

The Impact of State Property Rights Laws: Those Laws and My Land

By Harvey M. Jacobs

As I argue in my work to date, the private property rights movement is the most significant land-use and environmental movement in the U.S.¹ It has succeeded in keeping its agenda before the U.S. Congress throughout the 1990s (though as yet there has been no action that has resulted from this).² More significantly, movement supporters have succeeded in having bills introduced in all of the states reflecting their agenda and they have secured the passage of legislation in over half of all states.³ In addition, they have promoted significant parallel activity in more than 200 counties.⁴

Because of the movement's inability to get very far beyond rhetoric in the U.S. Congress, the foci of the substantive battle has become state houses. And, as noted, here the property rights movement has been quite successful.

They have promoted three types of bills in state legislatures: assessment laws, compensation laws, and conflict reso-

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1. Over the course of the past five years I have presented a set of papers on the rise and significance of the private property rights movement in the U.S. I began with an overview of the movement and its theoretical challenge to mainstream land use and environmental planning and policy (H. Jacobs, *The Anti-Environmental, 'Wise Use' Movement in America*, 47 LAND USE L. & ZONING DIG. 3, no. 2 (1995)), and then explored its manifestations at the local level (H. Jacobs, "Rethinking Progressive Localism? The 'County Movement' for Conservative Control of Land Use Planning," an address to the annual meeting of the Association of Collegiate Schools of Planning, Phoenix (1994)), how the environmental and planning communities are organizing against it (H. Jacobs, "Organizing Against Wise Use: The Emergent Planning, Environmental, Labor Coalition," an address to the annual meeting of the Association of Collegiate Schools of Planning, Detroit (1995)), and its likely future (H. Jacobs, *Whose Rights, Whose Regulations? Land Theory, Land Policy, and the Ambiguous Future of the New Private Property Rights Movement in the U.S.*, 13 ENVTL. PLAN. Q. 3, no. 3 (1996)).

2. Subcommittees of the U.S. House of Representatives have held many separate hearings on private property related matters. H.R. 1534, allowing property owners more access to federal courts on takings issues, was recommended for passage by the House Judiciary Committee earlier in 1998 but has not yet been passed by Congress. President Clinton still threatens to veto the proposal if it gets to his desk.

3. See H. LUND, PROPERTY RIGHTS LEGISLATION IN THE STATES: A REVIEW (1994); K. Emerson and C. Wise, *Statutory Approaches to Regulatory Takings: State Property Rights Legislation Issues and Implications for Public Administration*, 57 PUB. ADMIN. REV. 411, no. 5 (1997).

4. T. Arrandale, *The Sagebrush Gang Rides Again*, GOVERNING at 38-42 (March 1994); and A. Hungerford, 'Custom and Culture' Ordinances: Not a Wise Move for the Wise Use Movement, 8 TULANE ENVTL. L. J., no. 2 at 457-503 (1995).

lution laws.⁵ Assessment laws require a designated government office to conduct assessments of proposed legislation, rules, and regulations to determine how they will impact private property rights. These laws are built upon the model of environmental impact assessments, and are referred to by their proponents as "look before you leap" bills. Compensation laws require that private property owners be compensated when governmental laws, rules and/or regulations would impose a burden on private property—reduce property value—by a predetermined percentage (percentage amounts vary from 10 to 50). Conflict resolution laws set up a formal process for negotiation among aggrieved parties, sometimes through the establishment of a new office for conflict resolution, whereby impacts on private property rights can be discussed and hopefully resolved to the satisfaction of all concerned.

The exact number of bills and states that have passed these laws varies somewhat based on how and what you count. Emerson and Wise offer up a set of 25 states that have passed these laws between 1991 and 1996. See note 3, *supra*. These states are concentrated in the plains and mountain sections of the country, though the states vary from Maine to Florida, and Rhode Island to Washington. See map on page 5. Emerson and Wise (1997) identify 17 states that have passed assessment laws (including Arizona and Washington which later had them repealed by referendum, though Arizona then passed another law), and six states that have passed compensation laws (including Washington which later had it repealed by referendum). None of the laws predates 1991, and most have been passed in the last two to three years.

In this paper, I present the preliminary results of a national study I have been supervising which focuses on the impacts of state-based private property rights laws on the security of individual land tenure.⁶ This research project selected seven states for detailed examination. These states were selected because they represented both geographic diversity within the U.S. and diversity of type of private property rights legislation. The seven are: Arizona, Florida, Kansas, Maine, Mississippi, Montana, and Wisconsin. All of these states except Wisconsin have adopted some form of private property rights legislation. Arizona has a conflict resolution law, Florida a compensation and conflict resolution law, Kansas

5. See R. Freilich and R. Doyle, *Takings Legislation: Misguided and Dangerous*, 46 LAND USE L. & ZONING DIG. 3, no. 10 (1994); H. LUND, PROPERTY RIGHTS LEGISLATION IN THE STATES: A REVIEW (1994); N. G. Marzulla, 1995; *State Private Property Rights Initiatives as a Response to 'Environmental Takings'*, 46 S.C. L. REV. 613, no. 4 (1995); H. Jacobs and B. Ohm, *Statutory Takings Legislation: The National Context, the Wisconsin and Minnesota Proposals*, 2 WIS. ENVTL. L. J. 173, no. 2 (1995); and K. Emerson and C. Wise, *supra*.

6. This article was presented to the 39th Annual Meeting of the Association of Collegiate Schools of Planning, Ft. Lauderdale, Florida, November 6-9, 1997. The project is titled "State-based Property Rights Legislation and the Security of Individual Land Tenure: A National Assessment." It is conducted under the auspices of and with funding from the relatively new North American Program of the Land Tenure Center at the University of Wisconsin-Madison. This program was established with funding from the Ford Foundation, the W.W. Kellogg Foundation, and the Otto Bremer Foundation for the purpose of examining the changing nature of land and natural resource ownership in North America, and to conduct research and public education about these changes. I help coordinate the program, specifically the sub-area of social and cultural conflict over land and natural resources.

an assessment law, Maine an assessment and conflict resolution law, Mississippi a compensation law, Montana an assessment law, and Wisconsin a proposed compensation law.

Researchers in and/or familiar with these states prepared commissioned papers on the impact of the laws in their designated state. See box on page 7: Researchers and Their Papers on the Impact of Private Property Rights Laws. This included an examination of the law in the context of the state's constitutional and administrative framework, and interviews with representatives of key interest groups concerned with and/or affected by the law. In August, a workshop was held in Madison, Wisconsin, for the individual researchers to present their work to each other, and for us to piece together a national picture from the puzzle of individual states. Thus, this article is an interim report on a work in progress, and the final results probably will be available later in 1998.⁷

Why the focus on the security of individual land tenure? To a large extent this gets at the heart of the challenge offered by the private property rights movement. The movement puts forth the notion that land-use and environmental laws threaten the security of individual land tenure; put simplistically, they argue that zoning and other laws, by telling me what I can do or not do with my land, restrict my exercising the full set of my property rights.

Yet, it has been noted by critics of these laws that, in fact, it is the opposite that is more true. That is, land-use and environmental legislation can serve to make property rights more secure by establishing a public rule framework for the management of unfettered market forces. So, for example, the existence of my home in a residentially zoned neighborhood can add security to my land tenure by establishing insulation from certain market decisions—I need not worry about an undesirable land-use activity appearing next door. (This is the basis of critics suggesting that these laws are “the pornography shop owners’ bill of rights.”)

The goal of this project is to provide an empirical analysis in an area that has been predominantly speculative. It is seeking to address the question of exactly *how* state property rights laws are affecting the security of individual land tenure. Specifically, authors of individual state analyses asked: Will private property laws diminish or strengthen the security of individual land tenure/individual property rights? And how will these likely effects occur?

THE GENERAL IMPACTS

In addition to the specific focus of this research project, four general conclusions about the impacts of state-based private property rights laws emerge.

One: On the whole *not enough time has passed since the laws have been passed to precisely know what their impact will be.* Many of these laws have been in place only a year or two, and in some cases their implementation was delayed until this year. So, in a very real sense, it is too early to tell whether they are going to have much of an impact, if that impact will be positive (as their proponents expect it be), negative (as their opponents hope it will be), or more muddled and situational (which is more likely).

Two: There seems to be little relationship between the adoption of state-based laws and the existence or non-existence of on-the-ground problems in a particular state. At the national level the private property rights movement is informed by a set of “horror” stories about the supposed abuse of administrative and regulatory power that comes from the implementation of a set of selected federal laws, specifically the Endangered Species Act, and section 404 of the Clean Water Act (relating to wetlands). In many of the states in this study, and other states that researchers were aware of, there were no particular parallel alleged abuses that appeared to prompt the introduction of these laws.

Three: There are a set of states where the existence of these laws appears to have no impact whatsoever. For example, in Kansas (an assessment law state) and Mississippi (a compensation law state), researchers associated with this project were among the first to make inquiries about the law to the state agencies responsible for them, and many of the interest group representatives knew little and seemed to care little about the laws. That is, in a selected set of states these laws appear irrelevant to what is going on politically and administratively.

Four: In a few states, where development pressures are strong and administrative practices by government can act to significantly curb private property right values, such as Arizona and Florida, the existence of private property laws has had a chilling effect on the development of laws, rules, and regulations. This effect means that existing laws, rules, and regulations move towards being frozen in place because the administrative structure is uncertain about the impact of the private property rights laws and finds it easier to do nothing than to do something and thus subject itself to the new law's provisions. The impact of this is that the administrative structure may find itself unable to respond flexibly to new situations, conditions, and technology and will become literally stuck.

SPECIFIC FINDINGS FROM STUDIES

Perhaps the most interesting result of this research, relative to the reason it was initiated, is the difficulty that researchers had in getting interviewees to understand and focus upon the impact of state-based laws on the security of individual land tenure.

First, many of the researchers reported that interviewees did not grasp the concept of land tenure if they presented it as such. And if researchers tried to explain it, then they felt they were often leading interviewees into answer sets. So the concept itself, presented as land tenure, was confusing.

However, many of the researchers themselves ventured conclusions from their research. So, as noted, Strauss in his paper on Kansas (an assessment state), and Culp in her paper on Mississippi (a compensation state) find that *at this time* the laws in their respective states appear to be having no impact whatsoever. Therefore there is no impact on the security of land tenure; the institutional situation remains as it was before the laws were passed.

But Strauss also notes that what was true now need not be true for the future. The situation today was largely a function of the individuals filling particular roles and positions in state government. That is, the Kansas law is strong and has the potential to have many negative impacts, but it is being administered now to minimize negative impacts. If these individuals were to change to people who wanted to exploit the provisions of the Kansas law,

7. The final report of the research project will be available from the North American Program of the Land Tenure Center sometime in 1998.

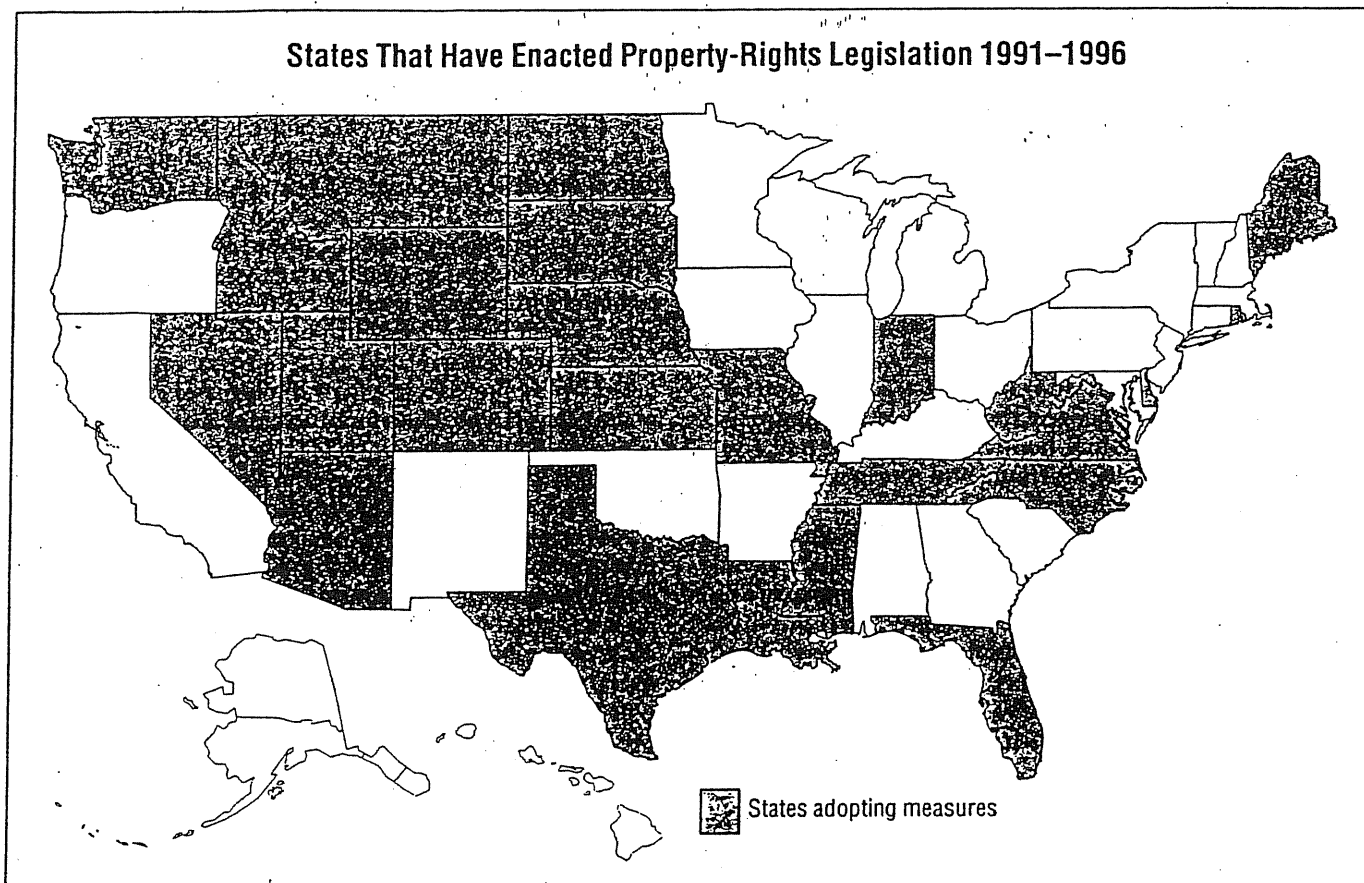
Commentary

then the potential exists for very negative impacts on the security of individual land tenure.

In other states studied, the situation is a bit the same and a little bit different. For example, Farling notes in his paper on Montana that the assessment law was pushed in its development by one of the leaders of the private property rights movement nationally. However, now, that it exists, Hertha Lund, lobbyist for the Montana Farm Bureau, is disappointed with its impacts. The particular form that implementation took has ended up meaning that the assessment law in Montana has not shifted private property rights towards farmers and ranchers (her goal on behalf of the Farm Bureau). Likewise, representatives of major environmental interests in the state do not see that the law has had much real impact on the regulatory structure of government, the integ-

statewide land-use policy.⁸ It is also the most populous, urban and rapidly growing of the seven states studied. While, it is interesting because of its size and urban form, and long history of state-based "progressive" policy, it is its conflict resolution approach to the private property rights controversy that has drawn national attention.

As RuBino describes in his paper on Florida, in 1995 the state passed two acts that he denotes as non-identical twins—a private property rights protection act and a dispute resolution act. Together these laws establish a new basis for relief from governmental action—that such action may not create an "inordinate burden" (this is intended to be separate, distinct, and less stringent than the formal finding of a "takings")—and a formal process for approaching and then resolving differences between a



Source: K. Emerson and C. Wise, 57 *Pub. Admin. Rev.* 411, no. 5 (1997)

rity of private property rights, and/or the security of individual land tenure. For all real purposes, the law's main impact, from the perspective of its proponents and opponents, has been to require selected state agencies to be more sensitive to private property issues and to bring these issues into public consideration in a more explicit way. Ironically, one of the positive impacts of the Montana assessment law was to thwart efforts to pass a compensation law in the state. Opponents of the compensation law were able to use the existence of the assessment law as evidence that additional legislation was unnecessary.

Perhaps the most interesting case included in this study is Florida. Florida has long been touted as one of the leaders in

landowner's perception of appropriate government regulation of his property and the government's desire to act in the public interest.

If a landowner in Florida is found to be inordinately burdened by government regulation, then the government must negotiate, and the negotiation process is set up to require the government to back off of its proposed action or to significantly compromise it. Settlement options are specifically denoted and include: adjustments of the conditions

8. See F. BOSSELMAN AND D. CALLIES, *THE QUIET REVOLUTION IN LAND USE CONTROL* (1971); and J. DEGROVE AND D. MINESS, *THE NEW FRONTIER FOR LAND POLICY: PLANNING AND GROWTH MANAGEMENT IN THE STATES* (1992).

of the proposed permit, increases in density, land swaps, mitigation payments, issuance of a variance, or purchase of the property.

RuBino makes two broad conclusions from his research: first, the effect of these laws has been to significantly slow down the Florida regulatory process—to chill it. Second, there has been a pivotal impact of land tenure security in Florida as a result of these laws. The security of large, development-oriented landowners has been strengthened, and the security of the smaller “every-person” is weakened as a result. Agreeing with one of his resource references, RuBino notes that the new laws in Florida signal a real change in the way Florida government will interact with Florida landowners.

Based on admittedly incomplete and speculative data, I venture the following conclusion about the impact of these state-based laws on the security of individual land tenure—the state-based laws are likely to have the opposite effect intended (or stated as the intention) by their proponents. That is, in those states where they are not being ignored, laws intended to provide more security for the private property rights of small landowners may instead be making landowners’ private property rights more vulnerable and thus insecure.

This will occur when the private property rights laws remove the protection provided by local and state land and environmental laws and regulations. These latter laws are developed and implemented to manage neighbor-to-neighbor conflict and to provide a degree of investment security for the individual landowner. These laws and regulations rarely spring forth without due cause. Instead they appear when individual landowners or the public at large experience problems with the existing, non-regulated private property rights system of land and environmental resource management. Private property rights laws that reach up and down a state’s administrative system serve to threaten the major asset and security of most Americans.

If these laws are benefiting any set of landowners, they are likely to be large landowners and/or landowners representing active land use, in the form of land conversion and/or resource extraction.

THE FUTURE OF PROPERTY RIGHTS LAWS

Despite the specific impacts of state-based private property rights laws, the source of these bills, the private property rights movement, can be understood as being enormously successful in its efforts. Even more so than the specific bills passed in any particular state, the movement’s success is in how it has captured and reframed the public debate about private property rights.⁹

From a period spanning from at least 1970 to 1990, the private property rights debate was seen through the lens provided by environmental and related interests. From the point of view of these interest groups, private property rights needed to be constrained and reshaped to fit changing social values and social conditions. The environmental community argued (not incorrectly from my point of view; see the following section), and the judicial system largely agreed, that most legislative and regulatory changes that impinged

on private property were reasonable when viewed from the perspective of a necessary balance between the public interest and the private interest in land. See F. Bosselman, I. Callies, and J. Banta, *The Taking Issue: An Analysis of the Constitutional Limits of Land Use Control* (1973).

The “success” of the private property rights movement is to have forced the policy debate to its side. Now it is increasingly common for private property related issues to be debated from the point of view of having to justify why it is that impositions on private property rights should be allowed. For the debate even to be set up in this way shows the difference a decade can make.

Because of the rhetorical strength of the private property rights movement, I foresee four trends shaping the immediate future.

First, the locus of private property rights legislative activity is likely to stay at the state level. There is an increasing recognition among many of the parties to land and environmental management disputes that the vast majority of these issues are local in nature. So it is in the state houses, rather than in U.S. Congress, that we are likely to see this struggle unfold. This does not discount serious national/federal debates over the content of the Endangered Species Act (16 U.S.C. § 1531), the wetlands provision of the Clean Water Act (33 U.S.C. § 1251), or the management of public lands. Nor am I diminishing the leadership of nationally based private property rights organizations. Rather, I am suggesting that federal activity will be focused on particular issues, while more broad-based issues related to private property rights will be taken up by the states, where the locus of debate on these matters has largely been for much of this century.

Second, the nature of state bills is likely to move toward conflict resolution laws and away from compensation and assessment bills (which can be thought of as first generation responses to these issues). This is likely to be true for several reasons. The first generation responses are proving either difficult to adopt because of local concern over their cost (in terms of compensation laws), or difficult to implement (in terms of assessment laws). Conflict resolution laws present the issue as more reasoned: Who could disagree with the notion that we should all sit down and work out solutions to these problems? But the impacts of these bills are themselves uncertain, reflecting how they get written, who gets access to the conflict resolution process, the terms of resolution dictated by the statute, etc.¹⁰

Third, I believe there is likely to be increasing outcry and backlash from those negatively affected by private property rights legislation. To some extent, these laws operate in a universe of fixed resources. That is, what is an advantage or added security to your private property rights becomes a disadvantage or insecurity to mine.

To date, the media have set up the private property rights issue as a struggle between (virtuous or crazy, depending on your point of view) environmentalists on the one hand and (land-raping, or responsible-managing, or job/growth creating, depending on your point of view) landowner/developers on the other hand. But, at bottom it is about the most

9. A WOLF IN THE GARDEN: THE LAND RIGHTS MOVEMENT AND THE NEW ENVIRONMENTAL DEBATE (P. Brick and R. Cawley, eds. 1996); and LAND RIGHTS: THE 1990s PROPERTY RIGHTS REBELLION (B. Yandle, ed. 1995).

10. D. AMY, THE POLITICS OF ENVIRONMENTAL MEDIATION (1987), and R. RuBino and H. Jacobs, “Mediation and Negotiation for Planning, Land Use Management and Environmental Protection: An Annotated Bibliography of Materials for the Period 1980-1989,” No. 264 (1990).

Researchers and Their Papers on the Impact of Private Property Rights Laws

Arizona	Dr. Kirk Emerson, Udall Center for Studies in Public Policy, University of Arizona—"Evaluating the Impacts of Arizona's Private Property Rights Legislation on the Security of Individual Land Tenure."
Florida	Prof. Richard G. RuBino, Department of Urban and Regional Planning, Florida State University—"The Chilling Effect of Florida's Private Property Rights Protection Acts on Growth Management and Environmental Regulation."
Kansas	Prof. Eric Strauss, Chair, Graduate Program in Urban Planning, University of Kansas—"The Kansas Private Property Protection Act: A Success Story for Environmentalists."
Maine	Dr. Tadlock Cowan, Department of Sociology, Dartmouth College—"Property Rights Legislation in Maine: The Not-So-Quiet Revolution in Land Use Control."
Mississippi	Prof. Rhonda Phillips Culp, Department of Geography and Area Development, University of Southern Mississippi—"The Mississippi Agricultural and Forestry Activity Act: An Analysis of the Impacts on Individual Land Tenure and Property Rights."
Montana	Mr. Bruce Farling, Montana Council, Trout Unlimited, Missoula, Montana—"Look Before You Leap Private Property Assessments: An Evaluation of the 1995 Montana Private Property Assessment Act and the 1995 Amendments to the Montana Environmental Policy Act."
Wisconsin	Mr. James A. Kurtz, Bureau of Legal Services, Wisconsin Department of Natural Resources, and Ms. Stacey L. Swearingen, Institute for Environmental Studies, University of Wisconsin-Madison—"Property Rights and the Security of Land Tenure in Wisconsin: An Analysis of Wisconsin Assembly Bill 521, 1995 Legislative Session."
Commentary	Prof. (Emeritus) Ann Louise Strong, Department of City and Regional Planning, University of Pennsylvania—"A Commentary on Seven Papers Addressing State-Based Property Rights Legislation and Its Impact on Security of Land Tenure."

important asset possessed by most American families—their land and home.

In the high-profile fight over this issue we tend to forget that most laws and regulations restricting private property came about because other, often adjoining, private property owners were unduly affected by the relatively unconstrained private property use of certain landowners. This is the origin of zoning, the oldest and most common form of regulation restricting private property. Zoning was invented in the 1910s because conservative, middle-class landowners needed to protect their private property rights. They also needed some security in planning for the use of their land. Zoning restricts the private property rights of some landowners to secure the private property rights of other landowners. This was zoning's origin, and this remains the major rationale for zoning. The U.S. Supreme Court, even in its most conservative incarnations, has found this to be a reasonable balancing act.

If I am correct in my prediction that private property rights legislation will concentrate at the state level, then I believe that those landowners who will find their private property rights made less secure through the adoption of these laws (and I believe they are in the majority) increasingly will assert their interests in this fight.

Fourth, the push for state-based bills has resulted in renewed creativity among planners, public administrators, and their peers in the regulatory community. There has long been an internal debate among those characterized by the private property rights movement as "regulators," about ways to, on the one

hand, respect the integrity of private property, and, on the other hand, achieve public objectives in land and environmental planning and policy. The professional journals are full of ideas for doing just this. The "success" of state-based private property legislation is facilitating a renewal of this debate and encouraging policy experimentation at the state and local levels. See e.g., A. Strong, D. Mandelker, and E. Kelly, *Property Rights and Takings*, 62 J. of the Am. Planning Ass'n 5, no. 1 (1996).

In line with the backlash that I foresee as the third trend, the regulatory community is finding a citizenry both more demanding of, and receptive to, creative solutions to land and environmental management problems.

THE FIXEDNESS OF PRIVATE PROPERTY

Much of the debate about private property legislation is at root a debate about the very nature of private property—specifically its fixedness (or rigidity) in contrast to its fluidity. See, e.g., *Who Owns America? Social Conflict Over Property Rights* (H. Jacobs, ed. 1998) (forthcoming, University of Wisconsin Press, Madison).

Proponents of private property legislation put forth the idea that a particular view of private property is enshrined in the U.S. Constitution, reflecting a consensus among the country's founders. This view is that private property has a priori integrity, and can be compromised only subject to the restrictions of the "takings" clause of the Fifth Amendment. Proponents also argue that the modification of private property by laws and regulations is a relatively recent phenom-

enon, associated most noticeably with the rise of the environmental movement.

It is true that certain founders took especially strident perspectives on the necessary integrity of private property. James Madison wrote in the *Federalist* No. 54, "Government is instituted no less for the protection of property than of the persons of individuals." Others, including Alexander Hamilton and John Adams, concurred. Adams noted that "property must be secured or liberty cannot exist. The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence." J. Adams, "Discourses on Davilia, A Series of Papers on Political History" (1790) in 6 *The Works of John Adams* 280 (C.F. Adams, ed., 1851).

However, it is also true that others took the opposite perspective. For example, Benjamin Franklin noted with force: "private property is a creature of society, and is subject to the calls of that society whenever its necessities require it, even to the last farthing." B. Franklin (1789), "Queries and Remarks Respecting Alterations in the Constitution of Pennsylvania," in 10 *The Writings of Benjamin Franklin* 59 (A.H. Smith, ed. 1907). And both sides took inspiration from the writing of John Locke. In support of Franklin's position, for example, Locke (1952 [1690]: 68-69) noted:

For it would be a direct contradiction for any one to enter into society with others for the securing and regulating of property, and yet to suppose his land, whose property is to be regulated by the laws of society, should be exempt from the jurisdiction of that government to which he himself, and the property of the land, is subject. J. Locke (1690), *The Second Treatise of Government* at 68, 69 (T. Peardon, ed. 1952).

So, there was not just one point of view about the place and role of private property among the country's founders. They, like we today, had positions that spanned the political spectrum.

As for the proponents' second position, history shows us that the states especially have exercised substantial regulatory restrictions over private property rights since colonial times. See J. Ely, Jr. *The Guardian of Every Other Right: A Constitutional History of Property Rights* (1992). More importantly, private property rights have been substantially reshaped at various times in U.S. history to reflect changing

social values and changing technologies. So, in the early part of this century, after the invention and commercial development of the airplane, private property owners lost their rights *est usque ad coelum* (all the way to heaven—the traditional definition of air rights in private property) without compensation. Courts found that allowing private property owners to continue on with this older definition of private property was strangulating the need for technological development and progress. Similarly, in the 1960s, reflecting changing social values, restaurant owners lost their private property rights to exclude patrons on the basis of race, again absent compensation. See H. Jacobs, *The Anti-Environmental, 'Wise Use' Movement in America*, 47 *Land Use L. & Zoning Dig.* 3, no. 2 (1995). History and law show us that private property has always been a socially defined and flexible concept.¹¹

This does not take away from private property's strong cultural meaning, and its attachment to our concepts of American freedom, liberty, and citizenship. See, e.g., J. DeLong, *Property Matters: How Property Rights are Under Assault—and Why You Should Care* (1997). In fact, it is precisely because private property is married to these concepts that we fight so strongly over it.

Yet, at bottom, the issue with private property laws, those laws, is that they are acts of social regulation that affect *my* land. They are a clear attempt by a well-focused interest group in America to impose its views of private property, and property-society relations, on us all. As the Defenders of Property Rights (a conservative advocacy organization that promotes these laws) says in one of its publicity brochures—"Private Property Matters to All of Us." They are correct. But it is precisely because it does, in the most fundamental way, that I believe these laws need to, should, and are bound to fail.¹²

11. See F. BOSSELMAN, D. CALLIES, AND J. BANTA, *THE TAKING ISSUE: AN ANALYSIS OF THE CONSTITUTIONAL LIMITS OF LAND USE CONTROL* (1973); and D. W. Bromley, *Regulatory Takings: Coherent Concept or Logical Contradiction*, 17 *Vt. L. REV.* 647, no. 3 (1993).

12. The irony is that if I am correct, these laws will fail for a conservative, not progressive, reason. Once "we" all realize the real impact of these laws—who they benefit and who they burden—despite the real appeal of the cultural symbolism of their advocates, it will be our need to protect our personal investments in private property that will bring these laws, and the movement, down.