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## Anarchy, State, and Utopia

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## BOOK REVIEWS

ANARCHY, STATE, AND UTOPIA. By Robert Nozick.<sup>1</sup> New York, New York: Basic Books, Inc. 1974. Pp. xvi, 367. \$12.95.

*Reviewed by Alan R. Mabe<sup>2</sup>*

A few years ago there was speculation that political philosophy was dying if not already dead. Recent publications such as John Rawls' *A Theory of Justice* and Robert Nozick's *Anarchy, State, and Utopia* show that such speculation was mistaken. There is a renewed vigor in contemporary political philosophy. Nozick's view, which challenges both Rawls' theory and the Marxian position, will likely generate a vigorous and high-level debate among proponents of alternative positions in political philosophy.

It is necessary to locate Nozick's discussion in the context of continuing debates in moral and political philosophy. Utilitarianism has been widely accepted in moral and political philosophy, but in recent years it has been attacked on the ground that some of the actions sanctioned by the utility principle do not coincide with some of our deeply held moral beliefs. Critics claim, for example, that punishment of an innocent person can be justified by the principle of utility if certain conditions hold. Rawls' theory of justice is an alternative to the utilitarian account of justice. In Rawls' view utilitarianism cannot account for basic rights people have. In fact, Rawls suggests that under certain conditions utilitarian moral theory could be used to justify slavery. That is because in utilitarianism what is right or just is understood in terms of maximizing good, however identified. Hence, if the total value of a society with slavery exceeds that of any alternative society, the former would be the moral alternative. Rawls believes that a person's rights cannot be exchanged for an increase in another's happiness. According to Rawls' theory, rights are independent of the maximization of any identifiable good, e.g., pleasure or happiness. But Rawls allows economic redistribution under a "difference principle" that justifies inequalities (primarily economic) when they provide advantages to the least advantaged. The rights Rawls defends so vigorously correspond to that range of rights we designate as civil liberties.

Nozick accepts many of Rawls' criticisms of utilitarianism, and like Rawls makes rights fundamental in his position. But he differs

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from Rawls by including traditional property rights in his list of basic or fundamental rights; hence, he is opposed to forced transfers in the economic domain. Nozick raises the perennial question of what things a government can justifiably force a citizen to do. He argues that considerably less coercion of citizens can be justified than Rawls, socialists, or people generally believe. Nozick is not an anarchist; he argues that some coercion by government can be justified, but there is a limit, and our current political practices (I presume) far exceed that limit.

Let me complete the background for Nozick's discussion with some remarks about political theory. Central to anarchist theory is the view that coercion by government of a citizen conceived to be an autonomous moral agent can never be morally justified. Liberal democratic theorists have taken this position seriously and have tried to refute the anarchist by developing a theory of justification for governmental coercion. One seemingly attractive answer to the anarchist is social contract theory. (Utilitarianism offers another answer.) If a citizen's voluntary act (an explicit act, tacit acquiescence, or even a hypothetical act) has created a moral obligation to obey political authority, a government that coerces him when he fails to meet his obligation is, in effect, forcing him to do the moral thing. Hence governmental coercion is morally justifiable. (This is a brief statement of the argument, which needs a number of restrictions attached to make it plausible; it will, however, do for our purposes.) Assuming some type of unanimous consent, government forces citizens to do merely what they have voluntarily agreed to do. Herein, contract theorists thought, was the answer to the anarchists. But contract theory offers no obvious limits to what people might or should agree to. Thus one could possibly extend the contract argument to justify a wide range of governmental activity, especially if only some form of hypothetical agreement were involved (*e.g.*, whatever a rational moral agent would agree to under conditions C). Rawls uses a suitably revised and extended social contract approach in constructing and defending his theory of justice, which in turn is used in justifying governmental coercion of citizens where, for example, economic redistribution is involved.

Nozick believes that the state can operate legitimately over a certain domain, but he wants to limit severely the role of the state. Traditional social contract theory is not attractive to Nozick partly because it has been extended to justify types of governmental activities that he thinks illegitimate, and partly because of inherent difficulties in the contract theorist's reply to the anarchist. He needs an argument

that will refute the anarchist, but one which cannot be extended to justify more than a minimal state.

Nozick attempts to justify a minimal state without recourse to the device of unanimous contract. In the first part of the book the argument for the minimal state is developed; in the second part, arguments for more than a minimal state are examined and rejected; in the third part, Nozick relates his conception of the state to utopian speculation. I will discuss each of these parts in turn.

The starting point for Nozick's argument is a state of nature in which individuals have rights: "Individuals have rights, and there are things no person or group may do to them (without violating their rights). So strong and far-reaching are these rights that they raise the question of what, if anything, the state and its officials may do" (p. ix). Nozick wants to show how a state *could* come into existence without violating anyone's rights. He uses a Weberian definition of the state: an entity that has a monopoly on the use of force in a given geographical territory. His account of the state must meet these conditions if he is to succeed.

Nozick accepts Locke's account of rights in the state of nature. In Locke's view, "everyone has a right to punish the transgressors of that law [of nature] to such a degree as may hinder its violation."<sup>3</sup> One has a right to punish others when one is harmed by others. Due to the inconvenience and perhaps ineffectiveness of doing this for oneself, one may voluntarily contract with another to punish those who harm oneself. In fact, many people may do this, and a number of "protective associations" might be formed. Nozick suggests that protective associations may arrange to adjust conflict among themselves. According to Nozick, there eventually would be a single Dominant Protective Association (DPA) that would prevent harm to its clients and punish those who succeed in violating its clients' rights. The DPA would violate no one's rights—it would prevent one person from interfering with another's rights and, failing to prevent that, would punish the aggressor. Since the DPA's right to do these things is based solely on the transfer of rights from individuals in the state of nature, and since exercise of those rights in the state of nature violates no one else's rights, their exercise by the DPA violates no one's rights. Suppose, however, there are those in the territory who do not want to join the DPA. They would continue to protect themselves and punish violators of their rights. Further, suppose an independent (a non-member of a DPA) attempts to punish a client of a DPA. There must be some pro-

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3. J. LOCKE, *The Second Treatise of Civil Government* ch. II, § 7, in *TWO TREATISES OF GOVERNMENT* 124 (T. Cook ed. 1947).

cedure to determine guilt, or punishment would not differ from simple aggression. In the state of nature, one has a right to prevent unfair procedures for determining guilt from being applied to oneself. If this right were transferred, the DPA would have a right to prevent an independent from imposing an unfair or risky procedure on a client. Thus the independent would find himself at a disadvantage if a DPA grew up around him.

Nozick introduces the principle of compensation at this point in his argument. For our purposes the following formulation will suffice: If in the course of the exercise of one's rights one disadvantages another person, one may be required to compensate him for those disadvantages. The specific form for the argument would require "those imposing a prohibition on risky activities [*e.g.*, DPA clients prohibiting independents from applying their own guilt determination procedures] to compensate those *disadvantaged* through having these risky activities prohibited to them" (p. 87). The compensation to independents would take the form of protection provided them by the Dominant Protective Association and paid for by the voluntary clients of that agency. DPA clients, however, would be required to pay compensation only if the independent were in fact disadvantaged.

Nozick believes that at this stage the Dominant Protective Association would resemble a state, albeit a minimal one. There would be a *de facto* monopoly on the use of force (simply because the DPA would be much more powerful than independents), and all in the territory would receive protection from the DPA. Yet the DPA would not be formed by a unanimous social contract. According to Nozick, the DPA would develop to this point without violating anyone's rights (the independent has no right to impose risky procedures to determine another's guilt); thus the anarchist has no ground on which to oppose the minimal state.

But an economic redistribution appears to occur in this minimal state—clients pay for the protection of disadvantaged independents. Hence, this form of redistribution might provide the pattern for other and more extensive redistributions in a more-than-minimal state. Nozick argues, however, that a shift of funds is redistributive only when done for redistributive reasons. The economic shift in Nozick's minimal state would occur to protect client's rights and avoid violation of the principle of compensation; the shift would not occur for the sake of redistribution. There is, therefore, no redistribution as such in the minimal state.

Having offered a model of a minimal state premised on strong individual rights, Nozick proceeds to argue: "The minimal state is

the most extensive state that can be justified. Any state more extensive violates people's rights" (p. 149). In this part of the book he examines the view "that a more extensive state is justified, because necessary (or the best instrument) to achieve distributive justice" (p. 149). He devotes most of his attention to a critical examination (and finally a rejection) of Rawls' argument for his two principles of justice. Nozick distinguishes *end-state principles* of justice from *historical principles* of justice. End-state principles redistribute according to a criterion that ignores how we arrived at our existing distribution. Historical principles "hold that past circumstances or actions of people can create differential entitlements or differential deserts to things" (p. 155). Nozick labels his own theory, which is based on historical rather than end-state principles, the entitlement theory of justice in holdings. That theory has three basic principles: the principles of acquisition and transfer, and the principle of rectification, which is applicable only if one or both of the other two principles is violated. He argues that the entitlement theory of justice is not a *patterned* theory of distribution, as apparently Rawls' is. Patterned theories distribute according to some criterion that ignores rights in existing holdings. For example, the formula for a patterned distribution is "to each according to his ——" (need, merit, I.Q., etc.).

Nozick suggests that most discussions of distributive justice generally presuppose that the solution will be a patterned distribution. The entitlement theory is offered by Nozick as an alternative to the whole range of patterned and end-state schemes of distribution. Nozick argues that difficulties involved in maintaining a given pattern will generate further regulations concerning how resources received can be used. He offers the example of a society that distributes assets in equal shares. Are there limits on how individuals can dispose of their shares? Imagine a voluntary scheme in this society in which Wilt Chamberlain agrees to play basketball for the season only if each fan is willing to pay twenty-five cents in addition to the regular admission price. Attendance for the season of 1,000,000 fans results in \$250,000 for Chamberlain. Is he entitled to it? Are the fans entitled to spend their shares that way? Nozick argues that patterned distributions will either be very unstable or the amount of interference necessary to maintain them will become intolerable (*e.g.*, the fans will not be able to see Chamberlain play basketball).

Nozick apparently means for this criticism to apply to Rawls' theory of justice, but it is unclear whether Rawls' difference principle (inequalities are justified only if they provide advantages to the least advantaged), which exhibits a tendency toward equality, has the

defects Nozick alleges. An assessment of Nozick's account of Rawls would require the independent development of some of the themes in Rawls' work. This is not possible here; one theme, however, can be considered briefly.

Rawls wants to discount natural abilities and developed talents (among other things) as a basis for distributing income, since these things are arbitrary from a moral point of view (or so Rawls claims). Talents and developed capacities, though possessed by individuals, are viewed by Rawls as collective assets. Talents and capacities are not to be rewarded for their own sake but only when they are put to work for society's benefit. The size of the share given talented persons is based neither on degrees of talent or capacity nor solely on the value of social contribution. It is based on whether inequalities (larger shares) are necessary to assure that talents will be exercised for society's benefit. If enough people would exercise particular talents without the inducement of larger shares, then larger shares would not be justified.

If people could base their claims to distributive shares on natural assets or developed capacities, Rawls' difference principle would be severely restricted in its operation. Nozick argues that Rawls fails to make the case for discounting natural abilities and developed capacities as a basis for receiving shares. "We have found no cogent argument to (help) establish that differences in holding arising from differences in natural assets should be eliminated or minimized" (p. 226). In Nozick's view, if Rawls cannot make this case, his theory of justice (which includes the difference principle as one of two basic principles defining just institutions) is seriously weakened. Thus it becomes an unattractive basis for justifying more than a minimal state.

Nozick briefly explores some Marxian themes, particularly envy, worker control, and exploitation. The discussion of envy is very interesting. Rawls argues that envy could be reduced and self-esteem increased if wide inequalities were eliminated. Nozick argues that envy cannot be eliminated; self-esteem is based on differentiating ourselves from others—if one mode of comparison is eliminated attention will shift to another mode. We envy those who come out higher on some scale than we do. With many scales we can find some scale on which we rate highly. But Nozick thinks that an egalitarian society would eliminate many scales. Hence there would be fewer bases for self-esteem and, contrary to Rawls' view, self-esteem would fall and envy grow.

Regarding worker control, Nozick suggests that unions are now rich enough to experiment with entirely worker-owned and worker-

controlled factories. A more than minimal state is not needed to provide worker control since workers who want worker control can have it under voluntary arrangements. His discussion of exploitation is rather brief and generally unsatisfactory. There is a brief discussion of the labor theory of value. He classifies it as a species of the "productive resources theory of value" and rejects it on the following grounds: "Thus Marx holds that this labor isn't all socially necessary. *What* is socially necessary, and how much of it is, will be determined by what happens on the market!! There is no longer any labor theory of value; the central notion of socially necessary labor time is *itself defined* in terms of the processes and exchange ratios of a competitive market!" (p. 260). The argument relevant to the main theme may be extracted as follows: Marx was so muddled about economic matters that one can hardly use his reflections as a basis for justifying more than the minimal state. Nozick does not make that argument explicitly, but the discussion suggests something of that thrust.

The third part of Nozick's book is devoted to a discussion of utopia. That discussion is interesting but not particularly original. The key idea is that what is needed is a *framework* for utopia and not specific, detailed blueprints for creating communities or states. The framework should provide for the realization of many different types of utopian experimental communities (many of which may become permanent): "Utopia is a framework for utopias, a place where people are at liberty to join together voluntarily to pursue and attempt to realize their own vision of the good life in the ideal community but where no one can *impose* his own utopian vision upon others" (p. 312). The concluding discussion of utopia is supposed to result in our realization that the minimal state is a noble idea, and hence is capable of inspiring us.

This sketch has located and developed some of the main themes of Nozick's argument. The book is far richer than this sketch would indicate; a number of other interesting but often tangential issues are pursued. Nozick challenges many views which are widely accepted by social and political philosophers and lawyers. Nozick is especially good at locating the lack of argument for a position—for example, his critical examination of Bernard Williams' argument for equality (p. 233-35). Although the book is exceedingly provocative, it suffers from some serious defects.<sup>4</sup> The distinction between entitlement principles and patterned principles is an interesting one, but it is not at all clear that particular theories fit entirely into one mold or another. Rawls argues that people are entitled to certain basic rights

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4. Nozick acknowledges (pp. xii-iv) that his argument is not well developed at all points.



e.g., B's right to personal private property). Rawls also notes that his principles of justice are neutral between private and public ownership arrangements; which arrangements are chosen depends on historical conditions of a particular society. Apparently there would be no need to change from one form of ownership to another if justice could be achieved without such a change. As Nozick admits, there may also be a large degree of patterned distribution under an entitlement theory. For example, variations in distribution may vary with natural capacity and circumstances of birth (blood lines) or combinations of those factors. Nozick's conceptual framework here needs further development to be fruitful.

Another troubling matter is Nozick's failure to indicate what rights he considers basic. Obviously ownership of private property is regarded as a basic right, but there is no clearly articulated list of other fundamental rights to which individuals are entitled. If I am correct in stating that entitlements operate in Rawls' theory, Nozick and Rawls' difference may lie in their respective articulation of basic rights, since both start from a "rights" prospective. Nozick discusses Locke's account of rights and recognizes that the right to private property is limited by the "proviso": "A process normally giving rise to a permanent bequeathable property right in a previously un-owned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened" (p. 178). Nozick then asserts: "I believe that the free operation of a market system will not actually run afoul of the Lockean proviso" (p. 182). But there is little argument for this belief and almost no consideration of non-traditional private property arrangements. The content, range, and strength of entitlements is at issue here. If inheritance disadvantages some, why shouldn't they be compensated? Or consider an arrangement of this sort: The right to hold and control private property is absolute, except that it may not be transmitted to specific members of the next generation. The result is an extremely strong private property right<sup>5</sup> of limited range—the property right would extend one only over one's lifetime.<sup>6</sup> Nozick's entitlement theory suffers because it does not include an explicit list of rights and arguments against alternative lists. Further specificity is needed if we are to have a full picture of Nozick's theory.

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5. The right might be so strong as to preclude most forms of taxation; public funds might come from the assets of the agency charged with redistributing wealth after the death of its holder. Gifts would also have to be taxed if the scheme were to be effective.

6. Cf. Van Doren, *Redistributing Wealth by Curtailing Inheritance: The Community Interest in the Rule Against Perpetuities and the Estate Tax*, 3 FLA. ST. U.L. REV. 33 (1975).

Consider a more radical alternative: Suppose the list of basic economic rights included an individual right to the resources necessary to satisfy basic human needs. Perhaps rights in holdings would be on the list as well, but would be overridden when in conflict with the right to essential resources. I recognize many difficulties in this suggestion, but it does help make the point that the entitlement conception may be compatible with a wide range of alternative formulations of basic rights. Nozick admits that he has not provided the moral basis for the theory of rights he articulates, and his theory suffers because of this.

Within Nozick's formal principles of justice is the requirement for rectification for injustices. Two sorts of injustice might occur: Some persons might suffer because of the operation of the free society Nozick envisions (*e.g.*, the independent in a territory where there is a DPA), and others might suffer because the free society does not exist, or because of deviations from the two basic principles. Either abuse could provide a basis for state activity more extensive than that of the minimal state. Nozick admits this. "[P]ast injustices might be so great as to make necessary in the short run a more extensive state in order to rectify them" (p. 231). Further, "one *cannot* use the analysis and theory presented here to condemn any particular scheme of transfer payments" (p. 231). With an opening of this sort, it is unclear whether Nozick provides a conceptual or theoretical alternative to standard liberal democratic theorists who, on the whole, grudgingly back into a justification of state coercion. In Nozick's view the reason for redistribution determines whether it is redistributive. Rawls' theory of justice may be justified not as redistribution *per se* but as rectification or compensation. If a theory like Rawls' is required by the principles of compensation and rectification, its redistributive pattern can be seen in a different light, since the reasons for it are rooted in the rectification requirement. Ironically, Nozick fails to construct an argument that will justify the minimal state but that cannot be extended to justify more than the minimal state. The discussion of possible states more extensive than Nozick's minimal state is ambiguous. A state could be more extensive in the sense that additional, different grounds for justifying coercion were acceptable. Or a state could be more extensive simply because it exercised a larger amount of coercion. Under the latter conception, if more coercion were needed to enforce the acquisition, transfer, and rectification principles than were needed to enforce Rawls' two principles, a Nozick-endorsed state could be more extensive than a Rawlsian one.

One merit of Nozick's work is clear, however. As we generate more

and more laws and state regulations, we establish additional avenues for government coercion of citizens. Nozick invites us to reexamine our justification for coercion in the first place, and especially what limit we apply to state coercion. Even if we do not set the limit at the minimal state as Nozick does, we will, after encountering Nozick, think more clearly about the limit of state coercion.

MANAGEMENT AND CONTROL OF GROWTH: ISSUES, TECHNIQUES, PROBLEMS, TRENDS. Edited by Randall Scott,<sup>1</sup> David Brower,<sup>2</sup> and Dallas Miner.<sup>3</sup> Washington, D.C.: Urban Land Institute. 1975. 3 Volumes. Pp. xviii, 1779. \$22.50.

*Reviewed by Robert M. Rhodes<sup>4</sup>*

The ethic of growth in America is increasingly being challenged; no longer is it being accepted unquestioningly as a premise of progress. Its effects on the quality of life are widely debated, and its management and control are seen by many as essential elements of modern land use policy. (Vol. I, p. 2)

Recognizing this challenge and its attendant conceptual combat, the Urban Land Institute has assembled an anthology of material designed to provide a convenient resource document for attorneys, planners, public officials, developers, and others who share a common concern with management and growth control issues and techniques. These compilations accomplish their mission: they represent a cross-section of basic material on several key growth management issues as well as provide a point of departure for further research efforts. The offerings pique, but do not overwhelm, one's taste for the subject. And happily, the editors maintain a relatively high degree of philosophical balance among the contributors—proscription and prescription, thrust and parry abound in the assembled articles by the growth gurus. The volumes are well organized, replete with chapter introductions, individual article descriptions, bibliography and an executive summary.

The editors recognize that rhetoric is a congenital characteristic of any growth management discussion. Hence, in an effort to establish a conceptual point of departure for the ensuing articles, managed growth is defined as "the utilization by government of a variety of traditional and evolving techniques . . . to purposefully guide local patterns of land use, including the manner, location, rate, and nature of development" (Vol. I, p. 4). The terms employed provide the

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general polestar on which the articles guide; they also mirror the traditional bias of growth managers.

Emphasis solely upon governmental action to manage growth is shortsighted and unduly optimistic. The interactive relationship between governmental action and the development industry is apparent and is discussed in Chapter 19, "Prospectives From the Development Sector." If quality of life is the perceived issue, the public and private sectors must join forces on a more sustained basis. If managed growth is the aim, the providers of growth products must be persuaded to buy into the management program. Similarly, developers should be encouraged to participate fully in policy dialogue and to engage in "diplomacy planning" (Vol. III, pp. 509-20). Clientele frustration stimulated by governmental coercion inevitably leads to political retribution capable of dismantling any management program. Hence development, implementation and perfection of growth management programs must include sound contributions from both government and the private sector.

In addition, the editors appear to target local governments for managed growth assaults. Chapter 4 fortunately provides several persuasive critiques of traditional local zoning and regulatory techniques; Chapter 6 discusses exclusionary land use issues; Chapter 16 incorporates a number of articles relating to regional management approaches; and state growth policies are generally treated in Chapter 17. If growth is to be "purposefully" guided by innovative techniques, I believe the weight of the evidence clearly reveals that local governments generally do not possess the fiscal resources, requisite jurisdiction, or expansive perspective to accomplish this task. Regional or state action may not provide the ultimate panacea; however, I feel an appropriate mix of local, regional, and state powers, responsibilities, and sensitivities provides a better opportunity to achieve the aim of managed growth.

Finally, the editors curiously concentrate on land use as their sole path to the attainment of managed growth. The merits of relying on stringent land use regulations as the prime determinants of a managed growth strategy are discussed in various chapters, particularly 6, 7, and 19. Land use emphasis versus comprehensive planning is a continuous theme throughout the articles. Suffice it to say that public land use programs must reflect and reinforce governmental policies relating to the economy, transportation, housing, and manpower programs, to mention a representative few. In Florida, early development patterns were almost totally shaped by the availability of transportation routes. What the neighborhood looked like after the immigrants settled was of

secondary concern at best. Moreover, the presence or absence of water continues to stimulate and channel primary growth decisions in south Florida, notwithstanding the presence of land use controls.

Land use politics must also be considered. In developing its report on the Florida Keys as an area of critical state concern, the Division of State Planning necessarily focused on the impact that proposed land use policies would have on the economy of the area. The Division successfully argued that the well-being of the Keys' economy was inextricably linked to environmental quality and particular land use patterns. In addition, a proposed governmental economic assistance program for the Keys was developed by the Division and submitted to the Governor and Cabinet prior to designation of the critical area. Lacking these economic policy supports, I believe the vote designating the Keys as an area of critical state concern would have been much closer. Hence, under certain circumstances, land use regulation provides only one implementation tool in the growth management arsenal. Additional factors obviously affect life quality and should be orchestrated with, and integrated into, a multi-faceted growth policy.

Fortunately these traditional definitional proclivities are not unduly stressed, and several articles dealing with "cutting edge" management issues are presented. Volume I evaluates the "new attitudes" or "new mood" concerning land use controls and growth as perceived by a variety of commentators. Russell Train poses the question: "[I]s more [growth] necessarily better?" and cautions: "We should avoid dogmatic, categorical approaches. . . . Beware of insistent voices that categorically tell us what our values should be" (Vol. I, p. 42). James O'Leary bleakly describes the no-growth syndrome infecting a number of communities, moratoria, and the paucity of accepted guidelines for determining growth policy. A mid-1971 *Forbes* magazine article aptly notes: "'Welcome, Stranger,' the typical American attitude, is fast changing to that of 'Stranger, Get Lost'" (Vol. I, p. 54). A synopsis of the Rockefeller Task Force report, *The Use of Land*, is included along with the full panoply of growth management tools recommended by the Task Force. A critique of the Task Force's conclusions is provided by Basile Uddo.

The "traditional way of doing things" is critiqued by Heyman, Babcock, and Bosselman. These articles outline the usual judicial approaches to zoning and planning and point out the system's shortcomings. Ragsdale dissects Siegan's approach to land use without zoning and Bosselman *et al.* provide a brief summary of *The Taking Issue*. Hagman reviews *The Taking Issue* and introduces his concept of

"trading windfalls for wipeouts." Impact fees are analyzed and criticized by Jay Janis.

The limits to growth are explored by a number of authors who alternatively stress the risks of growth or point out the dangers which lie in zero population and economic growth. Several chapters address the problems inherent in local attempts to exclude development, with emphasis on exclusionary zoning affecting low-income persons. Litigation tactics are discussed in a perceptive article by Williams; Haar and Iatridis evaluate the role of the judiciary in such cases.

Volume II examines growth management programs and experiences of several communities, and explores the legal and policy ramifications of various growth control techniques. Extensive analyses are offered of the two major managed-growth cases of the early 1970's: those involving Ramapo, New York (timed development), and Petaluma, California (building cap). Articles by a number of the litigators, public officials, planners, and others probe the policy questions and dilemmas presented in these cases. These authors focus on the evolving issues of regional general welfare, the right to travel, exclusion, and local governments' authority to determine the acceptable amount or rate of development.

An article by Franklin examines the Ramapo and Petaluma cases, as well as litigation involving Maricopa County (right to travel relative to residence requirement for public medical care), and Boulder, Colorado (population cap established through water and sewer service). Bosselman and Fielding offer perspectives on the right to travel/mobility issue, which appears to present fertile ground for planners and attorneys as growth controls are challenged across the nation.

Additional presentations cover interim development controls (Freilich and Heeter), timing-phasing-sequencing of growth (Urbanczyk), building permit restrictions (Allen), sewer moratoria (Rivkin), and use of water and sewer facilities to control growth (Ramsay). A final series of articles outlines various methodologies for impact measurement, including fiscal analysis of proposed developments, the Fairfax County evaluation-information system (UDIS), and extrapolation techniques based on household size and school loads. Of particular interest to non-statisticians are Gruen and Ashley's observations as to how these analyses can be misapplied and shaped to support predetermined conclusions. The concluding offering in Volume II summarizes the Council on Environmental Quality's study of "the cost of sprawl."

Volume III explores the roles played by the several levels of government in land use programs. Various chapters discuss land banking, transfer of development rights, planned unit developments, open

space preservation, environmental impact statements, and other techniques. Unfortunately, the large majority of these offerings are primarily descriptive. A welcome contribution from the International City Managers' Association relates the actual experiences a few localities have had with growth control programs. Among these brief presentations is a discussion of Dade County's multiple moratoria.

Substantial experience has been developed working with most of these techniques. Volume III could have provided a greater contribution if lawyers, planners, administrators, and legislators intimately familiar with the enactment and implementation of primary management techniques were commissioned to analyze their experiences. Very few land management cases dealing with the new techniques are assembled for the use of practitioners; consequently, public officials and management system clientele are forced to reinvent the regulatory wheel when growth management comes to town.<sup>5</sup> We should be developing a case system for growth management similar to that of the Public Administration Service. The experience is there; it must be compiled so that it may be shared.

Florida alone provides a smorgasbord of state and local experience and efforts to implement growth management programs. PUD's and CUP's are alive and well in several central and south Florida counties. Collier County has adopted a type of transfer of development rights program called special treatment (ST) zones. Dade County has developed a "mini-DRI" review process for certain large-scale development (SD) projects. The Division of State Planning's two years of experience with developments of regional impact (DRI) and areas of critical state concern is unmatched nationally, and still has not been adequately analyzed. Instead of yet another illuminating exposition of the American Law Institute's Model Land Development Code, why not offer a series of analyses exploring how Florida's adopted version of the Code is functioning and why enactment of the Model Code has failed in a number of states?<sup>6</sup> Boca Raton's population cap and Broward County's impact fee program provide further study areas. Carrying-

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5. When the Bureau of Land and Water Management was formulating its initial policy regarding the "vested rights" provisions of the Environmental Land and Water Management Act of 1972, FLA. STAT. §§ 380.012-10 (1973), I called Joe Bodovitz, Executive Director of California's Coastal Zone Commission. One half-hour telephone call concerning California's policies and subsequent vested rights litigation proved to be of tremendous value as the Bureau began issuing vested rights determinations.

6. Bagne's article (Vol. III, p. 340), relating Washington State's experience could serve as a starting point for such a compilation. I have analyzed Florida's experience with the American Law Institute's Model Code for the American Institute of Planners. Rhodes, *Florida's Environmental Land and Water Management Act Implements Article 7 of the ALI Model Code*, 9 AIP NEWSLETTER 7 (1974).



capacity concepts could be measured against the University of Florida's work in Orlando and the Green Swamp. The 1974 Legislature's effort to enact a state growth policy could be examined. Finally, the unique role of the Governor's Property Rights Study Commission—its inception, focus on compensable regulations, and reports—could add additional flavor to a comprehensive analysis.

The point here is well stated by Priest in the Epilogue to the ULI compilation: "The keys to solving problems raised by managed growth lie in the political process and in institutional change within the private and public sectors, not in litigation and court decisions" (Vol. III, p. 549). The complex mix of economic, legal, and social issues woven throughout the growth management area can only be treated properly and comprehensively by elected officials. The weighing of equities and balancing of interests, which hopefully are revealed by a number of predecision methodologies described in these volumes, will necessitate legislative action. Even the greatest growth management conundrum—the taking issue—must, and in my opinion will, be confronted by legislative bodies.

And so the goals for the growth managers at this point must be implementation, perfection of existing programs, and constituency building. The managers must end their fraternal soliloquy and take the traveling road show and the programmatic elixirs to the consuming public. Government officials, administrators, and private clientele groups must be persuaded that participating in the DRI process or succumbing to moratoria makes a qualitative difference. The inevitable "thou shalt nots" must be discussed and understood in terms of why we dare not. If such public support is not achieved, the growth management movement will remain a luxury issue for a fair weather day: something desirable, but not essential; something to be pursued *after* the economic upturn, and not in conjunction with economic revival measures. I doubt that such popular relegation is palatable to the growth management advocates. A campaign of this type will require intensive scrutiny of the traditional reliance on the regulatory process to achieve growth management goals. I suspect that increasingly stringent regulations are producing some significant antithetical results, *e.g.*, driving developers to operate in minimally regulated areas, discouraging large scale land assemblages and comprehensive development of such areas, and pricing a large segment of our population out of the new housing markets. Developers have forecast in the most dire terms the ultimate effects of the new growth control mechanisms, but we have not thoroughly analyzed the industry operating under these restraints. Such analyses may reveal that less emphasis should be placed

on negative adversary regulatory systems, and more on public-private cooperative programs and endeavors. I believe such institutional change is inevitable.

The Urban Land Institute has performed a service by assembling a large amount of resource material on numerous growth related issues. I hope the ULI will be able to follow with a similar set of commissioned analytical offerings geared primarily to those parties who bear the burden of implementing the techniques described in these three volumes.