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BOOK REVIEW

LAND USE REGULATION AND LEGAL RHETORIC: BROADENING THE TERMS OF DEBATE

R. S. Radford†

Property Rights and the Constitution: Shaping Society Through Land Use Regulation.
By Dennis J. Coyle. SUNY Press: Albany, New York, 1993. Pp. xvi, 398. $65.50.

Dennis Coyle's new book, *Property Rights and the Constitution*,[1] is an important addition to the ongoing debate over the constitutional status of private property.[2] Coyle selectively reviews important land use cases decided by the United States Supreme Court and various states in the post-New Deal era. More importantly, Coyle provides an ideological framework that illuminates several key strands in the constitutional jurisprudence of property law. Coyle traces the ebb and flow of competing attitudes toward property rights and regulation in a way that makes sense of the sometimes chaotic body of case law in this field. In the process, he sets forth his own theories of the vital role of private property in creating and maintaining the American constitutional system.

The status of private property rights in American jurisprudence has undergone volatile shifts over time. Individuals' rights to own and use property were thought to be of fundamental importance at

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1. DENNIS J. COYLE, PROPERTY RIGHTS AND THE CONSTITUTION: SHAPING SOCIETY THROUGH LAND USE REGULATION (1993).

2. For other recent contributions to this debate see, for example, RICHARD A. EPSTEIN, TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN (1985); NICHOLAS MERCURO, TAKING PROPERTY AND JUST COMPENSATION: LAW AND ECONOMICS PERSPECTIVES OF THE TAKINGS ISSUE (1992); JENNIFER NEDELSKY, PRIVATE PROPERTY AND THE LIMITS OF AMERICAN CONSTITUTIONALISM (1991); ELLEN FRANKEL PAUL & HOWARD DICKMAN, LIBERTY, PROPERTY, AND THE FUTURE OF CONSTITUTIONAL DEVELOPMENT (1990).

the time the Constitution was drafted,[3] but constitutional protection of such rights was virtually abolished during the New Deal.[4]

Recent trends suggest the Court may be giving renewed vigor to the constitutional defense of property rights. Cases like *Nollan v. California Coastal Commission*[5] and *Lucas v. South Carolina Coastal Council*[6] can be read to indicate that government may no longer rely on boilerplate assertions of "police power" to justify the *de facto* confiscation of property through excessive regulation.

This shift in Supreme Court doctrine, however, has not been mirrored by the legal literature. With few exceptions,[7] legal treatises and law reviews are dominated by the view that private property rights do not (or should not) exist. Yet if they do exist, these archaic claims must not be allowed to thwart the public-spirited policies of the regulatory state.[8]

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3. *See, e.g.*, TERRY L. ANDERSON & PETER J. HILL, CONSTITUTIONAL CONSTRAINTS, ENTREPRENEURSHIP, AND THE EVOLUTION OF PROPERTY RIGHTS, PUBLIC CHOICE AND CONSTITUTIONAL ECONOMICS 207, 213-16 (1988); GOTTFRIED DIETZE, IN DEFENSE OF PROPERTY, 25-34 (1971); JAMES W. ELY, JR., THE GUARDIAN OF EVERY OTHER RIGHT: A CONSTITUTIONAL HISTORY OF PROPERTY RIGHTS 42-58 (1992). The Founders included two separate property-related safeguards in the Fifth Amendment: the Due Process Clause prevents governmental interference with private property except by "due process of law" while the Takings Clause provides that private property may not "be taken for public use, without just compensation." U.S. CONST. amend. V.

4. The Court's abandonment of meaningful review of economic regulation was foreshadowed in 1934 in Nebbia v. New York, 291 U.S. 502, 530-39 (1934) (upholding a New York law establishing minimum prices for milk), and became firmly established in West Coast Hotel Co. v. Parrish, 300 U.S. 379, 399-400 (1937) (holding that economic regulation need be no more than reasonably related to some object of legislative concern).

5. 483 U.S. 825 (1987). Justice Scalia in *Nollan* suggests that the New Deal Court had abandoned the defense of property rights only in cases arising under the Due Process and Equal Protection Clauses while maintaining substantive protections under the Takings Clause. *Id.* at 834 n.3. This interpretation is not easily squared with the case law from the half century between *West Coast Hotel* and *Nollan*.

6. 112 S. Ct. 2886 (1992).

7. *See, e.g.*, RICHARD A. EPSTEIN, TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN (1985); ELLEN FRANKEL PAUL, PROPERTY RIGHTS AND EMINENT DOMAIN (1987).

8. For example, in the past four years the Harvard Environmental Law Review has not published a single article suggesting that private property rights might place legitimate constraints on environmental regulation. Positive or even neutral treatment of property rights in student notes has become so rare that an author recently thought it necessary to include a disclaimer to the effect that his balanced treatment of this topic did not mean that he was ipso facto an enemy of the environment. *See* Timothy G. Warner, Note, *Recent Decisions by the United States Claims Court and the Need for Greater Supreme Court Direction in Wetlands Taking Cases*, 43 SYRACUSE L. REV. 901, 902 n.6 (1992).

Property Rights and the Constitution, will go a long way toward restoring balance in this field. Coyle is well aware of the existing pro-regulatory bias in the literature and expressly sets out to "remedy this by presenting a study that is comprehensive and balanced . . . , adding a discordant voice to the harmony of New Deal commentary."[9] By and large, he succeeds admirably in this venture.

I. Coyle's Cultures: The Rhetoric of Group and Grid

There is little original in Coyle's observation that land use disputes involve "cultural conflicts in which ideas and values are implicit in different physical arrangements of land use."[10] However, the debate over land use and environmental regulation has been typically waged in bipolar terms: the "private" interests of property owners (usually seeking to develop their land) are opposed by the "public" interests of the state (usually blocking development).[11] Coyle enriches this dialogue by modeling regulatory disputes as a three-way opposition between competing preference systems embodying different fundamental values: liberty, equality, and order.[12]

These preference systems, or "cultures," are derived from the interplay of two key dimensions of social orientation designated as "group" and "grid".[13] *Group* denotes the extent to which individuals define themselves as members of a collective such that personal interests are deliberately subordinated to the welfare of all.[14] *Grid* refers to the degree to which individual actions and decisions are seen to be constrained by a network of social rules.[15] The resulting preference systems are plotted below:

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9. COYLE, *supra* note 1, at 12.

10. *Id.* at 20.

11. *See, e.g.*, ELAINE MOSS, LAND USE CONTROLS IN THE UNITED STATES 1-4 (1977); FRANK SCHNIDMAN ET AL., HANDLING THE LAND USE CASE § 1.1.2 (1984).

12. COYLE, *supra* note 1, at 20.

13. *Id.* at 281-82 n.3. Group-grid analysis originated in the work of anthropologist Mary Douglas and political scientist Aaron Wildavsky. *See, e.g.*, MARY DOUGLAS, CULTURAL BIAS (1978) [hereinafter CULTURAL BIAS]; MARY DOUGLAS, NATURAL SYMBOLS: EXPLORATIONS IN COSMOLOGY (1973) [hereinafter NATURAL SYMBOLS]; ; Aaron Wildavsky, *Choosing Preferences by Constructing Institutions: A Cultural Theory of Preference Formation*, 81 AM. POL. SCI. REV. 3 (1987). It should be recognized (as Coyle acknowledges) that both Douglas and Wildavsky employed the terminology somewhat differently from Coyle's application.

14. COYLE, *supra* note 1, at 281 n.3.

15. *Id.*

	High Grid	Low Grid
High Group	Hierarchical	Egalitarian
Low Group	Culture X	Libertarian

Individuals with both high grid and high group orientation tend to embrace a *hierarchical* (or authoritarian) worldview; decisions over land use should be guided by comprehensive regulations prescribed by experts and implemented by political authority.[16] High group combined with low grid yields an *egalitarian* culture whose members strive to maximize the common welfare through group decision-making without tolerating excessive political direction.[17] A low-group, low-grid culture is *libertarian* in outlook, stressing private ownership and individual autonomy in land use decisions.[18]

An identification problem arises with the fourth category—the culture of low-group identity combined with high-rule orientation. The occupants of this quadrant (if it is occupied at all) would be motivated mainly by personal self-interest, yet would support extensive social regulation and control over others. Seemingly uneasy with such a coincidence of values, Coyle dismisses it as "despotism,"[19] adding only that "[i]t is rarely an important category in the analysis of public policy . . . ."[20] Coyle's predecessors in the development of grid-group analysis have seemed equally ill at ease with this fourth worldview, which I have designated as "Culture X".[21]

As descriptions of real-world belief systems, Coyle's cultures are grossly oversimplified. They have considerable interest, however, as a means of categorizing and analyzing judicial rhetoric. Regardless of whether anyone really believes that land use decisions should be structured according to hierarchical, egalitarian, or libertarian principles, judges speak as if they do.[22] Thus, to a startling

16. *Id.* at 21-26.

17. *Id.* at 30-38.

18. *Id.* at 26-30. Libertarianism does not necessarily exclude cooperative decision-making but rejects the sacrifice of individual values to promote group welfare. *Cf.* R. S. Radford, *Regulatory Takings Law in the 1990s: The Death of Rent Control?*, 21 Sw. U. L. Rev. 1019, 1054-59 (1992) (Fifth Amendment's Takings Clause limits sacrifices that can be imposed by majoritarian processes).

19. Coyle, *supra* note 1, at 281 n.3.

20. *Id.* at 282 n.3.

21. For Wildavsky, Culture X is "fatalistic," characterized by "apathy." Wildavsky, *supra* note 13, at 6-7. Douglas referred to Culture X as "insulated." Cultural Bias, *supra* note 13, at 7, 20-21.

22. *See infra* notes 26-33 and accompanying text.

degree, the legal discourse of land use regulation can be clarified and illuminated by the application of Coyle's schema.

Coyle sees the holdings of the California Supreme Court as an extreme case of the hierarchical approach to land use regulations.[23]According to Coyle, the California court has—at least in the realm of land use law—championed a return to a social system based on status rather than contract,[24] an essentially feudal order in which all one's rights and responsibilities flow from the sovereign and are determined by one's position in an inflexible social ordering.[25]

Coyle's extensive review of California jurisprudence could be easily supplemented by anyone who has followed the sorry plight of property rights in the Golden State. In one recent case not cited by Coyle, a California appellate panel simply brushed aside a property owner's regulatory takings claim against a city, noting that the policy of California courts has been to "[display] a generally tolerant attitude to municipal ordinances in this area."[26] The state Supreme Court declined to review this holding—and indeed has declined to review *any* regulatory takings case in the past fourteen years.[27] This surely qualifies as a hierarchical worldview *par excellence*!

While the California judiciary has established a firm rule of hierarchy, the New Jersey Supreme Court has grounded its land use jurisprudence more on the rhetoric of egalitarianism.[28] As exemplified by the *Mount Laurel* decisions,[29] the New Jersey court has overridden both property owners and local governments in its zeal to "redirect the regulatory power to serve egalitarian ends."[30]

23. COYLE, *supra* note 1, at 112-65.

24. Maine perceived that "the movement of the progressive societies has hitherto been a movement *from Status to Contract.*" SIR HENRY SUMNER MAINE, ANCIENT LAW 141 (1986 ed.) (1861). In contrast, Coyle quotes former California Supreme Court Justices Matthew O. Tobriner and Joseph R. Grodin as advocating (they would have said "recognizing") a return to a status-bound system. COYLE, *supra* note 1, at 215-17.

25. COYLE, *supra* note 1, at 213-37.

26. Bullock v. City and County of San Francisco, 221 Cal. App. 3d 1072, 1089 (1990).

27. *See* Michael M. Berger, *Silence at the Court: The Curious Absence of Regulatory Takings Cases from California Supreme Court Jurisprudence*, 26 LOY. L. REV. 1113 (1993).

28. COYLE, *supra* note 1, at 61-72, 75-84.

29. Southern Burlington County NAACP v. Township of Mount Laurel, 336 A.2d 713 (N.J. 1975) (Mount Laurel I); Southern Burlington County NAACP v. Township of Mount Laurel, 456 A.2d 390 (N.J. 1983) (Mount Laurel II).

30. COYLE, *supra* note 1, at 84.

Coyle traces the interplay of New Jersey's egalitarian themes with the vaguely libertarian rhetoric of the neighboring Supreme Court of Pennsylvania.[31] Any cross-pollenization that may have occurred between these jurisdictions, however, has not been to the benefit of property rights. When egalitarian issues are not present in a land use case, the New Jersey court freely employs the rhetoric of hierarchy to squelch any libertarian illusions on the part of property owners.[32]

The United States Supreme Court presents the most complex and intriguing application of Coyle's cultural analysis.[33] Since abandoning the libertarian worldview in the 1930s, the Court has pursued at least three distinct rhetorical tracks in its land use decisions. Property rights have been upheld in contexts that advance egalitarian interests or other aspects of human flourishing unrelated to individual rights of ownership and development *per se*.[34] Strong protection has been afforded the "new property"—*i.e.*, government grants of entitlement having no basis in traditional property rights.[35] Meanwhile, within the traditional realm of private property ownership, the post-New Deal Court has acquiesced in broad assertions of the police power to abrogate rights supposedly protected by the Takings and Due Process Clauses.[36] This picture is further complicated by the Court's latest strand of decisions, in which muted echoes of libertarian rhetoric can be discerned.[37]

31. *Id.* at 53-111.

32. A clear example of the New Jersey court's hierarchical fallback position is Gardner v. New Jersey Pinelands Commission, 125 N.J. 193 (1991). In *Gardner*, the New Jersey court upheld a regulation that imposed a recorded deed restriction on plaintiff's property, limiting it to agricultural uses. Justice Handler disposed of Gardner's takings claim by quoting from the State Legislature's "finding" that development of private property is associated with a plethora of ills, including heightened risk of forest fires. *Id.* at 200. Gardner's constitutional rights, along with any recognition of them by local government, were simply "pre-empted by a higher authority." *Id.* at 201.

33. COYLE, *supra* note 1, at 166-209.

34. *See, e.g.*, Moore v. East Cleveland, 431 U.S. 494 (1977). For a succinct rationale for this rhetorical strain, see Michael C. Blumm, *Property Myths, Judicial Activism, and the Lucas Case*, 23 ENVTL. L. 907, 916 (1993) ("Property rights protecting private autonomy are closer to the speech, religion, and association rights that Americans hold as fundamental. They are all classic minority rights.").

35. *See, e.g.*, Goldberg v. Kelly, 397 U.S. 254 (1970).

36. *See, e.g.*, Agins v. City of Tiburon, 447 U.S. 255 (1980) (zoning law severely restricting development of residential property was found not to be a taking); Penn Central Transportation Co. v. City of New York, 438 U.S. 104 (1978); Williamson v. Lee Optical, 348 U.S. 483, 488 (1955) (holding that economic regulations will be upheld whenever "it might be thought" that they have some rational basis).

37. *See* Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886 (1992) (Holding that when owner is made to sacrifice economic beneficial use for common good, it is a

II. The Missing Dimension: Costly Preferences

Having acknowledged the utility of Coyle's grid-group analysis for evaluating judicial rhetoric, it is time to step back and raise some caveats. The core problem with the cultural preference model Coyle employs is that the *sort* of preferences the model takes into account are not clearly delineated.

Economic theory treats preferences in two subtly different ways: as determinants of personal choice and behavior, and also as the basis for value judgments about alternative states of the world.[38] A third distinct preference ordering may apply to decisions over the choices and behavior of *others*. For a variety of reasons, the preferences a person acts on may be different from those he employs in more global decision-making.[39] There are likely to be even sharper differences between one's preferred distribution of one's own resources and one's choices concerning the property of others.

The relative cost to the evaluator of implementing these preference rankings inevitably alters the evaluation. Unfortunately, Coyle's grid-group preference model abstracts completely from the allocation and distribution of costs. Group identification and rule orientation are the only variables taken into account, and the model's output is taken to be uniform regardless of whether the resulting preferences are applied to oneself, to others, or to universal states.

Because of this indeterminacy, the grid-group model has very limited explanatory value with respect to the preferences expressed in land use rhetoric. Rhetoric, like ideology, is an economic good; the lower its cost, the more of it will be produced and consumed.[40] Linking expressions of preferences with the costs of implementing them would predictably reduce expressions of costly preferences.[41] By failing to incorporate a cost dimension, the grid-group model is unable to account for pronounced shifts in *apparent* regulatory preferences associated with shifts in the distribution of costs.

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taking); Nollan v. California Coastal Commission, 483 U.S. 825 (1987) (holding that California Coastal Commission could not, without compensation, condition grant of permit on owners' transfer to public of easement).

38. *See, e.g.*, Amartya Sen, *Behavior and the Concept of Preference*, 40 ECONOMICA 241, 253 (1973).

39. *See id.* at 253-59.

40. *See* Dwight R. Lee, *Politics, Ideology, and the Power of Public Choice*, 74 VA. L. REV. 191, 195 (1988); Douglas C. North, *Ideology and Political/Economic Institutions*, 8 CATO J. 15, 26 (1988); Robert D. Tollison, *Public Choice and Legislation*, 74 VA. L. REV. 339, 352-53 (1988).

41. *See* Geoffrey Brennan & Jonathan Pincus, *Rational Actor Theory in Politics: A Critical Review of John Quiggin*, 63 ECON. REC. 22, 28-29 (Mar. 1987).

A cautionary illustration of this problem is framed by a case the Supreme Court had not yet decided when *Property Rights and the Constitution* went to press: *Lucas v. South Carolina Coastal Council.*[42]

III. The *Lucas* Case: Rhetoric Meets Reality

The facts of the *Lucas* case are by now well known. David Lucas bought two residential homesites on the Isle of Palms near Charleston, South Carolina. His intention was to build beachfront homes on these lots, as every other property owner up and down the beach had already done. Before construction could begin, the South Carolina Legislature, citing the value of open beaches to the state's tourism industry, adopted a law that prohibited the construction of any permanent dwelling on Lucas's property. Lucas brought suit for inverse condemnation under the Takings Clause but was rebuffed by the South Carolina Supreme Court.[43]

The state court's opinion was a showpiece of the rhetoric of hierarchy. So impressed were the justices by the Legislature's assertions of "findings" that it set them forth—three single-spaced pages worth—in full.[44] Against this overwhelming weight of expertise (one gets the impression the court wanted to decide the issue by literally weighing the evidence), David Lucas had the temerity to stand alone and ask for the protection of his constitutional rights. To the South Carolina court, this was a clear case of bucking the hierarchy of status and would not be tolerated. The court's position was clear: The State and its agents may properly take private property by regulation "where uncontrolled [private] use would be harmful to the public interest,"[45] and the State itself is to be the sole determinant of what constitutes the public interest.

The United States Supreme Court reversed. Occasionally resorting to mildly libertarian rhetoric, the majority opinion proposes looking at regulation "from the landowner's point of view."[46] Perhaps more significantly, the *Lucas* opinion goes out of its way to disavow the hierarchical rhetoric that had dominated the Court's property rights discourse for half a century.[47]

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42. 112 S. Ct. 2886 (1992).

43. Lucas v. South Carolina Coastal Council, 404 S.E.2d 895 (S.C. 1991).

44. *Id.* at 896-98.

45. *Id.* at 901 (quoting Carter v. South Carolina Coastal Council, 314 S.E.2d 327, 329 (1984)).

46. *Lucas*, 112 S. Ct. at 2920.

47. The Court strongly rejected any requirement of deference to legislative authority or expertise noting that, where all beneficial use of property has been taken,

Almost immediately, *Lucas* brought forth a deluge of criticism from commentators of both the hierarchical and egalitarian persuasions. Some of these critics expressed outrage:

> Any economic harm suffered by Mr. Lucas is clearly offset by the public need for the Beachfront Management Act.[48]
>
> Lucas and his colleagues . . . are asking the public to sacrifice the safety of an entire littoral in order to permit million-dollar playhouses for the rich.[49]

Others were scornful:

> The [Supreme] Court displayed no appreciation of the factors that led South Carolina to conclude that the physical characteristics of Lucas' land made it the wrong place for the construction of a house.[50]

Some were downright preachy:

> We have become so taken with the pursuit of individual rights and personal economic gain that we have lost sight of the community and the social fabric of mutuality and reciprocity without which our economic and political systems cannot operate.[51]

What unified the anti-*Lucas* rhetoric was its insistence that an individual property owner was not entitled to develop his land once the state (or "community") had expressed a preference that the land not be developed.

The case was remanded to the trial court, where the parties settled on a fair value and the State purchased David Lucas's land.[52] At this point things got very complicated for cultural preference analysis because as soon as the State of South Carolina assumed

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"it is less realistic to indulge our usual assumption" that the legislative enactment was legitimate. *Id.* at 2894. Such regulations "carry with them a heightened risk that private property is being pressed into some form of public service under the guise of mitigating serious public harm." *Id.*

48. Janet McClafferty Dunlap, *This Land Is My Land: The Clash Between Private Property and the Public Interest in Lucas v. South Carolina Coastal Council*, 33 B.C. L. REV. 797, 839 (1992).

49. John M. Payne, *Takings and Environmental Regulations*, 21 REAL EST. L.J. 312, 320 n.35 (1993).

50. Richard J. Lazarus, *Putting the Correct "Spin" on Lucas*, 45 STAN. L. REV. 1411, 1422 (1993). Lazarus goes on to scold the Court for "its ignorance of the potential fragility of land." *Id.* at 1423.

51. Judith M. LaBelle, *Takings Law in Light of Lucas v. South Carolina Coastal Council*, 10 PACE ENVTL. L. REV. 73, 83 (1992).

52. *See* Michael M. Berger, *Environmental Protection? It Depends on Who Is Paying*, L.A. DAILY J., Aug. 11, 1993, at 7.

the costs of property ownership, it put the land up for sale—for the development of residential homes![53]

Coyle's grid-group model is unable to explain such a sudden, radical shift in regulatory preferences. We have no reason to believe that cultural attitudes evolved, in so short a time, toward more libertarian sentiments.[54] The legislative determination remains intact that there is an essential public interest in keeping Mr. Lucas's former property undeveloped. The State's experts have not retracted their finding that the lots in question are totally unsuited for home construction. When Mr. Lucas proposed to build homes on these sites, the State regulators portrayed him as a threat to the public health, safety, and well being of the entire Charleston area. Yet the moment those same regulators were required to bear the costs of their preferences, they determined that developing the property was the only sensible course of action. After insisting for four years that the public interest required David Lucas to write off the million dollars he had invested in his property, the government suddenly found the paramount issue to be that "the state has to recoup the money it paid to buy the lots."[55]

Radical preference shifts such as the one demonstrated in this case can be incorporated into grid-group analysis by adding an economic dimension to the model, as suggested above.[56] The regulators' preferences concerning the development of someone else's property were just *different* from those dealing with property the state had bought and paid for. This should hardly seem surprising so long as we remember that even state governments are not exempt from the laws of economics.

It is more challenging to account for the fact that there has been no outpouring of hostile rhetoric condemning South Carolina's decision to develop the two homesites. Does this speak to the strength and authenticity of the cultural preferences behind the vituperative rhetoric directed at David Lucas and his Supreme Court case? Or does it suggest that land use preferences are influenced not just by a "mine-thine" dichotomy of ownership but also by whether the title to land is held privately or by the state?

A distinction of this kind is clearly compatible with hierarchical culture, which regards individuals as equally incompetent to question the state's decisions regardless of whether the authorities de-

53. *Id.*
54. *See supra* text accompanying notes 14-19.
55. *See* Berger, *supra* note 52.
56. *See supra*, text accompanying notes 38-40.

cide to develop or to forbid development. However, such deference is not consistent with the egalitarian component of the anti-*Lucas* rhetoric—not, at least, if Coyle's model has correctly identified modern egalitarianism as a low-grid culture.

In the end, one is forced to wonder whether Coyle's grid-group analysis has misidentified much of the opposition to private development. In particular, it is tempting to return to the mysterious Culture X and reconsider Coyle's assertion that this low-group, high-grid culture has little influence on land use policy.[57] It is widely recognized that imposing restrictive regulations on other peoples' resources can be a lucrative source of private economic rents.[58] The pursuit of economic self-interest by seeking to impose regulatory burdens on others can plainly be attributed to a Culture X worldview. Since pro-regulatory rhetoric emanating from Culture X is not based on consistent principle or ideology, and there is little anticipated payoff in appealing to the state to regulate itself, these voices could be expected to fall mute when the State of South Carolina took over David Lucas's property. From this perspective, the otherwise inexplicable silence that greeted the final resolution of the *Lucas* case can be seen as a logical implication of the modified grid-group model.

IV. Conclusion

Property Rights and the Constitution would be a welcome addition to the literature if it did no more than eschew the slavish celebration of the regulatory state that has become *de rigueur* in this field. In fact the book rises well above this threshold, transcending the standard analysis of land use regulation and, in so doing, significantly broadening and enriching the debate.

The major element that is missing from Coyle's analysis is an explicit recognition of economic costs and incentives. It may turn out that such a dimension completely dominates the cultural preference model. More likely, it will be found that optimal, positive amounts of hierarchical and egalitarian preferences would exist even if their advocates were forced to bear their own costs.[59]

It will be especially interesting to see whether inquiries along these lines can shed new light on Culture X preferences and their

57. *See supra* text accompanying note 20.

58. *See, e.g.*, TOWARD A THEORY OF THE RENT-SEEKING SOCIETY (James M. Buchanan et al., eds., 1980).

59. *Cf.* North, *supra* note 40, at 27 ("[i]deological conviction would be significant even if all the players paid the price of their conviction . . . .").

role in policy determination. If effective procedures can be found to require the beneficiaries of restrictive property regulations to bear the costs of such measures, a major advocacy group—the occupants of Coyle's low-group, high-grid quadrant—might disappear from the arena of land use disputes altogether. Such a happy prospect more than justifies the social scientists' traditional call for further research.