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Land use decision-making in the wake of state property rights legislation: Examining the institutional response to Florida's Harris Act

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ABSTRACT

Land use scholars hypothesize that state property rights legislation—adopted by more than half of U.S. states as a way to buttress the protections of landowners against uncompensated regulatory takings—negatively impacts the ability of local governments to regulate land use. This theorized impact can happen in two ways. First, compensation provisions may "chill" land use regulation due to increased risk of liability from adverse adjudication. Second, settlement and dispute resolution processes may limit public participation and abrogate decisions made in the public interest. However, there is little empirical or theoretical treatment of these concerns. To address this gap, we examine local land use decision-making in Florida in the more than two decades since the 1995 enactment of the Bert J. Harris, Jr. Private Property Rights Act [Act], one of the strongest state property rights laws in the United States. We use the Institutional Analysis and Development (IAD) framework to understand the system of rules and norms that operate within and between institutional actors in Florida's land use arena and animate decisions related to the Act. Drawing on key informant interviews and public documents, we show how contextual conditions and institutions mediate the impact of state private property laws. In Florida, institutions and transactions costs limit litigation under the Act—and consequently mitigate the Act's chilling effect—although unevenly depending on local context. The Act's compensation provision does little to reconfigure institutional arrangements and outcomes in property rights disputes; however, settlement and dispute resolution processes triggered by the Act effectively resolve local process and political challenges. Our findings suggest that dispute resolution is a more impactful and socially optimal approach to state property rights laws compared to compensation, and can enhance land use decision-making and outcomes for planning, the public interest, and landowners.

1. Introduction

State-level property rights legislation, which attempts to augment substantively and procedurally the constitutional protections of landowners against uncompensated regulatory takings, has become a common feature in the United States (U.S.) legal landscape. However, little is known about the effects of such legislation on the land use regulatory decisions of planners and other administrative and elected local government actors. Apart from a few notable exceptions (Jacobs, 1998, 1999, 2003, 2010; Jacobs and Bassett, 2011; Jacobs and Ohm, 1995; Jacobs and Paulsen, 2009; White, 2000), the planning literature has been largely disengaged from theoretical and empirical explorations of the implications of such legislation on land use decision-making and planning practice. Foremost among the concerns for local land use policy where states adopt strong property rights legislation is the "chilling effect," whereby local government officials and staff—fearing the consequences of a successful lawsuit—do not amend, adopt, or enforce regulations that may be necessary to manage growth and land use (Chapin and Higgins, 2011; Daniels, 2014; DeGrove, 2005; Deyle et al., 2007; Echeverria, 2008; Stroud and Wright, 1996; White, 2000). Efforts at downzoning and increasing environmental protections are seen as especially likely to be undermined where states adopt a strong property rights rule (Chapin and Higgins, 2011; Daniels, 2014; Deyle et al., 2007). A second concern is that dispute resolution provisions, often included as a key component of property rights legislation, may work against the public interest by allowing land use regulatory decisions—presumably made with public input and with the general welfare of that public in mind—to be modified without public input and in ways that no longer advance that interest (Juergensmeyer, 1996). Although these effects are discussed in the literature on property rights legislation, there is little empirical or theoretical treatment of them.

Our research responds to these gaps through an institutional

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analysis of local actor responses to state private property rights legislation. We study the critical case of Florida and the 1995 Bert J. Harris, Jr. Private Property Rights Act (Florida Statute § 70.001) (hereinafter referred to as the Harris Act, or Act), which has been described as "the most far-reaching property rights legislation in the country" (Echeverria, 2008, p. 4), and among the most "detailed" and "sophisticated" of state property rights laws (Spohr, 1997, p. 313). The Harris Act attempts to augment significantly the constitutional regulatory takings protections available to property owners by allowing claims for compensation to be brought by those "inordinately burdened" by a government regulatory action (the Act's compensation provision) (Florida Statute § 70.001), and by requiring an attempt at settlement between a local government and aggrieved landowner, which can invoke a dispute resolution process (settlement and dispute resolution provision). Land use experts anticipated both a chilling effect and an undermining of the public interest in planning and regulatory decisions as a result of the Harris Act (Chapin and Higgins, 2011; Daniels, 2014; DeGrove, 2005; Deyle et al., 2007; Jacobs, 1999; Juergensmeyer, 1996; Stroud and Wright, 1996; White, 2000). However, most of these concerns were identified in the initial years after adoption of the Act, and very little research or commentary has been produced in subsequent years. Florida also presents an intriguing context due to its strong state-level planning framework, which requires local governments to manage growth through comprehensive planning.

We examine the impact of the Harris Act on land use decision-making in Florida, focusing on the potential chilling effect from the Act's compensation provision and the potential for abrogation of the public interest resulting from the settlement and dispute resolution processes. We rely primarily on semi-structured key informant interviews with Florida land use attorneys who have represented the interests of both local governments and landowners, and secondarily on analysis of select Harris Act cases, settlements, and local meeting minutes. Our study is grounded theoretically in the institutional analysis and development (IAD) framework, which is used to understand the governance of resource use in formal and informal institutional contexts (Aligica and Boettke, 2009; Imperial, 1999; Ostrom, 2005; Ostrom et al., 1994; Rahman et al., 2014). The IAD framework provides a tool for evaluating the interactions among actors in decision-making situations, also known as *action arenas* (Clement, 2010; Ostrom, 2010; Rahman et al., 2014). It provides a way to parse more clearly what happens in the gap between state property rights policy adoption and local land use decisions. We also see our work as contributing to planning scholarship that explores the space within which disputes about land, property rights, and planning take place (Trapenberg Frick, 2014; Trapenberg Frick et al., 2014; Whittemore, 2013). In addition, our institutional analysis of local land use policy in the wake of property rights legislation responds directly to the recent calls by Schatz (2015) and Mualam (2014) for further investigation of the "trickle down" impact of court decisions in planning practice, and the emphasis Jacobs (2010, 2003, 1998) brought to the significance of property rights legislation over the last two decades.

We find that, more than two decades since it was adopted, the Harris Act is a looming, daily presence in planning decision-making in Florida. However, transaction costs and institutions mediate its impacts, limiting the chilling effect from the Act's compensation provision—although, critically, this varies by local context. We find that settlement and dispute resolution processes pursuant to the Act reduce transaction costs and present political and process solutions where land use decisions are dominated by special interests. Although the existing literature casts state property rights legislation as mostly harmful to planning, these findings point to a more nuanced understanding of the impacts of such laws. In the remainder of this article, we first discuss regulatory takings jurisprudence and the property rights movement in the U.S.. Next, we describe the Harris Act. We then present our findings and conclude with implications for practice and suggested pathways for future research.

2. Regulatory takings and state property rights legislation in the U.S

While a full review of takings jurisprudence is outside the scope of our paper, a brief tour will help the reader better understand the intentions behind state private property rights legislation. Most governments enjoy some power of expropriation, referred to as eminent domain in the U.S., by which private property can be taken for public use. The key limitation is found in the Fifth Amendment of the U.S. Constitution, which requires that just compensation be provided when such actions occur. In the typical eminent domain case, a government pursues a condemnation proceeding through which just compensation is determined. However, courts have long recognized that government regulations can cause inverse condemnations by interfering with property rights or value, and have allowed a landowner to seek compensation by bringing a claim against the government (*Pennsylvania Coal Co. v. Mahon,* 1922). These regulatory takings cases broadly delineate between physical takings (permanent physical invasions, however small (*Loretto v. Teleprompter Manhattan CATV Corp*., 1982) and regulatory takings, which can be total (a deprivation of all economically beneficial use, also known as a categorical taking (*Lucas v. South Carolina Coastal Council*, 1992) or partial (a deprivation of use or value that is not total, also known as a non-categorical taking) (*Penn Central Transportation Co. v. New York City,* 1978). The imposition of unconstitutional conditions can also give rise to a compensable taking (*Nollan v. California Coastal Commission,* 1987*; Dolan v. City of Tigard,* 1994; *Koontz v. St. Johns River Water Management District*, 2013).

Three characteristics of U.S. land use jurisprudence have sown discontent among property rights advocates. The first is the uncertainty surrounding partial regulatory takings. The test established in *Penn Central* (1978) evaluates claims by considering (1) the economic impact of the proposed regulation on the landowner, (2) the owner's reasonable investment-backed expectations, and (3) the character of the government action. The test has been critiqued as a "complex and *ad hoc*" approach that gives officials "unchecked discretion" based on subjective notions of fairness (Eagle, 2014, 604). Echeverria characterizes the test as "vague and uncertain" (2011, p. 6):

> Because it is so open-ended and value-laden, the *Penn Central* three-factor test invites the courts to second-guess legislative judgments. The value to be assigned to a particular policy objective, and whether achieving the objective is worth the social costs entailed in any regulatory program, represent quintessentially legislative issues. If the courts were to evaluate taking claims using essentially the same type of balancing test employed by the legislatures, they would run a serious risk of intruding on the responsibilities of the political branches (Echeverria, 2011, p. 8).

Property owners faced considerable uncertainty about their rights to regulation-triggered compensation under this system.

The second characteristic viewed negatively by property rights advocates is the broad federal understanding of "public use" in takings jurisprudence. Any taking, whether through direct or inverse condemnation, must advance a public use. However, the definition of this term is broad and highly deferential to local governments. The 2005 Supreme Court decision in *Kelo v. City of New London* reinforced the rationale for Court deference to state-led definitions of public use, which in prior cases was already being read expansively (Norwood, Poletown, etc.). As both the Kelo dissent (and other legal commentators) noted, this stance risks allowing local governments to have carte blanche with regard to being able to claim their actions advanced a public use.

Kelo was arguably the high water mark for the well-established deference shown local legislative decisions under substantive due process, which derives in part from the separation of powers. This is the third characteristic of land use law that can be seen as problematic from a property rights perspective. As noted in *Berman v. Parker* (1954):

> It is not for the courts to oversee the choice of the boundary line nor to sit in review on the size of a particular project area. Once the question of the public purpose has been decided, the amount and character of land to be taken for the project and the need for a particular tract to complete the integrated plan rests in the discretion of the legislative branch" (348 US 26 (1954)).

In general, courts review legislative decisions under the fairly debatable standard, which means a regulation survives if it is even fairly debatable that it rationally advances the public interest. For property rights advocates, the upshot is a legal system that is permissive about the reach of government regulation while failing to support the integrity of individual property rights.

Landowners also face practical difficulties in attempting to bring a regulatory takings claim to court. As Marzulla (1994, p. 628) observed:

> The scales of justice are unfairly tipped in favor of the government when citizens are faced with the threat of losing their property because of regulatory burdens. Not only are the laws drafted to ease the litigation burden placed on the government, but the cost of takings litigation can range from $50,000 to $500,000 or more, which is too great a burden for the average citizen to bear.

The inclusion of negotiation processes in many state property rights laws reflects an interest in reducing procedural barriers for homeowners seeking remedies for property rights infringements.

In the U.S., the property rights movement came together in part as a response to "widespread discontent with the procedures and the substance" of federal takings jurisprudence, which had a strong precedential influence on lower courts, as well as a backlash to increased regulatory controls enacted in the wake of the modern environmental movement (Cordes, 1998; Eagle, 2002; Jacobs, 2010; Vargas, 1995, p. 319). The legislation advocated for by this movement responded to the uncertainty about the value-diminution threshold that remained after *Penn Central*, to the expansive reading of public use following *Kelo*, to the longstanding deference accorded legislative intrusions on property rights post-*Berman*, and to the practical hurdles presented for many landowners by the adjudicative process.

From the perspective of the property rights movement, the last 100 years present a story that appears to move away from a view of property rights as integral and central to liberty and democracy. Instead, what appears is a story in which government is allowed ever increasing authority to intrude upon, reshape, and take away property without respecting the protections afforded by the Constitution (for public use and just compensation). Despite the promise contained in *Penn Coal* (1922) that regulation that "goes too far" will be recognized as a takings, in practice legislatures and the Court seem to continuously affirm the right of government over the rights of individuals with regard to property. (Jacobs, 2010, p. 336)

A peak moment in the U.S. property rights movement occurred in the 1990s, when 27 states passed legislation aimed at protection of property rights (Cordes, 1997; Jacobs, 2010). This legislative activity reflected a broader national conversation that was underway in the 1990s about limiting excessive government regulation and restoring common sense to government bureaucracies (Vargas, 1995). Another wave of state property rights legislation followed the 2005 Kelo decision, which spurred either changes in state jurisprudence, state constitutional amendments, or legislation adoption in 44 states (Jacobs and Bassett, 2011). That set of laws addressed eminent domain (Jacobs and Bassett, 2011).

Our study focuses on the subset of state property rights legislation adopted in the 1990 s, which augmented regulatory takings jurisprudence through three avenues: assessment, compensation, and conflict resolution (Jacobs, 2010). Laws with assessment provisions are modeled on the National Environmental Policy Act and require governments to assess the impact of policies on property rights. Those that address compensation attempt to statutorily lower the bar property owners must meet in order to be entitled to compensation for regulatory takings. For example, many respond to the vagueness of regulatory takings jurisprudence by including a specified percentage of diminution in value that triggers compensation. Lastly, conflict resolution provisions establish processes—typically alternative dispute resolution—for regulatory takings claims. Florida's 1995 Harris Act includes a compensation provision, as well as a settlement provision that can invoke a dispute resolution process as alternatives to litigation, which we describe in detail in the following section.

3. The Harris Act and the Florida context

The Harris Act was adopted by the Florida Legislature in 1995 as part of a package of legislation geared at property rights protections. Enacted as Chapter 95–181, Laws of Florida, and codified at Chapter 70, Florida Statutes, the measure contains two parts. Part I, the Harris Act, creates a new legal remedy landowners may pursue for regulatory actions that may not rise to the extent of a constitutional taking. Part II of Chapter 95-181 is the Florida Land Use and Environmental Dispute Resolution Act (FLUEDRA). FLUEDRA creates an expedited, impartial mediation hearing option for property rights disputes. FLUEDRA critically shapes decision-making and strategy around property rights disputes in Florida and is thus is intrinsically linked to the Act in practice.

The objective of the Harris Act is to enhance the remedies available to landowners when government actions "inordinately burden, restrict, or limit private property rights without amounting to a taking" (Florida Statute § 70.001). Substantively, it allows owners to pursue a new cause of action that provides compensation or relief for a decrease in the fair market value of property caused by government action (Butts, 1997; Juergensmeyer, 1996; Powell et al., 1995; Ruppert et al., 2012; Vargas, 1995). The Act also requires an attempt at a settlement, which is described below. Prior to litigation, a property owner aggrieved by an adverse governmental land use decision may invoke the FLUEDRA dispute resolution process. Because the settlement and dispute resolution provisions are intended to provide an alternative to litigation in property rights disputes, we view these as linked and refer to them jointly as settlement and dispute resolution provisions, acknowledging that the settlement occurs under Part I of Chapter 95–181 (the Harris Act) and dispute resolution is contained in Part II. The Harris Act is prospective: it applies only to decisions that are burdensome made pursuant *new* law, rule, regulation, or ordinances after the Harris Act became effective.

The Act's "inordinate burden" standard is its defining feature and—unlike several other state compensatory laws—is a non-numeric test—i.e., one that does not specify a diminution-of-value threshold before compensation will be required. Recall that this research is concerned with state property rights laws that are intended to provide remedies for takings that do not rise to the high federal standards. For example, some states require that assessed or fair market value decline by at least 50 percent due to a government action. By contrast, the Harris Act defines inordinate burden as follows:

> an action of one or more governmental entitities has directly restricted or limited the use of real property such that the property owner is permanently unable to attain the reasonable, investment-based expectation for the existing use of the real property or a vested right to a specific use of the real property with respect to the real property as a whole, or that the property owner is left with existing or vested used that are unreasonable such that the property owner bears permanently a disproportiate share of a burden imposed for the good of the public, which in fairness should be borne by the public at large (Florida Statute § 70.001).

Because the Florida legislature intended that the Act enhance a landowner's ability to pursue takings claims, "one could presume that the level of burden or regulation necessary to constitute an inordinate burden falls below that required to demonstrate a taking under the U.S.

Constitution's Fifth Amendment" (Ruppert et al., 2012, p. 12). For this reason, many of the attorneys we interviewed referred to the Harris Act as "takings light." However, the Harris Act's inordinate burden standard is sufficently vague that it creates "the same maze of confusion and inconsistent results that exists in takings law" (Vargas, 1995, p. 400). State case law has failed to differentiate how inordinate burden review should be differentiated from federal takings law (Ruppert et al., 2012). However, the lack of a clear standard invites the concern that local governments will be exposed to greatly-increased liability for regulatory actions.

The law is triggered by a "specific action of a governmental entity which affects real property, including on an application or permit" (Florida Statute § 70.001). The requirement that the action affect real property means that mere adoption of a rule or regulation does not generate a cause of action (Stroud and Wright, 1996, 695). In addition to demonstrating an inordinate burden, claimants must demonstrate vested rights and must show a diminution in value based on reasonable investment backed expectations that is documented with an appraisal. There are two definitions that describe the existing use or vested right: one addressing: "actual, present use or activity on the real property" and a second for an:

> activity or such reasonably foreseeable, nonspeculative land uses which are suitable for the subject real property and compatible with adjacent land uses and which have created an existing fair market value in the property greater than the fair market value of the actual, present use or activity on the real property" (Florida Statute § 70.001).

For a recent, detailed discussion of the Act's provisions, see Weaver and Quam (2018).

One of the more important provisions of the Act is the requirement that, following a landowner's initial filing of a written claim with the local government under the Act, the local government must make a responsive settlement offer within 180 days. The local government reviews the action from which the alleged burden arises and must decide if "it can modify its earlier decision in a way that will lessen the burden of the regulation on the individual property owner" (Vargas, 1995, p. 367). The statute indicates that the settlement can include a range of solutions (e.g., adjustment of land development or permit standards, land swaps, and transfer of development rights) and it instructs government agencies to exercise wide discretion in making a settlement offer. The Act even goes so far as to state that the settlement offer may contravene "the application of a statute as it would otherwise apply to the subject real property" so long as the public interest served by the regulation is protected (Florida Statute § 70.001). Settlement agreements that contravene laws must be submitted to a circuit court for approval; at this stage, other landowners or parties with standing such as environmental defense coalitions can enter for comment. Where a settlement offer is not reached, a Harris Act claim may invoke FLUEDRA for dispute resolution or go to court for adjudication.

The Harris Act operates alongside Florida's state growth management planning system. For more than two decades, land use planning in Florida was shaped by the landmark 1985 legislation that came to be known as the Growth Management Act (GMA). The GMA mandated that local governments develop and adopt comprehensive plans to limit sprawl, promote compact development, and protect natural resources. A legacy of the GMA is the reinforcement of the comprehensive plan as required and legally binding policy. Under the GMA, enforcement of local comprehensive plans occurred through the state review process and through local processes including citizen standing to challenge development orders that are not consistent with the plan. Although the 2011 Community Planning Act (CPA) dramatically reshaped Florida planning with reduced state oversight of planning and more flexible policies (for a complete description of the CPA, see Stroud (2012)), the local planning requirement remains intact. The upshot is that Florida local governments are tasked with the dual mandates of managing growth while preventing inordinate property rights burdens.

4. Conceptualizing Harris Act impacts on local land use planning and regulation

As noted earlier, the Harris Act may interfere with land use regulation in two ways. First, it may chill—or even freeze—local land use adoption, regulation, and enforcement. Juergensmeyer argues that such a chill, effectuated by the threat of lawsuits and increased government liability to claims, burdens local land use and environmental policy-making and planning (1996). It is important to clarify that, because the Harris Act is triggered by specific actions applied to real property, the potential for a chilling effects is more direct and well-defined for land use regulation and enforcement activities, while the impacts to planning as a policy-making activity will be indirect. Although rigorous evaluation of the chilling effect has not occurred, the topic is much discussed in the land use literature (Chapin and Higgins, 2011; Daniels, 2014; DeGrove, 2005; Deyle et al., 2007; Echeverria, 2008; Stroud and Wright, 1996; White, 2000). Only a few years after the Act's passage, Jacobs wrote:

> There is some concern that existing programs and policies may be frozen in place, unresponsive to changing economic, technological and social conditions. While this is not quite the impact that private property advocates had hoped for, it is a pivotal shift for a state which for so long has been in the forefront of planning, environmental and growth management laws and programs (1999, p. 23).

DeGrove, writing ten years after the Act was adopted, indicates that the law "certainly had a chilling effect, at least temporary, on the readiness of many local governments to amend their plans and develop new implementing regulations" (2005, p. 68). There are particular concerns about the impact of the Harris Act for environmental and rural areas due to concerns that the Act inhibits downzoning. Chapin and Higgins (2011, p. 81) observe, "[a]lthough there have been few claims since the passage of the Act, the specter of Bert Harris has kept many local governments from enacting regulations or pursuing land use and environmental policies." Deyle et al. indicate that "local governments are reluctant to down-zone property because of the threat of litigation under the state's 1995 Bert Harris Act" (2007, p. 188). Similarly, Daniels argues that the Act "has made downzoning property virtually impossible," to the detriment of rural areas where underlying zoning may encourage sprawl (2014, 43).

Second, Harris Act-triggered settlement and dispute resolution processes may abrogate the public interest because these processes limit public participation where landowners and governments enter into negotiation. Settlement processes may burden the public interest because the legislation "attempts to authorize settlement agreements that have the effect of repealing or at least modifying existing law" (Juergensmeyer 1996, p. 706; see also Ruppert et al., 2012). Despite the requisite circuit court approval of settlements, "the party omitted is the public which in theory had input during the enactment of the ordinances and regulations being modified or ignored" (Juergensmeyer, 1996Juergensmeyer, 1996, p. 707). Although wide discretion is afforded local governments in crafting settlement offers—even to the point of allowing solutions that breach the law as applied to the property in question—the Act does require that public interest by maintained. (Note that the question of how the public interest is defined or who defines it is not specifically addressed in the statute.) However, "the citizenry may be up in arms that the legislative product coming from its elelected officials after public notice, hearings, and debate can be easily thwarted" (Juergensmeyer, 1996, p. 707).

Overall, the existing literature helps us understand the *potential* impact of the Harris Act. However, we are unaware of any study that pushes beyond potential problems and normative prescriptions toward determining what the Harris Act has meant for the actual practice of land use decision-making, including planning and regulation. The

majority of articles predicting a chilling effect were written shortly after adoption of the Act, and little attention has been paid to theorizing or gathering empirical evidence about impacts over the longer term. Some data suggest the impacts of the Harris Act have been relatively benign. As of 2008, 202 claims had been filed under the Act, significantly fewer than the number of claims filed under Oregon's similar Measure 37, which numbered 7717 as of November 2007 (Echeverria, 2008).[1] Florida local governments continue to update their plans and development codes, and these updates frequently included bold plans with strong environmental and growth management provisions (such as the City of Miami's city-wide Miami21 form-based code).

5. Institutional analysis and development framework and methodology

Institutional analysis and development (IAD) is a framework for understanding and evaluating policy (Crawford and Ostrom, 1995). It calls for increased attention to institutions, which it conceptualizes as "enduring regularities of human action in situations structured by rules, norms, and shared strategies, as well as by the physical world" (Crawford and Ostrom, 1995, p. 582). This broad definition encompasses formal institutions such as laws or policies, as well as informal norms such as operating practices or habits (Polski and Ostrom, 1999). Past oversight of the role of institutions in assessments of policy stemmed from the difficulty of analyzing institutions, which are often abstract, complex, and "frequently invisible" (Polski and Ostrom, 1999, p. 3). Through an "encompassing systems view of the policy/institutional setting, economic and social/cultural aspects interacting with the physical environment," IAD illuminates processes that occur in the gap between policy adoption and outcomes (Mekala and MacDonald, 2018, 400). It helps explain the "complex games" that arise in decision-making situations and why they are played differently in different places, often through a focus on the transaction costs involved in interorganizational interactions (Imperial, 1999). Originally used in research on public choice as applied to metropolitan governance (Crawford and Ostrom, 1995), IAD has been applied widely, including several applications related to land use planning and decision-making (Clement and Amezaga, 2009; Mekala and MacDonald, 2018; Morrison and Hardy, 2014; Rahman et al., 2014).

In IAD, the primary level of analysis is an action arena, which is composed of actors located within action situations and affected by external variables, as depicted in Fig. 1 (Clement, 2010). Action situations are, most plainly, the processes that lead to a decision. The outcomes—the decisions—feed iteratively back into the action situation. External conditions also influence the action situation, and include biophysical conditions, community attributes, and the "rules-in-use" (both rules and norms) about what potential actions may be taken (Clement, 2010; Ostrom, 2010; Rahman et al., 2014). Rules and norms affect action arenas by entering exogenously as constraints on the strategy space of actors.

With a brief sketch of the IAD framework complete, we can now explore how it illuminates the "frequently invisible" institutional processes that animate post-Harris Act land use regulatory decisions. We gathered information through semi-structured interviews with 20 public and private attorneys who specialize in Florida land use law and serve on the front lines of local land use decision-making. We selected key informants based on two criteria. First, we sought interviewees with expertise as demonstrated through authorship of professional or scholarly publications on the Harris Act, conference presentations on the Harris Act (Florida Bar or American Planning Association), or property rights as a major area of practice. We used snowball sampling to identify additional interviewees with expertise. Second, we

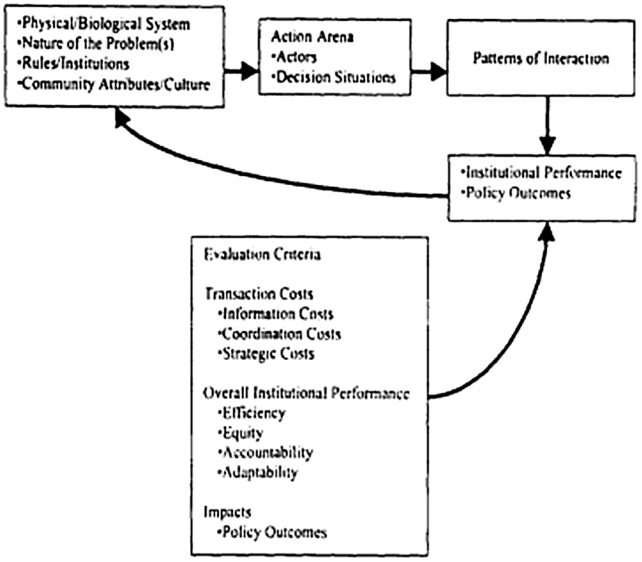

Fig. 1. The Institutional Analysis and Development framework (figure Imperial, 1999).

intentionally sought a pool of interviewees that would include a mix of attorneys who had represented both landowners and local governments (the latter include both staff attorneys and contracted counsel); many had done both. We also aimed for a pool with geographic diversity, with practitioners from north, central, and south Florida. Because these regions have broadly different land use and market contexts and because conflicts arising in each go to different judicial circuits, we would expect these attributes to influence both the rules and norms at play and their operation in the action situation. By using expertise as the inclusion criteria and seeking variation in region and practice orientation, we attained a meaningfully diverse pool of informants with many years of experience as participants in collaborative meetings with planning staff about land use policy, as advisors to private clients making development decisions, as parties in lawsuits or settlements, and as property rights claims mediators. We analyzed interview content using an exploratory IAD perspective that looked for the rules and norms animating the post-Harris land use policy arena.

6. Results: Application of IAD framework

6.1. Action arena: Action situations and actors

Land use actions that may trigger property rights claims under the Harris Act are the relevant action situations for our study. These include adjudication or settlement/dispute resolution—the two potential outcomes that may follow from a landowner's filing of a written claim under the Harris Act. We also recognize the critical action arena of routine land use regulation, including plan adoption and enforcement (or lack thereof). Chilling effects and abrogated public interest may not show up in court decisions and settlements, but rather may be present in day-to-day decisions or norms associated with planning that can be difficult to measure or operationalize. In this action situation, a spectrum of governance outcomes are possible, with two extremes: action (the adoption and/or implementation of a regulation that optimally advances the public interest) or inaction (refraining from regulation). Between these two are regulatory actions that are adjusted to fall below what is believed to be the statutory threshold for a claim of compensation, but that fall short of fully advancing the public interest. Chilling effects and abrogated public interest could show up both through inaction or through an action that is adjusted due to the risks presented by the Harris Act. Finally, we consider the routine decision situations of landowners and developers strategizing land use actions that may

[1] The Florida Department of Law Enforcement indicated that it was unable to fulfill a public records request for updated claim and settlements numbers.

trigger Harris Act claims.

Within these action actions, local government actors include staff or contract attorneys, planning staff, planning commissioners, and elected officials. On the private side, landowners, developers, and their attorneys are key actors. These parties interact with the public, special interest groups, judges, and state legislators.

6.2. Patterns of interaction

6.2.1. Day-to-day decision-making

Public sector attorneys described a vigilant, reactionary position in routine decision-making related to the Act—a dynamic some public sector attorneys linked to a chilling effect. Describing day-to-day interactions with the Act, one attorney who represents local governments said "property owners raise the specter of a Harris Act lawsuit whenever they don't like what you are doing" (personal communication, 03-02-18). Another public sector attorney said the Act "makes people more cautious" when regulating land use (personal communication, 03-01-18). While acknowledging the Act as a looming presence, many public sector attorneys minimized its impacts on planning actions. One attorney who represents local governments indicated that the Act is "a tool that applicants refer to" and that "it is very present and in that sense it does chill excesses" (personal communication, 03-01-18). Others from the public sector said the Act "keeps everyone on their toes in a good way" (personal communication, 03-23-18), and prompted local governments "not to act more or less rationally, but to be rational all the time" (personal communication, 03-23-18). Directly addressing the potential chilling effect, one attorney who represents local governments stated: "The Harris Act has been influential in how planning has been conducted at the local level, but it hasn't prevented good planning" (personal communication, 03-01-18).

Private attorneys similarly described the Act as omnipresent, yet also said it played just a minimal and occasional role in their actions and strategies. One attorney who primarily represents private clients described this dynamic, stating "the "Harris Act is always in the back of everyone's mind," but "it doesn't come up in 90% of situations" (personal communication, 03-23-18). One attorney who represents both public and private clients said, "When you represent local government, you are in a defensive posture and it feels like the Harris Act can be used against you. When you represent the private side, it doesn't feel quite as powerful" (personal communication, 03-20-18). An attorney who represents private clients said, "some clients think you can bully local government claiming Harris Act, but I tell them it won't work" (personal communication, 03-13-18).

6.2.2. Adjudication

Attorneys on both the public and private sides emphasized how the mutual goal of fostering good projects and shared concerns about transaction costs positioned actors to collaborate and compromise. For both, this meant litigation was seen as a tool of last resort to be pursued only in a narrow set of circumstances. In litigation, "the transaction costs are high" (personal communication, 03-02-18). Attorneys for landowners and developers emphasized that their clients' goal is to move projects forward, and Harris Act lawsuits are generally not a good tool to serve that outcome. Developers "don't want to buy litigation" (personal communication 03-26-18). One attorney who represents mostly private clients noted that, "most cases don't rise to the point where clients want to fight" (personal communication, 03-23-18), while another said of lawsuits, "even if you win, you sort of lose" due to the transaction costs associated with harmed relationships with the local government (personal communication, 03-20-18). Although representatives of the development community seemed especially attuned to the risks of broken relationships with government decision-makers, public sector attorneys also expressed an interest in cooperative interactions because "development is an important part of the local economy" (personal communication, 03-06-18).

In addition to the transactions costs associated with stalled projects and damaged relationship, both the public and private sides cited fiscal costs as a determinant of strategy in decisions related to the Act—one that curtailed litigation. A private client attorney pointed out that even the initial appraisal required for Harris claims could cost tens of thousands of dollars and cause private property owners to look elsewhere for solutions. Especially worrisome for both public and private actors are provisions under the Act that create liability for attorneys' fees for the non-prevailing party in lawsuits (for guidance on when these fees apply, see Weaver and Coffey, 2015).

Where public-private interactions breach relational rules and norms around shared goals, the private sector is attuned to remedies under the Act. Private attorneys indicated that they felt most prepared to sue under the Harris Act when local governments have made decisions that lead a developer to believe a project will go forward and which have resulted in private investment, but then local government shifts course. This is evident in The Town of Ponce Inlet v. Pacetta, LLC case.[2] In Ponce Inlet, Pacetta, LLC purchased 16 acres of property from 2004 to 2006 with the intention of using it for mixed-use project. Such uses would have required an amendment to town's comprehensive land use plan, which was undergoing an evaluation and update process. The company claimed they had developed a "beneficial relationship" with the town, including "its council, its planning department and, for the most part, its citizens" that would lead to approval of the amendment. When the amendment did not pass, the landowners brought a Harris Act claim. After a failed attempt at a settlement, a trial court found in favor of Pacetta, LLC and ordered Ponce Inlet to pay about $20 million for the property and $10 million in interest. Following an appeals process, a final judgment in favor of the Town was issued in April 2018.

6.2.3. Settlement and dispute resolution

Both public and private actors saw settlement and dispute resolution processes triggered by the Act as an efficient and effective process for deliberations around property rights questions. "The best feature of the Act is the dispute resolution process, which can be effective," stated an attorney who serves private clients (personal communication, 03-14-18). Interviewees said settlement and dispute resolution pursuant to the Act "has been a good thing for working out resolutions" (personal communication, 03-01-18). Interviewees nearly unanimously characterized negotiation as beneficial for private and public sides because it allowed conversation and compromise—a preferred alternative to litigation and stalled projects. The dispute resolution process "brings people together" (personal communication, 03-13-18); it allows discussion "without the draconian procedures" of typical local land use decision-making processes (personal communication, 03-14-18). Speaking of the settlement process, a private attorney who represents local governments said, "local governments can do better with the Harris Act than without because it is better than litigation" (personal communication, 03-23-18). For this reason, "local governments don't fear the Act because it allows them to make more discretionary decisions they couldn't have made" but for the Act (personal communication, 03-23-18). A private client attorney said, "most claims get settled and not for money, but more for development approvals" (personal communication, 03-22-18).

Settlement and dispute resolution was often characterized as an effective way to circumvent ad-hoc, political decision-making—especially where these decisions are made in response to not-in-my-backyard (NIMBY) constituents, community elites, or other "vocal minorities" (personal communication, 03-18-18). It creates an alternative process for responding to land use decisions that reflect special interests and therefore may present harms to the public interest and/or private property owners. This perspective draws attention to the

[2] The facts are taken from *Town of Ponce Inlet v. Pacetta, LLC*, No. 5D12-1982 (Fla. Dist. Ct. App. July 5, 2013) and accompanying briefs.

influential—but not always positive—role public participation plays in property rights disputes and Harris Act decisions. An attorney for private clients said the Act is "another lever against the maddening crowd" that "you can use to take control of a political situation" (personal communication, 03-14-18). A private client attorney said the Act is invoked "when politicians don't want to make a tough decision" and "the city has its hands tied politically," in which cases "it's kind of understood that you are going to sue" (personal communication, 03-23-18). Another private attorney echoed the view that the threat of lawsuits afforded local governments options that would otherwise be unavailable politically: "Public agencies are in a position where they are sympathetic to the private client" but private attorneys "have to use the pressure of a lawsuit to get to a place where you should have been anyway" (personal communication, 03-01-18). Further explaining this dynamic, one attorney with experience on both the public and private sides observed that, where the political situation leads to "mockery of ad hockery" decision-making, dispute resolution fosters interactions where both public and private sides can strive for social optimization, predictability, and order (personal communication, 03-01-18).

Interviewees also described how local political institutions and norms meant public participation prevailed in settlement and dispute resolution processes. Challenging the hypothesis that settlement and dispute resolution processes limit public participation, interviewees described a land use decision-making arena where interaction with and feedback from the public loomed large, determining the strategies and actions of decision-makers. Although the Act does not provide for formal public participation in settlement negotiations, the public may participate in the final public meeting about the settlement. Moreover, interviewees observed that constituents mobilize political capital informally, influencing the decisions of elected officials. An attorney for private clients said, "settlement discussions are private, but the public can say their piece and that is considered" (personal communication, 03-13-18). Also, "dispute resolution doesn't limit public involvement because third parties can be part of a settlement," which means, "the public can actually benefit" (personal communication, 03-13-18). Finally, settlement agreements must still be submitted to a circuit court for final approval, creating a feedback loop back to the judiciary and bringing into play the rules and norms at work in the judiciary, which we later discuss.

We find mixed views about the potential for settlements to abrogate the public interest by modifying existing laws, which were presumably made in the public interest and put in place through public participation processes. Although the Harris Act presents local governments with the opportunity to contravene existing law, some interviewees indicated that this rarely happens due to norms of local planning and politics, which make both staff and elected officials unlikely to deviate from plan policies. Some say settlements are more about deciding application of law rather than contravening law, such as when "you have two sides that see their own vision of the world" (personal communication, 03-13-18). Others state that settlements mean "local governments will deviate from the law to work out a compromise" (personal communication, 03-26-18). One public sector attorney said this does allow "sophisticated clients to get back in after contract zoning became difficult" (personal communication, 03-20-18). [Contract zoning—or bargaining to achieve zoning changes in exchange for a benefit or concession—is illegal in Florida.] Another said, "development permissions are being given because local governments want to help build projects" (personal communication, 03-01-18). However, even where settlements do contravene the law, these decisions were characterized as made in an effort to balance the public interest against private property rights. For example, one public sector attorney described a downzoning decision that resulted in several Harris Act claims in a coastal community. The local government scrutinized each claim to decide whether to make a payout or allow development rights (that would contravene the law) depending on community values and impacts to taxpayers. Decisions to allow limited development permissions often reflect an interest in limiting deep impacts for taxpayers.

Interviewees widely agreed that settlements are far more common under the Act compared to litigation. Although perhaps the positivity about settlement and dispute resolution is an unsurprising finding, IAD provides insights into why settlements are preferred in spite of the lower risk in constitutional takings claims for a landowner presented by the Act. Dispute resolution helps actors resolve social dilemmas related to property rights in ways that present fewer transaction costs and better address shared interests compared to litigation. Dispute resolution allows land use decisions to be made using a broader set of criteria—such as equity, efficiency, accountability, and adaptability—a more attractive evaluation framework than litigation's winner/loser criterion.

6.3. Contextual conditions

6.3.1. Institutional rules: State legislation

In describing the legislative/policy environment related to the Act, interviewees first called attention to critical limiting factors presented by the Act itself. In other words, the feared opening of the floodgates to lawsuits and other risks to local government did not happen because it was designed not to happen. Recall that the Act applies only when triggered by a specific action applied to real property for which vested rights and a diminution in value must be demonstrated. The language of the Act makes it clear that it rarely applies to the broader legislative decisions associated with comprehensive planning, but rather targets specific quasi-judicial actions affecting the use of real property. Attorneys representing public clients indicated that it "didn't come up on legislative side" (personal communication, 03-20-18) and "rarely applies to legislative decisions" (personal communication, 03-02-18). On the other hand, the Act is used in as-applied situations: it "mostly came up where there were ways to have options on how to apply the land development regulations" (personal communication, 03-20-18);" and was used where there is a lack of clarity about "how the code works" (personal communication, 03-22-18). This is important because it means the feared chilling effect on land use regulation from the Act should be limited to quasi-judicial actions, with far lesser impacts on legislative actions such as comprehensive planning. Although attorneys were well aware of these limitations, they also noted that elected officials and other local government decision-makers don't always understand the Act and may react conservatively to a broad array of land use decisions to avoid perceived exposure to liability under the Act.

Interviewees affirmed previous research (Vargas, 1995) that describes the role of the Harris Act as a compromise solution designed to prevent a more far-reaching constitutional amendment advancing property rights. An attorney who was involved in drafting the original legislation said the State "wanted to come up with something that would not hurt clean air and water, but would thwart egregious behavior" by local government (personal communication, 03-07-18). The Act has been amended several times, and two interviewees pointed out that the amendments generally clarified and reinforced limitations on the scope of the Act. The limited thrust of the Harris Act reflects the dynamic also observed in post-*Kelo* state eminent domain legislation, in which legislators across the U.S. adopted new restrictions on takings in response to political demands from constituents. However, most rules had relatively little impact and maintained conditions consistent with what they had been before such legislation (Jacobs and Bassett, 2011).

Second, the Act operates within a context of other state legislation and related policy rules and norms that favor planning and mediate the Act's impacts. Interviewees indicated that legislative authority and case law establish a legal context in Florida that is largely supportive of planning. Florida has required local governments to plan since the 1970s and has actively enforced these requirements since the 1985 GMA, which also empowered citizens to hold governments accountable to plan policies. Courts follow this legislative framework, generally making decisions that reflect the state commitment to planning. The

Florida courts also build off early case law decided by judges appointed by the progressive wave of Florida political leadership of the 1970s and 1980s that requires development to comply with plans (for example, *Machado v. Musgrove* (519 So.2d 629 (1987)). Describing the impact of the Act on planning, one attorney said the Act functions "only in a defined universe of cases", whereas the state's Growth Management Act "has had a far greater impact on local government decisions" (personal communication, 03-20-18).

6.3.2. Institutional rules and norms: The judiciary

Interviewees pointed to formal and informal rules and norms within the judiciary that shape decisions around the Act. Attorneys indicated that the Harris Act has not significantly changed the risk nexus for private property claims in Florida, where it remains "really difficult to win cases" and "the scale is usually tipped in favor of government" (personal communication, 03-22-18). Interviewees observed that adjudication pursuant to the Harris Act suffers from similar issues of uncertainty and deference to government action that characterize takings jurisprudence in general. This is partly because the inordinate burden threshold falls short of providing the necessary clarity to foster a land use system that is evidently more responsive to property rights concerns. Some interviewees characterized the Harris Act as "inverse light" (personal communication, 03-20-18) or "not that much different from a takings analysis" (personal communication, 03-07-18), except with lesser diminution in value. However, a few attorneys disagreed with this perspective, emphasizing that the Harris Act does present a separate cause of action distinct from takings—albeit one in which risk remains because the courts have yet to provide full clarity about how the law should be interpreted—and "the local government cannot presume that decades of takings case law applies" (personal communication, 03-05-18). Either way, interviewees said case precedent and shared knowledge amongst the Florida legal community gained through conferences and newsletters effectuated a sense that Harris Act lawsuits presented too great a level of risk in most situations. Also, attorneys indicated that other rules and procedures have more legs for landowners concerned with property rights infringements compared to litigation under the Harris Act.

Interviewees discussed the ways institutional rules and norms within the court system influence strategy. Many cited risk due to fact that Florida judges are rarely familiar with the complex provisions of state property rights law. Under Florida's post-1973 reformed court system, which streamlined the trial court system, the state's 20 circuit courts are trial courts that have jurisdiction over the majority of court matters. Sometimes referred to as courts of general jurisdiction, generalist circuit judges hear all cases not assigned by statute to the state's county courts, and also hear appeals from those courts. This feature of the state judiciary can be regarded under IAD as both a boundary and position rule, in that it decides the jurisdictional coverage of each court and the responsibilities of different judges. Attorneys we spoke to indicated that they regularly have to educate judges on current land use law and that many cases are first decided based on outdated or incorrect interpretations of the law, necessitating a lengthy and costly initial case and appeal process. Although attorneys from large, urban areas where several different judges serve said they did not factor in who was on the bench in the decision to adjudicate, those who worked in smaller areas—where a single judge typically presides—indicated that the judge's style and decision history played a critical role in legal strategy. A local government attorney observed, "it is important who sits in court" (personal communication, 03-01-18) while a private client attorney said he has "made decisions about whether to bring cases depending on who the judge is" (personal communication, 03-22-18). This is again portrayed in The Town of Ponce Inlet v. Pacetta, LLC case where, in a series of special meetings in 2011 and 2012, town officials revealed a variety of attitudes toward risk that were informed directly by their knowledge and perceptions of the disposition of judges who would be hearing the case if settlement were not achieved.

6.3.3. Community attributes

Among socio-cultural factors shaping Harris Act decision-making, fiscal resources for legal action and access to sophisticated legal counsel play a key role. Private developers with access to fiscal and legal resources were seen as more likely to pursue claims under the Act, although only where the case met the Act's narrow criteria and settlement provisions were exhausted. The level of sophistication among local government staff and elected officials also plays a key role in determining whether Harris Act claims will arise and in the outcomes of those claims. "The local government attorney is where critical decision-making happens and it is there you will see the big difference between sophisticated and less sophisticated" local government responses to the Act, said an attorney who has worked for both public and private clients (personal communication, 3-20-18). "There is an element of knowledge and experience that varies across the state," said an attorney who represents public and private clients (personal communication, 03-05-18). Interviewees indicated that local governments with deep and experienced legal counsel rarely make land use decisions that would engender Harris claims, less because they are aiming to avoid exposure to potential lawsuits and more because they make land use decisions in consultation with robust legal counsel that follow constitutional rules on property rights. Representing this point of view was a county attorney who said the Act "has not changed the way we do business" (personal communication, 03-06-18. Similarly, there was consensus that communities that had adopted robust comprehensive plans and land use regulations prior to the 1995 passage of the Harris Act were in a better position to prevent and respond to Harris Act claims.

Interviewees generally agreed that less well-resourced local governments are more wary of lawsuits, more likely to act conservatively in land use decisions related to the Act, and more likely to settle. Where elected officials, planning commissioners, and legal counsel lack or misunderstand information about the Act, interviewees said that local governments will make risk-averse land use decisions when claims are threatened, even where these claims have little legal validity. One attorney characterized this as "practice by rumor" (personal communication, 03-19-18). This is important because it demonstrates the critical role of information in shaping outcomes, and also points to ways chilling effects on planning can extend beyond regulation and enforcement and into the policymaking arena in some contexts. Interviewees also observed that local governments who had previously lost property rights cases were characterized as likely to be "gun-shy" (personal communication, 03-20-18) about regulation that may impact property rights.

6.3.4. Biophysical conditions

Only one biophysical factor was identified as influencing decisions made in relation to the Act: the nature of local land use conditions, especially the level of urbanization. In general, local governments in large, urbanized areas are not only more well-resourced, the underlying development conditions mean they grapple with a different policy agenda around land use that is less likely to trigger Harris Act claims. In urbanized areas, the dominant planning issue was shaping and enhancing already-dominant processes of urbanization. Attorneys from larger, urban areas expressed that they often use upzoning to accommodate growth. In this context, the Harris Act is not triggered because they rarely seek to downzone or otherwise "take" vested property rights. For example, an attorney for a large, urbanized county said, "We are doing upzoning in the urban core" and "we haven't been doing as much downzoning" (personal communication, 03-06-18). There was more concern about the Act in smaller, less urbanized communities where protecting quality of life and community character—potentially through growth controls and downzoning—is a vital planning issue. In this context, "it doesn't stop downzoning, but the public has to decide to pay for it" (personal communication, 03-13-18).

Interview discussions related to physical conditions prompted several comments about the Act's potential to limit downzoning or

regulatory actions for rural and environmentally-sensitive lands. There was consensus that downzoning and the Act's related implications were outlier issues. "You can't downzone much in Florida easily with or without the Harris Act" due to "constitutional law" (personal communication, 03-01-18). Similarly, "if you were going to sue for downzoning under the Harris Act, you could have done that anyway," (personal communication, 03-22-18)." As a result, "you don't see sophisticated local governments downzoning" (personal communication, 03-01-18). One local government attorney said the Act was rarely triggered on agricultural and environmentally sensitive lands because "we have long had protections in place in rural areas" (personal communication, 03-06-18). In rural areas, the "requirement to have reasonable investment-backed expectations means there is no real impact on hurting agriculture" (personal communication, 03-01-18). One interviewee suggested that "sea level rise" will present critical property rights issues in Florida's coastal areas, but "insurance is the bigger issue" in that context, and "private conditions will create impetus for change," rather than property rights rules (personal communication, 03-06-18).

7. Discussion: The Harris Act and local land use decision-making

Our application of IAD identifies factors that animate decision-making—and ultimately outcomes—related to the Harris Act. Although we interweave the discussion of outcomes throughout our application and analysis, we now synthesize our findings, highlighting insights IAD yields related to the two theorized negative impacts of the Harris Act on land use decision-making in Florida.

We first consider the theorized chilling effect stemming from the Act's compensation proviso. Overall, we find that the remedies enabled under the Harris Act present an objective increase in the risks involved in local government planning actions. Amongst our interviewees, there was a strong consensus that the Harris Act is omnipresent with day-to-day impacts on Florida land use decision-making. However, we also find evidence that provisions in the statute, the strength of Florida's strong institutional and policy context for planning, and rules and norms in the judiciary and local governance arenas mediate these impacts. Although the Harris Act is a formal imperative designed to change the rules of the game, IAD demonstrates how underlying conditions related to land use litigation present high transaction costs—an institutional arrangement that the Act's compensation provision does not effectively reconfigure. The outcome is a countervailing of the chilling effect presented by the risk of litigation such that planning and land use regulation in Florida are largely unimpeded.

Although several factors referee the chilling effect, our analysis situates the Harris Act within a complex feedback loop in which context and subjective processes inform payoff rules—creating a heterogeneous landscape of risk and reward. Critically, this means that the chilling effect is experienced unevenly at the local level, leaving some local governments removed from ramifications of the Act while others are impacted. Impacts vary depending on the sophistication of legal counsel and government decision-makers, fiscal resources, the level of urbanization and resulting land use policy program, and the robustness and timing (pre- or post- Harris Act) of local planning provisions.

We now turn to the risks of abrogated public participation and public interest decision-making as a result of settlement and dispute resolution processes. IAD illuminates how the alternatives to litigation enabled by the Act—whether through a Harris Act settlement or FLUEDRA—are widely seen as effective remedies to political and process challenges present in the land use decision-making arena. In particular, settlement and dispute resolution are viewed as constructive where special interests would otherwise hijack land use decision-making and deter outcomes that could serve the public interest as well as private property concerns. Formal and informal rules and norms of local governance ensure that the public still plays a key role in shaping outcomes. Although settlement decisions may contravene law, interviewees characterize dispute resolution as a valuable tool in the land use toolkit that can facilitate outcomes that would otherwise be unachievable. Upending the public versus private debate that tends to dominate property rights issues, settlement and dispute resolution processes facilitate socially optimal solutions that address a range of criteria, allow actors to participate, and reduce transaction costs.

8. Conclusions

Our objective in this paper is to demonstrate how insights from IAD may be used to illuminate land use decision-making in the wake of state property rights legislation, and to specifically examine how such an analysis provides insights about planning in Florida following the adoption of the Harris Act. The IAD approach helps us appreciate that state property rights legislation is filtered through the informal relational norms and formal rules existing in state policy, local land use actions, and the judiciary. Every time a case is adjudicated, a settlement reached, or a claim averted, this outcome is fed back into the action situations we have discussed in this article. The IAD analysis we have offered in this article offers a guide for making connections among the rules, norms, and iterative feedback loops animating the action arenas and motivating the decisions of actors in them. It can help us empirically investigate potential impacts from state property rights legislation, rather than work from normative assumptions grounded in anecdotal evidence.

We note that our work presents several limitations and avenues for future research. Our paper focuses on insights from attorneys who serve at the front lines of land use decisions and are topic area experts. We call for future research that considers the perspectives of planners, elected officials, landowners, developers, and other actors. Also helpful would be data collection efforts that assemble and analyze claims, settlements, and litigation pursuant to the Act. Our work has a Florida focus, potentially limiting generalizability. Finally, there is a temporal dimension to our work. Many interviewees pointed to changing political regimes in Florida and predicted that property rights issues could be treated differently over time.

Finally, we address implications for practice. Our study calls on Florida local governments to conduct land use decision-making with awareness of the limited scope of the Act and in recognition that the theorized impacts of the Act are much mitigated in practice. This call for pro-active planning in the wake of state property rights laws has an important caveat due to our finding that impacts vary by local context. Our finding that under-resourced local governments or those grappling with growth control planning agendas are disparately affected by the Act presents several policy implications. As Florida continues to adopt legislation that returns growth management to local control, the uneven capacities and competitive disadvantage of some local governments to respond to property rights issues is a critical matter for state policy. Given the state shift away from intervention in local land use planning, we call on advocacy and professional organizations to fill the gap in providing information and legal counsel to under-resourced communities.

Beyond Florida, our findings indicate that compensation provisions in state property rights laws present transaction costs and invoke institutional rules and norms that limit the likelihood of litigation. Although this means such rules are unlikely to yield a substantial chilling effect on local planning, neither do they do much to enhance outcomes in private property rights disputes. On the other hand, settlements and dispute resolution rules provide an effective solution to process and political challenges at the local level, especially those that stem from special interest and ad hoc decision-making. Dispute resolution also allows local governments to achieve compromise solutions that respond to a rich set of governance objectives while accommodating public participation and decisions made in the public interest. Unlike compensation laws—which can be harmful at worst and unproductive at best—state property rights rules that enable dispute

resolution offer solutions that benefit property owners, the public, and planning.

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