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ACCOUNTABILITY CONCEPTIONS AND FEDERALISM TALES: DISNEY'S WONDERFUL WORLD?

*William W. Buzbee**

MARRIED TO THE MOUSE: WALT DISNEY WORLD AND ORLANDO.
By *Richard E. Foglesong*. New Haven: Yale University Press. 2001.
Pp. xvi, 251. \$27.95.

Richard Foglesong's¹ *Married to the Mouse: Walt Disney World and Orlando*, may not offer the thrills of an entertainment park, but it is an uncommonly good read. In a book focused on approximately four decades of Disney's interactions with Orlando and state officials, political scientist Foglesong tells the tale of how Walt Disney ended up locating his new East Coast entertainment park in Orlando, Florida and what happened in subsequent government-Disney company interactions. Using chapter headings based on stages in a personal relationship's progression ("Serendipity" to "Seduction" through "Marriage," and ultimately, after interim stages, "Therapy"), Foglesong shows that while the relationship had its birth in a mutual desire for economic growth, the government-Disney relationship was also dynamic and at times unpredictable. This work is likely to influence debates on subjects as diverse as federalism, land use, state and local government, public choice, deregulation and privatization of government functions.

Compared to most legal scholarship exploring these subjects, political scientist Foglesong's technique is unusual. Foglesong actually conducted substantial documentary research into the Disney-Orlando story and interviewed many of the key players. Weaving in the fruits of this document review and interview process, the book presents a nuanced picture of this increasingly complex and ultimately souring forty year relationship between an economic powerhouse and its less sophisticated local and state government and business counterparts. Orlando granted Disney substantial governmental authority, thus making the company a rarity as both the predominant business in a city and, in part, its own government. To an extent perhaps unparal-

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leled within the United States, Disney succeeded in controlling both market choices and governmental issues within its approximately forty square mile kingdom.

Whether this story of a business that transformed a sleepy Florida city into the most popular tourist destination in the world offers broader lessons for law and policymaking is a difficult question. Disney's breadth, success and audacity seem beyond category. Justice Cardozo once spoke of the "tendency of a principle to expand itself to the limit of its logic"² Along several different trajectories, the Disney World Story goes well beyond usually anticipated limits. Pushing propositions well past their usual bounds, however, may just reveal the implications of extremity, and not the implications of, for example, partial privatization of government functions or business efforts to externalize costs of new development. At times the reader may yearn for more in-depth political science analysis, but apart from occasional forays into related political science scholarship, Foglesong devotes most of his attention simply to telling the Disney-Orlando story. Like other classics on urban government and growth, such as Caro's *The Power Broker*,³ this book's principal value may lie in its rich tale as itself a source of edification, as well as for analysis by Foglesong and others in subsequent scholarship.⁴ *Married to the Mouse* ultimately succeeds due to the insights offered by its blend of historically grounded observations, brief but deft placement of its own analysis within political science literature, and a rich story of several decades of business-government interaction and reshaping of the legal terrain.

This Essay starts by reviewing highlights of Disney World's first forty years, as presented in Foglesong's book and a few other recent accounts of Disney World's growth and operations. It then turns in Part II to closer analysis of what happens to accountability when private and public powers merge as occurred at Disney World. Part III examines this book's methodological approach, contrasting its mode of analysis with prevailing legal scholarship approaches to examination of business-government interactions, particularly in literature on federalism and motivations of state and local governments. The kind of context and history-rich analysis offered by Foglesong constitutes an approach generally missing from legal scholarship. Public law legal

2. BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 51 (1921).

3. ROBERT A. CARO, *THE POWER BROKER* (1974). Caro's monumental work is undoubtedly substantially different in its painstaking investigation into all aspects of Robert Moses's life, but Foglesong's work shares the willingness to look in a sustained way, with recourse to primary materials and interviews, at his subject. Both also are compelling reads.

4. Foglesong has already utilized his research in other scholarship. See Richard E. Foglesong, *Walt Disney World and Orlando: Deregulation as a Strategy for Tourism*, in *THE TOURIST CITY* 89-106 (Dennis R. Judd & Susan S. Fainstein eds., 1999).

scholarship more typically focuses on legal texts or structures or, in scholarship influenced by economic modes of analysis, often seeks to discern the nature of business or governments at various levels based on aggregate, modeled or statistical analyses. *Married to the Mouse* offers numerous compelling examples of how politics, personalities and historical context influenced both legal developments and the evolving nature of government-business interactions. As generally predicted, a broad consensus in support of economic growth led to the enthusiastic embrace of the Disney World project, but later stages of business-government relationship revealed a thornier interaction as the costs of Disney's growth created burdens and dysfunction. This book's ultimate and most valuable lesson is that people and politics matter. Utilization of assumptions about predictable or inevitable types of business or government actions may be unavoidable, especially when designing or critiquing regulatory regimes, but such assumptions should be leavened with attention to historical detail and context.

I. THE DISNEY WORLD STORY

When Walt Disney began to search for a location in the eastern United States for a new Disney complex to rival the West Coast Disneyland, he and his team settled on a location. They attended a festive dinner preceding planned execution of documents committing Disney to its new venture. When the head of the city's leading business questioned Disney's business acumen in planning a tourist destination that would not sell alcohol — "Any man who thinks he can design an attraction that is going to be a success in this city and not serve beer or liquor, ought to have his head examined" — Walt Disney took umbrage (p. 2). As Foglesong recounts, Disney later that evening announced that the deal was off and Disney and his team would leave in the morning (p. 2). The loser? Not Orlando, but Saint Louis, due to the imprudent assertiveness of August (Gussie) Busch Jr. Rather than a revitalized and perhaps burdened Saint Louis, the Disney World team turned its sights to other potential locations.

Several Orlando business leaders known as the "movers and shakers" had for years sought to create conditions that would lure business and growth to Orlando. Their chief tool was to attract non-local federal and state highway funds for roadbuilding that would make Orlando a key transportation hub (p. 17). Led by Orlando's most important power broker, Billy Dial, and newspaper publisher, Martin Anderson, these business leaders succeeded in their efforts. With the substantial assistance of "politically insulated institutions" such as the State Turnpike Authority and the State Road Board (pp. 22, 23-26), these "movers and shakers" succeeded in attracting new highway links and expansions that passed through Orlando. Neither these local busi-

ness and political leaders nor the state knew who or what would be attracted to the area, but they felt confident that with new roads, beneficial business growth would follow.⁵

Despite occasionally strong local opposition to the destruction wrought by the new confluence of highways running through and near Orlando, political deals and the lure of non-local funds succeeded (pp. 27-30). By the time Walt Disney turned his eyes to Orlando, the city offered a near perfect intersection of major, limited access highways that could be used by the millions of planned tourists (pp. 12, 14-15). Foglesong's Chapter Two constitutes a modest antidote to the oft-voiced assertion in legal scholarship and court opinions that with smaller levels of government, greater accountability and sensitivity to local citizens' needs will be found.⁶ This first stage in Orlando's growth instead presents business leaders motivated largely by profit and local boosterism who, in turn, used state and federal money and politically insulated state institutions to transform a city's landscape and future. Indeed, little evidence of Disney, state or local government attention to broader desires or views of the citizenry appears anywhere in this story. Instead, citizens were repeatedly disenfranchised by state and local officials who acquiesced in Disney's requests.

Once Orlando's climate, location and transportation infrastructure were found appropriate, Disney began, through stealth and intermediaries, to acquire land near Orlando (pp. 34-35). Seeking to avoid the escalation in prices and public scrutiny that would accompany public knowledge about Disney's plans, it employed an array of people and devices, among them false identification documents, an assortment of newly created corporations lacking any name link to Disney, two former World War II intelligence agents, and an assortment of mostly uninformed real estate brokers. They rapidly assembled rights to substantial portions of the desired 27,500 acre parcel (p. 49).

When Walt's brother and later Disney leader Roy Disney questioned acquiring so much property for a venture that would actually use a far smaller area, Walt offered two explanations. First, he preferred for Disney to control not only Disney World's core but also the surrounding areas. He feared the visual clutter and tackiness that already surrounded the California-based Disneyland (p. 46). Walt

5. Pp. 31-32. As stated by an Orlando merchant during a 1960s road controversy, "[t]here is no progress without inconvenience to some." P. 22.

6. See, e.g., *New York v. United States*, 505 U.S. 144 (1992) (striking down portion of radioactive waste disposal legislation due to its unconstitutional mandate to states either to accept federal regulation or take title to the waste and explaining that such a mandate would undercut accountability by blurring state government accountability for its actions); *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (stating that "a decentralized government . . . will be more sensitive to the diverse needs of a heterogeneous society"); Richard Briffault, *The Rise of Sublocal Structures in Urban Governance*, 82 MINN. L. REV. 503, 503-07 (1997) (in assessment of "sublocal" municipal institutions, reviewing economics and political science literature anticipating local government sensitivity to citizen concerns).

Disney also recognized the benefits of ensuring that Disney controlled blocks of property in two local jurisdictions, Orange and Osceola Counties. Disney would have “more bargaining power” (p. 46). Disney was ultimately able, within eighteen months, to acquire a parcel twice the size of Manhattan and about the same size as San Francisco (p. 49).

Married to the Mouse then begins to change in tone and content. Foglesong offers more removed analytical observations about how Disney and state and local government officials interacted early in their relationship. Later in the book he begins to focus on how rapid growth and an overwhelmingly low wage economy created harmful externalized costs for both citizens and local and state governments. Foglesong maintains a level tone and scholarly voice. He nowhere creates the written fireworks of more colorful critics such as Carl Hiaasen, who in his short biting essay on Disney calls for “resistance” and refers to Disney World as “a sovereign state within a state” that succeeded in convincing Florida legislators to “blithely agree to give the company whatever it wanted.”⁷ Although Foglesong’s unfavorable assessment of the Disney-government interactions and the breadth of power handed to Disney becomes increasingly apparent as the book progresses, he backs his critical views with compelling documentation.

From the moment Disney acknowledged its Orlando aspirations, the company sought favorable legal treatment: Walt Disney stated that Disney’s grand plans depended on “‘how fast the state will work with us’ ” (p. 51). Walt Disney’s exact plans remained vague, apart from his revelation that the complex would exceed Disneyland in size and would include “‘a model city, a City of Tomorrow’ ” (p. 51). Much as the scale of its land acquisitions went well beyond typical business real property investment, Disney proceeded to secure a remarkable array of extraordinary political breaks and broad assumption of what are typically governmental powers. Businesses, the press, and state and local officials initially saw Disney’s plans as a boon for Orlando, predicting “‘phenomenal’ ” real estate growth and “‘unparalleled economic returns’ ” (p. 56). Governor Haydon Burns promised the “state’s ‘100 percent cooperation’ ” (p. 56), and the legislature and state agencies soon delivered. The Disney company was able to avoid 40 percent of usual sales taxes on its attractions by convincing state tax officials that a similar percentage of Disney World’s operations would be research, design and engineering expenses (p. 57). To gain the benefit of lower county level taxation for agricultural lands, Disney ensured that cows grazed on company lands (p. 57). The thornier and more innovative Disney plan was to establish

7. CARL HIAASEN, *TEAM RODENT: HOW DISNEY DEVOURS THE WORLD* 6, 26-27 (1998).

an autonomous political district that would be recognized by the state, be protected from unwanted changes in the legal landscape, and be largely immune from typical county government powers over building and land use, police, fire and waste treatment.

Disney's desire for a private government was motivated in part by the goal of avoiding the creation of unsightly outside development, such as had occurred around Disneyland in California. Walt Disney also had an abiding personal interest in effective urban planning (pp. 59-60), perhaps rooted in his father's work as a carpenter at the White City at the 1893 Chicago World's Fair.⁸ The Disney planners, however, had their work cut out for them in efforts to convert the scrub tree and swampy land that would eventually become Disney World. In this period before congressional amendments created the substantially more rigorous federal Clean Water Act, with its section 404 "dredge and fill" constraints on wetlands destruction, Walt Disney and his minions simply saw a swamp problem requiring an engineering cure.⁹ Not only did Walt Disney himself seek drainage and filling of thousands of acres of wetland, but he also wanted to be sure the black swamp waters would be converted to a bluish color. "Can you change it?" he asked his engineering consultant. When told it was possible if he "ha[d] the money," Disney said "do it" (p. 60).

The swamp conversion required more than just control of Disney's swamps and creative engineers. Disney needed either a pliant and reliable local government or governmental control for itself. Adjacent bodies of land and water were linked. Based on its engineers' advice, the Disney company used existing state law to obtain recognition of The Reedy Creek Drainage District. Such a district required mere approval of a circuit court rather than a legislative body, would be substantially immune from county government interference, and would be governed based not on numbers of residents, but on numbers of acres controlled (p. 61).

But the Disney officials needed more than mere drainage autonomy. To secure additional immunities from local or state government oversight and increase protection of their substantial investment in Orlando, the Disney company sought and received advice from consultants to find ways to be "freed from the impediments to change,

8. Foglesong has in another major work on urban design and governance described the White City, designed by Frederick Law Olmstead of Central Park fame and Daniel Burnham, as part of a larger exploration of urban form within a capitalist market system. See RICHARD E. FOGLESONG, *PLANNING THE CAPITALIST CITY: THE COLONIAL ERA TO THE 1920s* 124-66 (1986).

9. See 33 U.S.C. § 1344 (1994) (setting forth substantive and procedural provisions limiting permits for placing "dredged or fill material" into navigable waters).

such as rigid building codes, traditional property rights, and elected political officials.’ ”¹⁰

Acting on this advice, Disney officials advocated the chartering of two new municipalities, one of which would be experimental in its design and modes of governance. As envisioned, it would be an Experimental Prototype Community of Tomorrow, or “EPCOT.” This experimental municipality as originally conceived would lack landowners and therefore also lack voter control (p. 65). Around this time, Walt Disney succumbed to lung cancer, but the planning continued. When the Disney company officially presented its state legislative proposals with a more fleshed out EPCOT vision, Walt Disney was on hand, through a previously recorded film, to describe this experimental city (pp. 66-68). In this often rebroadcast film, Walt Disney described a variant on a new urbanist vision, this time complete with actual residents, coordinated design and minimal reliance on the automobile. This early EPCOT vision was substantially different from the commercially underwritten portion of the Disney World theme park that, with an international theme, was later built and also referred to as EPCOT.

Disney and its advisors disseminated three proposed pieces of state legislation to create Disney’s own self governance through the specially chartered Reedy Creek Improvement District. Although a few legislators expressed doubts about the breadth of governmental powers and immunities granted to Disney, they were reassured by Disney representatives. The bills’ actual terms, however, gave Disney substantial immunity from state and local regulation. These bills even sought to make these protections unusually durable with language requiring later explicit repeal of these new town charters before they could be subjected to new or different legal constraints (p. 71). These bills, collectively referred to as the Reedy Creek charter and creating the Reedy Creek Improvement District, were passed largely as proposed by Disney after twelve days of debate (pp. 72-73). Some legislators who supported these bills later rued them as “one of the worst things that ever happened,” because they “gave [Disney] too many powers.”¹¹ The Florida Supreme Court further enhanced Disney’s governmental powers when it agreed that the Reedy Creek Improvement District could issue tax-free municipal bonds, thus enabling Disney’s new government arm to finance infrastructure with bonds partially underwritten by federal taxpayers.

10. Pp. 62, 230 nn.20-24 (quoting REPORT FROM ECONOMIC RESEARCH ASSOCIATES TO WALT DISNEY PRODUCTIONS, EXPERIMENTAL PROTOTYPE CITY OF TOMORROW: OUTLINE OF PRESENTATION TO DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT 20-22 (Aug. 15, 1966) (on file with the Disney Archives)).

11. P. 73 (quoting Henry Land, a legislator who chaired the House Appropriations Committee). Land also stated that had he stood up in opposition, “[he] would have been lynched.” P. 73.

Despite repeated planning stage references to a substantial future Disney World including a residential community, Disney avoided a citizen population for roughly three decades (pp. 70, 72 and 75). Disney instead built an entertainment complex that involved only tourists and a few temporary or Disney-affiliated residents (p. 75). Until the much later building of the retro-styled Celebration community in the 1990s, Disney remained largely unconstrained by the potentially unruly presence of resident citizens. As observed by novelist Hiaasen, "control has been the signature ingredient of all the company's phenomenally successful theme parks."¹² Even in Celebration, residents refer to Disney's influence as that of a "benevolent dictator."¹³

Unshackled from the constraints of a local government land use review process or building code, the Disney company quickly started and in four years completed its massive building project. Water was drained, canals built, sludge removed, and the theme park's central areas raised twelve feet above the surrounding land. Disney, however, did not shirk in the quality of its construction. It created its own building code that included features, such as smoke monitors, alarms and fire sprinklers, that were then lacking in most municipal codes (p. 81). Innovations such as underground pneumatic waste removal were also created after Disney encouraged technology companies to experiment with new ideas at Disney World (pp. 82-83). With such control, Disney was able to create a coordinated and cohesive design for its theme park.

Disney's growth both paralleled and contributed to rapid growth in the Orlando area. Due to Disney's control of market and government decisions within its now state-sanctioned borders, Disney was able to coordinate its actions. Local governments, however, rapidly found that small city modes of governance were ill matched for a rapidly growing region (pp. 92-94). Sporadic efforts by area businesses and officials to ensure that growth and necessary public services were adequately coordinated met with failure. Governmental powers and private market goals were joined only within Disney's borders. Quickly, the surrounding roads and communities were confronted with poorly coordinated and often dispersed modes of growth.¹⁴ Surrounding private ventures that sought to divert Disney tourists and compete with Disney's attractions and on-site hotels were economically disadvantaged due to Disney's local tax breaks and unusual ability to use tax-free municipal bonds for infrastructure development (p. 94). Due to

12. HIAASEN, *supra* note 7, at 69.

13. ANDREW ROSS, *THE CELEBRATION CHRONICLES: LIFE, LIBERTY, AND THE PURSUIT OF PROPERTY VALUE IN DISNEY'S NEW TOWN* 230 (1999).

14. Orlando's rapid growth and attendant discomforts track those commonly found in sprawling metropolitan areas. See generally William W. Buzbee, *Urban Sprawl, Federalism, and the Problem of Institutional Complexity*, 68 *FORDHAM L. REV.* 57, 63-76 (1999).

the absence of independent resident voting citizens in Disney's two state-recognized towns, Disney's growing and usually low wage work force had to turn to other municipalities for schools, housing and other public services. These costs of growth were thus successfully foisted on other municipalities, the state, or the federal government.

Not until the mid-1970s did Disney propose a substantial expansion of its theme park. Called "EPCOT," this internationally themed series of exhibits bore virtually no resemblance to the residential model community that had previously been referred to by the same name. By this time, the costs of further growth of Disney and surrounding businesses were already apparent. Local and state officials began to show modest resistance to Disney's plans. Several state officials thought this expansion should be subjected to analysis as a "development of regional impact," as was now generally required under a 1972 state law intended to rationalize regional growth (p. 101). The state Attorney General, however, sided with Disney arguments that the original Reedy Creek charter protected Disney from obligations to comply with this subsequently passed state law.¹⁵ Disney thus was able to expand without sharing regional planning burdens. As Disney expanded, many other surrounding attractions foundered, unable to compete successfully with Disney's subsidized and unfettered operations, as well as Disney's popularity, smooth running and attractive facilities (pp. 103-05).

By the mid-1980s, the vast internationalized Disney company was struggling due to cost overruns at Disney World and poor movie revenues. To capture more of the Disney World revenues, Disney again began to expand, this time with new hotel construction to keep tourist revenues on site. Increasing the density of tourist use on the Reedy Creek lands, however, also meant increased infrastructure burdens and road congestion. Disney resisted paying for road improvements and opposed transportation proposals such as a light rail system (pp. 109-11). Such a rail system could have eased transportation ills and facilitated tourist movement from the Orlando airport to Disney, but it would also have facilitated tourist decisions to stay off site and

15. This Disney-drafted legislation did, in fact, attempt to provide Disney with a potentially perpetual break from other regulatory obligations on the Reedy Creek lands. Section 23(1) of the charter stated that the "jurisdiction and powers of the Board of Supervisors [of the Reedy Creek Improvement District] provided for herein shall be exclusive of any law *now or hereafter enacted* providing for land use regulation, zoning or building codes, by the State of Florida or any agency or authority of the state and the provisions of any such law shall not be applicable within the territorial limits of the District." P. 102 (emphasis added). Although this later regional planning and impact analysis law called for analysis of an action's regional effects, and hence did not focus on, for example, on-site impacts of the EPCOT construction, Attorney General Shevins read the law broadly to exempt Disney. The net effect was to burden competitors' major projects with obligations under this regional planning law, including mitigation obligations, while Disney was subjected to no such similar burdens and costs.

utilize non-Disney restaurants and entertainment. Hints of Disney support for light and magnetic rail service did not mature into public Disney support, leading interested business leaders and area officials to feel betrayed (pp. 122-31).

Around this time, the Orlando-Disney honeymoon began to end, with critical newspaper coverage assailing Disney's failure to assist with public needs, Disney's aloof manner, and the off-site impacts of Disney's substantial expansion plans (pp. 111-13). Despite belated Disney efforts to smooth relations with local officials, irked competitors and local officials began to pursue means to undercut Disney's privileged legal status, including a challenge to the constitutionality of the Reedy Creek Charter. That challenge was ultimately dropped after a settlement was reached committing Disney to pay a small portion of infrastructure expenses associated with Disney expansions.¹⁶ When Osceola County tax officials decided to start taxing largely undeveloped Disney land at a rate reflecting its "highest and best use," Disney fought to keep its privileged low tax rate status and ultimately secured a settlement largely splitting the difference (pp. 146-50).

Foglesong's book gives limited and somewhat superficial attention to Disney's use of a private police force that sometimes acted as though an arm of the state, but there too Disney only reluctantly conceded ground by distinguishing the appearance of its security personnel from that used by county and state police (pp. 137-45). During this "negotiation" period, as labeled by Foglesong, state and local governments began to impose on Disney obligations to pay for costs associated with its growth, but Disney also continued strategically to use tax breaks, bonding authority and negotiation over allocation of costs associated with growth to minimize these burdens (pp. 150-58). Despite Disney's irrevocable commitment to its location and huge sunk costs in Disney World, the company still fared quite well in securing government assistance and favored treatment. Local officials became personally acquainted with their Disney counterparts and expected neighborly behavior that often failed to materialize (pp. 172-79).

The story of Disney's belated inclusion of a residential component, Celebration, within the Reedy Creek charter lands has been extensively told by others, so Foglesong wisely focuses on the Celebration project as another locus of Disney-government negotiation and strategic behavior.¹⁷ Here too, a familiar pattern is found. Disney structured the creation and nature of Celebration so this first infusion of poten-

16. Pp. 117-20. Disney's success in securing most of the limited available tax exempt housing bond capacity for sewage infrastructure resulted from Disney's circumvention of the traditional coordination of such requests through county officials. Furious county officials unsuccessfully pursued potential legislative cures or a litigation option, but were unsuccessful. Pp. 131-37.

17. See, e.g., ROSS, *supra* note 13.

tially independent actual voting citizens would not imperil Disney World's governance by corporate control. It therefore de-annexed Celebration from Reedy Creek, accepting as the price of this decision subjecting Celebration to new state growth management legislation (pp. 150-53). Disney still sought to impose these costs on others, with some success, and also notably succeeded in building no low income or affordable housing in its new town. Few Disney World employees could afford Celebration housing, yet Disney ultimately negotiated to an agreement discharging its obligation to underwrite housing needs with a mere \$100,000 per year, three year commitment (pp. 160-61).

Disney even found means to blunt the power of Celebration's new resident citizens, creating a community development district board elected on the basis of acres owned. As the largest property owner, Disney controlled this board. Detailed covenants controlling resident behavior and house aesthetics were administered by residential and commercial owners' associations, further minimizing risks of loss of control over this new venture.¹⁸ Even these associations were constrained due to Disney's retention of veto power (p. 164). Celebration residents also grew disenchanted at times, especially when Disney's apparent commitment to a model public school proved illusory (pp. 166-71).

Foglesong concludes by stepping back from his chronological story to summarize the less salutary aspects of Disney World's growth. Due to its size, Disney has consistently generated huge tax revenues for the state and local governments; indeed, Disney remains Orange County's largest taxpayer (p. 180). Disney's favored tax status, however, subjected surrounding counties to unreimbursed public expenses while competitors were monetarily disadvantaged. The company's overwhelmingly low wage workforce created unmet needs for affordable housing and social services. Disney's presence and the concentration of tourists also attracted a huge number of similar low wage entertainment ventures to nearby areas. Orlando's economy thus was heavily weighted not to high wage ventures, but to a low wage entertainment service industry. All of this growth created transportation and congestion problems, and Disney's huge market clout and zealous protection of its tourist-generated revenues also undercut the economic viability of Orlando's old downtown.

In a closing essay placing the Disney World story in the context of other political science scholarship, Foglesong inquires why local and state government officials would continue giving Disney special treatment long after the initial rapture of attracting Disney had faded.¹⁹

18. *See id.* at 223-36.

19. Foglesong in this closing section offers a detailed recounting of how Disney succeeded in having built at mostly public expense a costly new highway interchange. County acceptance of this obligation followed confusing and questionable claims about the county

Foglesong suggests that “regime politics” political scientists offer a partial explanation in their focus on particular personal and institutional relationships.²⁰ These multiple “institutional, political, and cultural rather than economic” ties set a municipality into predictable behavioral patterns that constitute a form of “path dependence” that, in the case of Disney World, “limit[ed] Orlando’s choices about its economic development” (p. 194). A “large-scale, extended public dialogue” about issues such as public and private values, overcommitment to a single employer or industry, and excessive grants of public power to a private entity, suggests Foglesong, would have the potential to “transform this one-sided economic development marriage” (p. 200). How this debate would actually come about, however, is left largely unaddressed except when Foglesong suggests that “political entrepreneurs” might be able to seize on Disney-created ills to foster such a public discussion (pp. 198-99).

II. ACCOUNTABILITY AND EXTERNALITIES WHEN THE PRIVATE AND PUBLIC MERGE

The Disney World story presents elements both consistent and inconsistent with scholarly expectations. As predicted in Paul Peterson’s foundational *City Limits*,²¹ state and local governments fell all over themselves for Disney and explicitly sought growth and conditions suitable for new investment with its attendant employment, real estate and tax benefits. Foglesong focuses on many of the negative side effects of Disney World, but Orlando’s pro-growth consensus succeeded to an extent surely envied by the many struggling cities in the United States. Orlando attracted a huge employer, a generator of massive tax revenues, and a world-famous attraction. Many parents with tired feet might vacillate on whether Disney World is a good thing, as surely would environmentalists valuing wetlands,²² but many millions of free-spending tourists apparently view Disney World as a worthwhile family investment.²³

location of this interchange. He includes interviews with key officials to discern why government generosity to Disney continued long after Disney was locked into Orlando and many of the costs of Disney’s phenomenal growth had become apparent. Pp. 185, 188-91. Foglesong concludes that multiple personal relationships among business and government leaders led local officials to continue their generosity to Disney. Pp. 94-95.

20. See CLARENCE N. STONE, *REGIME POLITICS: GOVERNING ATLANTA, 1946-88* (1989); *THE POLITICS OF URBAN DEVELOPMENT* (Clarence N. Stone & Heywood T. Sanders eds., 1987).

21. PAUL E. PETERSON, *CITY LIMITS* (1981).

22. See James Salzman & J.B. Ruhl, *Currencies and Commodification of Environmental Law*, 53 *STAN. L. REV.* 607, 648-65 (2000) (discussing difficulty in commodifying complex services and values of environmental amenities such as wetlands).

23. It has also inspired masterful satires such as Carl Hiaasen’s *NATIVE TONGUE* (1991), a skewering of a seedier variant on Disney and other pervasive forms of Florida excess.

The Disney World story, however, is far less consistent with optimistic expectations about state and local government sensitivity to citizens' desires and needs. Citizens are all but missing from state, local government, or Disney considerations and activities. With malleable and acquiescent state and local officials rolling out the carpet, Disney instead repeatedly sought and obtained authority to bypass citizen control or even modest democratic accountability, avoid its fair share of growth burdens, and shift to others many societal discomforts associated with its kingdom. The state capitulated to Disney's desires, giving Disney many of the powers of government, but with no explicit requirement that the company answer to resident citizens.²⁴ The merger in Disney World of private and governmental control over an over forty square mile district shows both the benefits of internalization of all private and public functions, but also the likely inevitability of efforts to shift costs to others. The breadth of the Disney World Reedy charter district did not render Disney immune from running roughshod over public concerns when they conflicted with the profit motive. As an experiment in the merger of private and public powers, Disney World constitutes a mostly cautionary tale.

The benefits of merging public and private powers are mostly evident in the planning and building of Disney World. Disney was able to carry out its massive infrastructure and building effort in rapid fashion, also using its flexibility in building code design to embrace and test innovative techniques. As scholars of regulation often assert, reducing constraining regulations facilitated private sector innovation.²⁵ Disney's efficient initial efforts are also consistent with arguments voiced in favor of privatization of government functions.²⁶ Disney showed vision in creating a coherent and coordinated Disney World design, converting a largely swamp environment into a highly engineered and fully conceived entertainment powerhouse. A critic for

24. Economist William Fischel suggests that homeowners' interest in protecting the values of their homes leads local governments to be sensitive to citizen desires, including citizen interest in amenities such as environmental protection. See WILLIAM A. FISCHEL, *THE HOMEVOTER HYPOTHESIS: HOW HOME VALUES INFLUENCE LOCAL GOVERNMENT TAXATION, SCHOOL FINANCE, AND LAND-USE POLICIES* (2001). By circumventing resident political voice for over three decades, Disney World avoided what Fischel sees as the key determinant of responsiveness to the citizenry.

25. For a discussion of regulatory reform efforts and the relationship of regulatory burdens, innovation and regulatory design, see THOMAS O. MCGARITY, *REINVENTING RATIONALITY: THE ROLE OF REGULATORY ANALYSIS IN THE FEDERAL BUREAUCRACY* 1-6 (1991).

26. See generally Michele Estrin Gilman, *Legal Accountability in an Era of Privatized Welfare*, 89 CAL. L. REV. 569 (2001) (in critique of welfare privatization efforts, reviewing arguments for and against privatization and noting advocates' claims about efficiency and innovation); Michael H. Schill, *Privatizing Federal Low Income Housing Assistance: The Case of Public Housing*, 75 CORNELL L. REV. 878 (1990) (in critique of shift of low income housing provision from government to private sector, reviewing efficiency claims but also noting prevalent risk of market failure).

New York magazine suggested that Disney World and its West Coast sibling, Disneyland, were the only new towns of architectural significance built in the United States since World War II.²⁷

Disney designers credited their building and design success to their unusual ability to control all aspects of their environment: "We were very careful to avoid any contradictions in architecture and design The challenge was not just in the theme park this time but outside the park because for this project we had total control . . . we owned all the immediate surrounding land."²⁸ Disney World and the later Celebration development thus in some respects resembled, on a much larger scale, modest-sized new urbanist developments such as Seaside, Florida.²⁹ Seaside's planners and Disney mandated a coordinated aesthetic and centrally planned design within an area initially owned by one developer. In both settings, the result was a degree of harmony and functional mixed uses often lacking in multiple owner, market driven urban and suburban developments. Even hyperbolic critic Carl Hiaasen notes the "wave of relief that overwhelms you upon entering [Disney World] — relief to be free of the nerve-shattering traffic and the endless ugly sprawl."³⁰

Despite this merging of private and government control, the Disney World story also reveals massive environmental destruction and substantial exportation of the negative externalities. Disney's unusual power to control and coordinate, as well as easy ability of citizens and local and state governments to attribute credit and blame to Disney, did not lead to Disney accountability or acceptance of responsibility. Disney's socially unconcerned behavior and despoliation of the environment is in tension with more optimistic views of reliance on private market incentives or state and local government regulators. For example, "free market" oriented critics of current environmental frameworks suggest that with improved property rights and ability to trace responsibility for environmental harms, producers of goods and bads such as pollution will be subjected to market or common law discipline and clean up their act.³¹ Instead, in the absence of later-enacted stringent federal wetlands protection laws, Disney filled swamps, re-routed areas with flowing water and imported sand to change Disney

27. P. 84 (citing and quoting from Peter Blake, *Mickey Mouse for Mayor?*, *NEW YORK MAG.*, Feb. 7, 1972, at 41).

28. P. 84 (quoting Press release, Walt Disney Productions, *The First 20 Years . . . from Disneyland to Walt Disney World* (1976)).

29. For discussion of new urbanist design, Seaside, and typical sprawling development today, see ANDRES DUANY ET AL., *SUBURBAN NATION: THE RISE OF SPRAWL AND THE DECLINE OF THE AMERICAN DREAM* (2000). For discussion of the roots of sprawl and barriers to achieving the new urbanist vision on a larger scale, see Buzbee, *supra* note 14.

30. HIAASEN, *supra* note 7, at 5.

31. See, e.g., TERRY L. ANDERSON & DONALD R. LEAL, *FREE MARKET ENVIRONMENTALISM* (rev. ed. 2001).

World's once murky waters to blue.³² Regardless of larger values or services of wetlands, Disney showed no compunction about the conversion of a complex ecosystem into an environmentally manipulated theme park. The profit motive overwhelmed ecosystem values not able to be captured by Disney in the market.

Similarly, Disney's employment of a massive low-wage workforce created vast housing and social service needs, yet Disney played the political system to avoid paying its share for local burdens. Despite new state laws requiring growth proponents to pay impact fees for growth burdens, Disney resisted such a burden with its earlier Reedy Creek Charter immunity from new legal constraints. Disney similarly managed to avoid paying for most road improvements needed to service Disney World and killed with its opposition proposals for adding passenger rail service to the Orlando area. Disney's success in exporting to others the costs associated with its complex continued even after local disenchantment with Disney became evident.

Disney's broad private and governmental powers produced little evidence in Disney officials of civic engagement or expanded social conscience. Author Foglesong at times appears to expect such social engagement, but the reasons for such an expectation are hard to find.³³ Disney, like most powerful private or public actors, preferred to avoid public accountability and expenditures of money.³⁴ Despite its assumption of broad public powers, Disney remained in the end a for-profit corporation. After initially resisting involvement with community projects, it eventually invested modest sums in local philanthropy, engendering good will within the community.³⁵ Disney was invested with broad government powers, but those grants of government power were subject to no citizen check within the Disney World kingdom, and surrounding local and state officials repeatedly showed little stomach for taking on "the Mouse." Foglesong soundly questions the desirability of giving an entity like Disney the ability to be "selectively public" (p. 124).

In regulatory federalism debates, scholars often suggest that control of societal ills such as environmental harm should be allocated to

32. See HIAASEN, *supra* note 7, at 18.

33. In recounting Disney's belated rejection of a proposed "Mag-lev" train that would have reduced transportation woes, but also would have freed tourists to visit non-Disney attractions, Foglesong asks: "This plan raised the question of what they were: a community player befitting their public powers, or just another for-profit corporation." P. 124. He criticizes Disney's "ability to be selectively public" P. 124.

34. See, e.g., David E. Rosenbaum, *When Government Doesn't Tell*, N.Y. TIMES, Feb. 3, 2002, § 4, at 1 (discussing how the administration of President Bush has sought to keep many materials secret from the public).

35. Pp. 181-82. Foglesong notes, however, that Disney steadfastly resisted entreaties for support of efforts to revitalize downtown Orlando, apparently due to downtown's status as a potential competitor. Pp. 186-87.

the level of government most coextensive with the scale of that harm. Professors Butler and Macey have referred to this idea, rooted in a few pathbreaking law and economics works, as “the matching principle.”³⁶ Disney World is about as close as one could imagine to a jurisdiction merging private and governmental control over an area the size of a major American city. Its governmental powers, however, concededly involved a bizarre form of local governance that included self-regulation but lacked citizens for thirty years. It is thus difficult to allocate responsibility for Disney's environmental and social obliviousness. Nevertheless, in the eagerness to attract growth, state officials actually abdicated most governmental powers to Disney and continued to provide Disney substantial favored treatment long after Disney was “married” to Orlando. State and local governments' desire for growth, institutional and personal links to Disney, and adept political maneuvering by Disney resulted in the near absence of governmental correction of Disney externalities, even those ills borne outside Disney World's borders. At a minimum, the Disney tale counsels caution in accepting the “matching principle” as a rationale for expecting more sensitive state and local regulation of societal ills. A fairer take, however, may just be one that political-economists Charles Lindblom or Albert Hirschman would embrace.³⁷ Both in markets and in politics, responsive mechanisms are needed. A government without citizen vote, voice or opportunity to exit, may be doomed to ignore citizen social concerns and harms in favor of purely monetary reward.

Foglesong finds state and local officials' ongoing willingness to underwrite costs of Disney's growth surprising and contrary to Peterson's “growth machine” hypothesis that focuses on economic bargaining. Foglesong's suggestion that reduced local willingness to coddle Disney might have been expected is supported by international development literature. This literature suggests that as a bargain made to lure foreign investors to engage in natural resource extraction ages, this “obsolescing bargain” will likely result in increasingly antagonistic relations and efforts to renegotiate original investment terms to favor the

36. See HENRY N. BUTLER & JONATHAN R. MACEY, USING FEDERALISM TO IMPROVE ENVIRONMENTAL POLICY (1996); Henry N. Butler & Jonathan R. Macey, *Externalities and the Matching Principle: The Case for Reallocating Environmental Regulatory Authority*, 14 YALE L. & POL'Y REV./YALE J. ON REG. 23 (Symposium Issue 1996) [hereinafter Butler & Macey, *Externalities*]. They, in turn, build on classic works such as Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416 (1956) and further related works such as Vincent Ostrom, Charles M. Tiebout, & Robert Warren, *The Organization of Government in Metropolitan Areas: A Theoretical Inquiry*, in PERSPECTIVES ON URBAN POLITICS (Jay S. Goodman ed., 1970).

37. See ALBERT O. HIRSCHMAN, EXIT, VOICE AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES (1970); CHARLES E. LINDBLOM, POLITICS AND MARKETS: THE WORLD'S POLITICAL-ECONOMIC SYSTEMS (1977).

host government.³⁸ Foglesong hypothesizes that more than economic concerns drove ongoing generosity towards Disney. He finds that institutional and personal ties emphasized by “regime politics” political scientists likely explain this apparently economically unnecessary behavior (pp. 187-92). Foglesong marshals ample documentary and interview evidence to support his hypothesis.

One wonders, however, if in his focus on Disney-government interactions, Foglesong may underplay the multiplicity of interest groups likely seeking favorable government treatment. He concedes that potential future investors would likely note increasingly adversarial relations with earlier major investors.³⁹ Relatedly, local and state government willingness to fund transportation links necessitated by Disney may appear difficult to fathom, but highway construction lobbies, institutions underwriting the bonds, and citizens suffering from congestion all stood to benefit. Thus, politicians needing to please these interest groups and citizens, as well as needing to show actual accomplishments, probably saw improved infrastructure as a political boon even if not essential to keep Disney in Orlando. Certainly many states continue to invest in highways even where societal benefits are difficult to find.⁴⁰ A reflexive belief in the political and perhaps societal benefits of economic growth goals appears to remain a prime motivator even as growth’s discomforts become apparent.

Paradoxically, Disney’s inward focus, obsession with control, and lack of concern with external societal ills and costs it helped create resemble Robert Heilbroner’s critique of the Soviet Union’s dysfunctions. In a 1990 *New Yorker* article, Heilbroner discussed the limited competence of overly centralized planning.⁴¹ He noted as well that devastation of the natural environment was a pervasive problem in the Soviet Union, while still posing an ongoing challenge in capitalist democracies. The fate of the Soviet Union and Disney World are obviously in no way joined: one “devours the world,” as Hiaasen says of Disney, while the Soviet Union is now splintered into many struggling republics. Still, this combination of forceful central control and minimal concern for off-ledger harms are notable similarities for a paragon of capitalism and quintessential communist state to share.⁴² The overly

38. For discussion of the “obsolescing bargain” literature, see THEODORE H. MORAN, FOREIGN DIRECT INVESTMENT AND DEVELOPMENT 141-45 (1998).

39. P. 188; MORAN, *supra* note 38 at 142-44 (suggesting that when developing nations seek to renegotiate original investment bargains, they “hurt themselves” by undercutting credibility in development bargain commitments).

40. See Buzbee, *supra* note 14, at 79-84 (discussing interest group pressures to build highways that in turn facilitate sprawl).

41. Robert Heilbroner, *Reflections (After Communism)*, NEW YORKER, Sept. 10, 1990 at 91, 99-100.

42. Repression of dissenting voices may be a further similarity. According to a recent newspaper article, when author Foglesong was about to appear on the “Today” show to dis-

complete merger of the private and the public may simply be a bad combination, whether starting with a government seizure of market functions or a private sector behemoth's successful grab for government power. A separation of functions, with a critical distance between the regulator and regulated, perhaps would have led Disney and Orlando to a more socially beneficial state of affairs.

III. GOVERNMENT CHARACTER IN DYNAMIC SETTINGS

What can legal scholars make of Foglesong's examination of Disney-Orlando interactions? Fitting this kind of historically detailed tale into contemporary legal scholarship debates is a challenge.⁴³ This tale is not set within an economics influenced model of private sector, local, state or federal behavior, as tends to be the focus of much environmental federalism scholarship in recent years.⁴⁴ It also is not focused on legal texts, especially the Constitution, and what the Constitution tells us about how governmental power can or should be allocated.⁴⁵ It also is unlike much political scholarship that in recent years is deeply into modeling of voter and government behavior. One prominent strain in all of these bodies of scholarship seeks to analyze what allocation of government powers will best ensure that governments act in the public interest and are responsive to citizen needs. Assessment of what actually happens in implementation, and why, however, tends to be neglected.⁴⁶ *Married to the Mouse*, in contrast,

cuss his book, he was pulled off the show. Earlier, a Disney executive complained to a university that had hosted a Foglesong discussion of his research. See Hank Stuever, *America Loves to Hate the Mouse*, WASH. POST, Dec. 5, 2001, at C1.

43. See Susan Bandes, *Erie and the History of One True Federalism*, 110 YALE L.J. 829, 835, 855-59 (2001) (in reviewing EDWARD A. PURCELL, *BRANDEIS AND THE PROGRESSIVE CONSTITUTION: ERIE, THE JUDICIAL POWER, AND THE POLITICS OF THE FEDERAL COURTS IN TWENTIETH-CENTURY AMERICA* (2000)), noting the dearth of attention to historical context in legal scholarship and suggesting the benefits of such attention).

44. See, e.g., Butler & Macey, *Externalities*, *supra* note 36; Richard L. Revesz, *Federalism and Environmental Regulation: A Public Choice Analysis*, 115 HARV. L. REV. 553 (2001).

45. See, e.g., DAVID L. SHAPIRO, *FEDERALISM: A DIALOGUE* (1995); Robert A. Schapiro, *Judicial Deference and Interpretive Coordinacy in State and Federal Constitutional Law*, 85 CORNELL L. REV. 656 (2000). See generally Symposium, *Constructing a New Federalism: Judicial Competence and Competition*, 14 YALE L. & POL'Y REV./YALE J. ON REG. 1 (Symposium Issue 1996) (paper symposium with an array of articles on regulatory federalism).

46. In the administrative law setting, the now defunct Administrative Conference of the United States ("ACUS") provided support for comparable detailed analyses of how federal agencies fulfilled their functions. For a few notable works of legal scholarship that explore law implementation history, going well beyond written law or theoretical expectations, see, for example, JAMES E. KRIER & EDMUND URSIN, *POLLUTION AND POLICY: A CASE ESSAY ON CALIFORNIA AND FEDERAL EXPERIENCE WITH MOTOR VEHICLE AIR POLLUTION, 1940-75* (1977) (describing and analyzing state, federal and industry interactions in controlling automobile pollution); JOEL A. MINTZ, *ENFORCEMENT AT THE EPA: HIGH STAKES AND HARD CHOICES* (1995) (analyzing U.S. EPA's enforcement practices and trends over

presents a rich picture of state and local government interaction with a dominant investor, presented over four decades. Concededly, interviews may reveal only what stakeholders in the Disney-Orlando relationship recall or wish to be remembered, and historical documents similarly can only reveal a slice of what happened and why. Nevertheless, this tale and, in particular, its mode of investigation and analysis, offer several insights for legal scholars.

Mere analysis of Florida's statutes and regulations would have revealed a state that was slightly ahead of the curve in dealing with regional growth problems and the environment. How state officials actually implemented their laws, however, was quite different. In reality, Florida officials quickly capitulated to Disney requests in handing over accountable government authority, largely eliminating citizen voice, and in only minimally burdening Disney with a fraction of the regional growth costs associated with Disney expansions. The written law sounded promising, but the implemented law was far different. This contrast between written law or theoretically based expectations has similarly been prominent in debates over the "race to the bottom" and environmental regulation. Theory might lead one to expect officials trading off amenities to maximize public welfare, but empirical studies reveal state and local officials ready to sacrifice environmental protection to attract investment.⁴⁷ More recent analyses of regulatory rigor and innovation present a more complicated picture, but the implemented reality remains largely unexamined.⁴⁸ For an example closer to

its first twenty-five years); and Thomas O. McGarity, *Deflecting the Assault: How EPA Survived a "Disorganized Revolution" by "Reinventing" Itself a Bit*, 31 ENVTL. L. REP. 11249 (Nov. 2001) (describing efforts to impose by statute cost-benefit analysis on agencies and congressional and U.S. EPA responses to this effort). "Regime politics" scholar Clarence Stone suggests that efforts to separate government policymaking and implementation are a mistake. Clarence N. Stone, *The Study of the Politics of Urban Development*, in THE POLITICS OF URBAN DEVELOPMENT 4-5 (Clarence N. Stone & Heywood T. Sanders eds., 1987).

47. See Richard L. Revesz, *Rehabilitating Interstate Competition: Rethinking the "Race-to-the-Bottom" Rationale for Federal Environmental Regulation*, 67 N.Y.U. L. REV. 1210, 1233 (1992) (stating there is no support for the claim that "without federal intervention, there will be a race to the bottom over environmental standards"). For a sampling of the criticisms of the theoretical, empirical, and normative observations and implications of Revesz's influential article, see Kirsten H. Engel, *State Environmental Standard-Setting: Is There a "Race" and Is it "To the Bottom"?*, 48 HASTINGS L.J. 271 (1997) (challenging Revesz's conclusion with data indicating frequent state laxity); Daniel C. Esty, *Revitalizing Environmental Federalism*, 95 MICH. L. REV. 570 (1996) (concluding that the appropriate level of government intervention will vary based on the situation); Peter P. Swire, *The Race to Laxity and the Race to Undesirability: Explaining Failures in Competition Among Jurisdictions in Environmental Law*, 14 YALE L. & POL'Y REV./YALE J. ON REG. 67, 91-94 (Symposium Issue 1996) (analyzing reasons why states might frequently fail to protect the environment). For a response, see Richard L. Revesz, *The Race to the Bottom and Federal Environmental Regulation: A Response to Critics*, 82 MINN. L. REV. 535, 545-63 (1997).

48. See Revesz, *supra* note 44, at 578-630 (compiling many citations and anecdotes concerning state environmental leadership and innovation, but providing little analysis of his-

the current home of this Review Essay's author, the state of Georgia has on the books environmental laws and regional growth measures that appear exemplary. The actual implementation and enforcement track record, however, reveals an often lax regulatory climate.⁴⁹

Married to the Mouse also suggests that in analyzing government-industry interaction, one should not assume a static relationship. Orlando and Disney initially shared growth aspirations, but as the decades passed and the costs of rapid growth became more apparent, the cozy Orlando-Disney relationship became more adversarial. A snapshot view of Orlando, state of Florida and Disney interactions today might indicate a moderately rigorous regulatory climate, while examination of the 1960s interactions reveals near absolute government capitulation to Disney desires. This relationship changed as Disney's investments and growth changed the political and economic underpinnings of Orlando and the larger region. This book reveals no persistent state or local government character, but changing goals, alliances and compromises, albeit with a sustained but eventually abating interest in economic growth.

It is hazardous to draw conclusions about government-industry interactions based on one in-depth longitudinal study, but a few modest inferences can likely be drawn. If government-industry interactions are dynamic, even at the state and local level where growth goals are likely greatest, then rigid recommendations about optimal allocations of government authority to local, state and federal officials would be a mistake. Dynamic industry-government interactions, if they are the norm, mean that effective regulation will at different times depend on different power allocations. If the political sphere and regulatory climate change over time, as they did in the setting of Florida, Orlando, and Disney, as well as in federal-state interactions in hot-button areas like environmental law, then judicially enforced static conceptions of what the federal government, states or local governments can or should do is a mistake.⁵⁰ Relatedly, cooperative federalism regimes

torical circumstances leading to such laws or the implemented reality at the state and local level).

49. See, e.g., *Altamaha Riverkeepers v. City of Cochran*, 162 F. Supp.2d 1368 (M.D. Ga. 2001) (discussing state of Georgia's lax enforcement practices in concluding that citizen suits could proceed against polluters due to lack of "diligent prosecution" by state); *Culbertson v. Coats American, Inc.*, 913 F. Supp. 1572 (N.D. Ga. 1995) (same); JAMES HOWARD KUNSTLER, *THE CITY IN MIND: MEDIATIONS ON THE URBAN CONDITION* 41-75 (2001) (tracing Georgia and Atlanta's failure to stem dysfunctional patterns of growth and transportation despite late 1990s legislation giving the governor broad powers to address sprawl and transportation harms).

50. See Bandes, *supra* note 43, at 873-78 (criticizing judicial enforcement of static conception of state and federal roles); William W. Buzbee, *Brownfields, Environmental Federalism, and Institutional Determinism*, 21 WM. & MARY ENVTL. L. & POL'Y REV. 1, 27-46 (1997) (analyzing how federal leadership as environmental regulatory "first mover" influenced allocation of federal and state roles and over time created conditions for state assumption of increased regulatory authority).

that allow federal and state governments to adjust implementation and enforcement duties depending on political will and regulatory capacity are likely a sound idea.

This rich, four decade story of Florida, Orlando and Disney could be viewed as a somewhat sordid picture. Public choice scholars applying their skeptical wares equally to all of the players and actions in this book would find many confirmations of jaded versions of rational actor theory.⁵¹ The “law” was not a static baseline guiding private and public conduct. Instead, Disney achieved wholesale changes in the law, playing the state and local governments to extract benefits for itself, while politicians generally went along with most of what Disney sought. The state rationally allowed Disney tax-free municipal bonding authority, thereby successfully exporting to federal taxpayers many of the infrastructure costs that would otherwise have been locally borne. Local business leaders, with cooperation from local and state officials, saw federal highway subsidies as a smart way to attract growth and hence garnered local benefits with federal dollars. As Foglesong notes, local and state officials did on occasion seek to reimpose some balance in the Disney-government interactions, but with little substantive effect. No actor reveals much interest in less monetized amenities such as wetlands or thinks in advance about the risks of overdependence on a low wage, tourist-based economy. The often unexamined faith that state and local governments will be sensitive to local citizen concerns is repeatedly contradicted. State and local officials have their own incentives and goals that, apart from a desire for growth, appear only minimally linked to broader public concerns.⁵²

A more optimistic assessment is that the Disney World story shows that regulatory design, institutions, and incentives matter.⁵³ The main actors in this story again and again responded to legal and institutional incentives. Social engineering through fiscal subsidies facilitated highways and infrastructure expenditures critical to Disney’s meteoric growth. Where regulation was lacking, such as in wetlands protection, destruction followed. Disney’s substantial long-term stake in Disney World led it to invest substantial monetary, political and human capital up front to lock in an advantaged position, long before local or state officials were equally sophisticated. Even though Disney thereby avoided many of the burdens of state regional growth laws, in the end

51. For an introduction to public choice theories, see DANIEL A. FARBER & PHILIP P. FRICKEY, *LAW AND PUBLIC CHOICE: A CRITICAL INTRODUCTION* (1991).

52. *But see* Clayton P. Gillette, *Local Redistribution, Interest Groups, and Judicial Competence* (SSRN Elec. Paper Coll. No. 293700, 2001), at <http://papers.ssrn.com/abstract=293700> (analyzing substantial and prevalent wealth redistributing programs by local governments despite contrary predictions).

53. For exploration of how attention to institutions and context is critical to legal analysis, see Edward L. Rubin, *The New Legal Process, The Synthesis of Discourse, and the Microanalysis of Institutions*, 109 HARV. L. REV. 1393 (1996).

it was unable completely to bypass growth burdens and ultimately had to surrender some of its legal immunities. This new law modified citizen, official and Disney expectations about what Disney should be expected to do. By enacting this law, the state made Disney vulnerable to bad publicity and Disney was forced to justify its unwillingness to share growth burdens. Politics, individuals' efforts and regulatory incentives changed the evolving Disney-government bargains. Foglesong convinces the reader that government-private actor interactions will evolve as circumstances change and institutional relationships mature, but increasingly sophisticated and displeased officials still never quite came to grips with Disney's power and influence.

CONCLUSION

Married to the Mouse offers an exemplary blend of historical research distilled to provide insights into the pervasively important question of how dominant businesses and government officials interact and bargain. Disney was not given an eternal free pass from legal constraints, but succeeded in securing a remarkable array of government powers and breaks from government-imposed burdens. Most notably, Disney remained consistently successful in avoiding the unpredictable presence of citizen power and voice. Despite oft-voiced arguments that state and local governments will be sensitive to local concerns and citizen desires, Foglesong's analysis is not reassuring. This story calls out for counter-stories. Are there other settings in which local and state governments, confronted with powerful investor demands for market and political power, have more firmly insisted on retention of political accountability and citizen voice? How often are assumptions of state and local sensitivity to citizen preferences borne out in reality? What institutional arrangements lead state and local officials to provide more balanced treatment of a dominant employer? Richard Foglesong's superb book stands as a challenge to legal scholars to dig past the surface of written law, to examine the implemented reality of how dominant businesses and state and local governments interact.