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## Law and Land, Anglo-American Planning Practice

Robert E. Beck

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maliciously defame any public figure. In another chapter, Packard writes about "Conditioning Students to Police State Tactics"; yet the constitutional world of Vance Packard is a little too inflexible for the encouragement in public schools of meaningful, person-to-person humanism taught by the major religions. Mr. Packard complains that private defense contractors are forced by the government to conduct loyalty checks, but *The Naked Society* proposes that the same government force private defense contractors to accord to their employees the right of confrontation and other guarantees of the fifth and sixth amendments in every private dismissal hearing.

The relationship between power and privacy eludes Mr. Packard. Nowhere is there mention of the need for village, city or state privacy. Now Mr. Packard sees problems, but he reacts much like some who know that absolute freedom to distribute hard-core pornography ought to end with the juvenile or adolescent, but propose and advocate that no line at all should be drawn because some juveniles grow up and develop faster than others. Packard fails in *The Naked Society* to see that a government can promote pluralism or destroy pluralism by one and the same concern for it.

*The Naked Society* veritably mirrors that kind of fashionable but soulless concern which in the real world breeds only suspicion. True it is that in our society some people are over-dressed and some not dressed at all. Some have good taste in dress, some bad and many can't afford to know the difference. Now all this creates problems, for clothes are significant and people know it. The clothes problem will not be solved by people tearing each other's garments; but, ask any women: Will it help to force people simply to tell each other that everyone is wearing the same thing? Packard's solution for the "Shabby Society" (if I may coin a phrase) is marked by a frightened retreat into the primordial world of primitive absolutes where problems and answers are indistinguishable. His message to *an individual in society* seeking solace and perfection consists, in the main, of tired, unoriginal, neutral abstractions, emotive totems or empty clichés about freedom and conformity.

In short, the book's one merit is that it succeeds in demonstrating that the great majority of individuals in America has little or no inviolate clothing of their own. Unfortunately, Vance Packard's only message to the rest is to move to a warmer climate.

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*Law and Land, Anglo-American Planning Practice.* Edited by CHARLES M. HAAR. Cambridge: Harvard University Press and the M.I.T. Press, 1964. Pp. xviii, 292. \$7.50.

The New York Times of August 16th carries a story about the "Green Acres Plan Lagging in Jersey";<sup>1</sup> the New York Times of August 23rd carries a story that "Chicago Unveils a Master Plan"<sup>2</sup> and one that "Moscow is Host for Cities Study."<sup>3</sup> These are but a few of the many stories appearing daily in newspapers

<sup>1</sup> New York Times, Aug. 16, 1964, p. L49, col. 1.

<sup>2</sup> New York Times, Aug. 23, 1964, p. L64, col. 4.

<sup>3</sup> New York Times, Aug. 23, 1964, p. L39, col. 1.

all over this land indicating not only the vitality of Professor Haar's observation that in this country "the battle over principle now is won: every state in the Union has enacted land-use control laws,"<sup>4</sup> but also the scope of worldwide interest in land-use planning. Yet at the same time these stories sound notes of discontent and draw the boundaries of the current battlefields. How much authority should "planners" be given? What procedures should be available to aggrieved parties? What role ought compensation play? On these fields battles shall rage for a long time to come. And although the battle over principle may have been won, I strongly suspect that not all will agree with Professor Dunham's view that "the problem of liberty or freedom in relation to planning is the inability of a property owner to anticipate the restraints which are to be placed upon him,"<sup>5</sup> and not the simple fact that restraints are to be imposed.

The contributors to this book not only describe past and present land-use planning legislation and practice in England and the United States, but present such an in-depth analysis of this subject that the book provides excellent, thought-provoking, definitions of these new battlefields. It is well put together and has startlingly little repetition, considering the fact that its basic bulk consists of essays from ten different authors. This probably means "Hats Off" to the editor, Professor Haar, who, also, has catalogued the essays under four basic headings, has introduced them briefly, and has followed them with a lengthy "appraisal" in which he draws into sharper focus some of the similarities and the basic contrasts in the American and British approaches to land-use planning. The primary focus of the book is comparative since the contributors received the impetus for their papers from a seminar in comparative planning law which they attended at the Brookings Institution and which included five Britishers, four Americans and one Canadian.

In Part I, "Land Planning and Land Ownership," W. O. Hart, Clerk of the London County Council, sets forth a brief general history of control of land use in England which he follows with a more detailed history of English planning legislation from its inception in 1909 through the latest amendments in 1959. He concentrates on a description and analysis of the two basic concepts in current English planning law: designation and planning control. Designation refers to the power of the Minister of Housing and Local Government to designate privately owned land for future public use without having to purchase that land at any given time, a power which may seem startling when stated in such an over-simplified fashion. The planning control discussion considers, in part, England's important and instructive experimentation with the "development charge" which was an assessment that the land owner had to pay to the government based on the increase in the value of his property attributable to the decision allowing him to develop it in a particular way. Hart concludes with a brief discussion of planning as it relates to concepts of ownership, freedom, and property. In Part I also, Professor Allison Dunham considers the relationship of planning to private property, economic policy, and freedom, after pointing out that for the most part planning literature has not dealt with these aspects of planning. The relationship of planning to democracy is not considered. The questions that he does raise, however, are fundamental, and it is

<sup>4</sup> LAW AND LAND 245 (Haar ed. 1964).

<sup>5</sup> Dunham, *Property, City Planning, and Liberty*, in LAW AND LAND 39 (Haar ed. 1964).

shocking that they have been so little discussed. Both of these essays should be re-read after the balance of the book has been read.

In Part II, "The Making and Effect of the Land Plan," Professor Milner of the University of Toronto compares the English "Development Plan" with the American "Master Plan," including a consideration of their purpose, what goes into them, what their effects are, who is responsible for them and who may complain about them. In another essay, Desmond Heap, Comptroller and Solicitor of the City of London, explores in further detail the English Development Plan, describing the basic authorizing legislation, considering then the preparation and review of the plan, the concept of designation, the questions whether the plan should be local or national in scope and for what time period it should be designed, and concluding with a consideration of its effect. Here there is some repetition, but the scope and emphasis of each essay are much different from those of the other.

In Part III, the longest section in the book, there are three essays dealing with "The Individual and the Machinery of Planning." First, F. H. B. Layfield, an English barrister, considers English planning decisions and their appeal to the Minister of Housing and Local Government. Thus he deals with the application to local planning authorities, the noting of the appeal, the preparation for the hearing, the inquiry, the process after the inquiry, judicial review and trends and improvements in the system. Lawrence A. Sullivan of the Massachusetts Bar considers the flexibility of American zoning administration through an analysis of its environment, the institutions involved, variances and special exceptions, amending of zoning regulations, and modification by selective nonenforcement. Lawyer Sullivan's support of flexibility in zoning administration should be compared critically with Professor Dunham's essay seemingly in support of less flexibility and more certainty in planning administration. In the third essay, J. G. Barr, Solicitor and Parliamentary officer to the London County Council, considers enforcing of planning controls under the English legislation, treating enforcement procedures section by section as they appear in the Town and Country Planning Acts. Assuming the acceptability of planning legislation, its enforcement will present a great challenge, as Barr shows.

Part IV deals with "Regulation and Taking of Property under Planning Laws." First, David W. Craig, City Solicitor for Pittsburgh, discusses the basic concepts of regulation under the police power and purchase under the eminent domain power and their role today in the United States, with a justifiably detailed exploration of the line between the two. Here is his significant conclusion:

There is an increasing narrowness of the line between police power regulation and eminent domain in the attainment of planned land use. In this field, eminent domain and the regulatory power seem to come together centripetally. There is an inescapable impression that the old tests of the line of demarcation between them are no longer dependable.<sup>6</sup>

Second, R. E. Megarry, Q.C., Reader in Equity in the Inns of Court, discusses compensation for the compulsory acquisition of land in England, considering, in turn, the three main compensation areas: "(1) compensation for the interest acquired; (2) compensation for disturbance; and (3) compensation for damage by severance or injurious affection."<sup>7</sup> This part concludes with an article by

<sup>6</sup> Craig, *Regulation and Purchase*, in *LAW AND LAND* 211 (Haar ed. 1964).

<sup>7</sup> Megarry, *Compensation for the Compulsory Acquisition of Land in England*, in *LAW AND LAND* 216-17 (Haar ed. 1964).

David R. Levin, Deputy Director, Office of Right-of-Way and Location, in the United States Bureau of Public Roads, dealing with several aspects of eminent domain in the United States but centering around the basic question of what compensation should be paid for to the land owner.

There is much to be learned from a comparative study. Although there are many similarities in the English and American approaches, some basic differences in emphasis, at least, appear. For example, the British have relied mainly on administrative review of planning, the Americans mainly on judicial review. The British have a much more centralized approach to planning than Americans do. Of course, we must recognize that there are many differences among the fifty states themselves. And the British have gone much farther than any American jurisdiction in public control, at least in theory, even if it has not worked out so in practice.

As long ago as the days of Isaiah there were exhortations regarding land use—Woe unto them that join house to house, that lay field to field, till there be no place, that they may be placed alone in the midst of the earth.<sup>8</sup>

but no easy prescription for carrying them out. And despite the extensive legislation today authorizing land-use planning, we often hear that "Today we are building tomorrow's slums." If true, should anything be done about it? If yes, to what extent? All lawyers ought to be interested in these questions even if they will never face a legal problem involving even remotely a land-use question. Then too, despite handicaps, it is in the area of land-use planning that the central planner has had his most striking success, and it has come speedily and with little discussion. Why limit planning control to land? This book is a good place to begin; it is a good place to acquire additional knowledge; it is a good place to review; but it is not a good place to end, for it is truly thought-provoking.

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<sup>8</sup> *Isaiah* 5:8.

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*Minister of Relief, Harry Hopkins and the Depression.* By SEARLE F. CHARLES. Syracuse: Syracuse University Press, 1963. Pp. 286. Bibliography, Index. \$6.00.

Here, in short and understated phrases, is the story of a dramatic segment of America of the nineteen thirties. Searle F. Charles, Dean of Willimantic State College, in Connecticut, tells of the undertaking by the United States to provide employment for three million Americans during the period when industry was able to utilize barely three-fourths of the labor pool of the nation. The writer completes his report with an almost complete absence of editorial comment, and the intensity of feeling on both sides which swayed the nation a generation ago does not appear in these pages.

This clinical report is timely in the extreme today; and its timeliness exists entirely outside its own pages. There exist in the United States today conditions of unemployment more baffling than those which brought forth the fine efforts chronicled here. Harry Hopkins may yet be proved to have performed his finest service more by charting a long-term course for government, rather than for the several years of his stewardship of the Works Progress Administration. And it is in the application of the WPA philosophy as a permanent part of the