

As to strict liability: The time consumed by the courts in negligence cases, the element of chance in securing compensation, the swollen verdicts obtained by some of the expert operators, and the very real need of protection to persons made indigent by disaster, may cause a profound change in the rules. To carry the authors' ideas to a logical conclusion, each person or household should be required to be insured against all forms of disaster. There is the same economic loss whether harm is caused by slipping in a bath tub or being run over by a negligent or non-negligent driver. The premium could be collected as a tax; as in social security, the amount of the tax and the compensation could be adjusted to income. Surely the state is the best "spreader of the loss." Such an approach would eliminate waste in the court room and elsewhere even more than do Workmen's Compensation Acts. Without advocating such a system, I think it is preferable to one of strict liability, which has many difficulties that have not been sufficiently explored to enable us to judge its workability. I do not subscribe to the idea that negligence as a factor in liability is passing nor that it should pass out, although I do agree that basing liability on legal fault does not substantially minimize the slaughter on the highway.

Again may I say that the reading of the book was interesting and educational. I suggest it for consideration and thought by all three branches of the legal profession.

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THE LAW OF ZONING. By James Metzenbaum. New York: Baker, Voorhis & Co., 2d ed., 1955. 3 Volumes, pp. xxix, 2531. \$35.00.

THE rise of zoning in the second decade of this century was a symptom not of urban progress but of urban decline. It followed a new emphasis on "efficiency" in city administration and a new contempt for beauty.¹ Even within the narrow compass of its potential usefulness, zoning has not been successful: in 1942 a study concluded that non-conforming uses were increasing rather than decreasing;² and given the wretched standards of enforcement generally prevailing,³ it is unlikely that this trend has since been reversed.⁴

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1. TUNNARD & REED, *AMERICAN SKYLINE* 171, 172-73 (1956).

2. Comment, *Amortization of Property Uses not Conforming to Zoning Regulations*, 9 U. CHI. L. REV. 477, 479 (1942).

3. See, e.g., LEWIS, *A NEW ZONING PLAN FOR THE DISTRICT OF COLUMBIA* 6 (1957). A unique aspect of zoning lies in the fact that boards of zoning adjustment can grant variances and exceptions without showing the reasoning on which their decisions are based in published reports or opinions. Hence there is no need for consistency, lawyers have no means of analyzing the board's past policies, and "contacts" and "influence" are at a premium. See, e.g., Note, *Zoning Variances and Exceptions: The Philadelphia Experience*, 103 U. PA. L. REV. 516, 529, 533 (1955), which also comments on inadequate enforcement, *id.* at 552.

4. It is true that there has been a trend towards ordinances requiring the termination of non-conforming uses after a reasonable period of time, which have been upheld by the

Zoning law has reflected the unpromising beginnings and the depressing development of zoning as an instrument of city planning. As Norman Williams has observed, zoning cases "are usually handled by small-time lawyers," and "court opinions tend to proceed on a remarkably low intellectual level."

"Many opinions read as if (as was probably the case) the lawyers considered their job done when they had found the leading zoning case in their own jurisdiction, and then copied out long passages of vague language about property rights, due process, the police power, and the public health, safety and general welfare—which then end up as the first few pages of the court's opinion."⁵

In turn, the sorry state of the art has been reflected in the literature. Metzenbaum's three massive volumes bound in red buckram with gold lettering on their backs, like the volumes of Yokley⁶ and Rathkopf,⁷ are a treatise only in appearance. In content they are paste and scissor digests and excerpts interspersed with a minimum of comment and transition, composed in pre-Langdellian legal prose of touching pomposity.

It would be a pleasure to be able to praise his work, for James Metzenbaum was a pioneer in zoning at a time when its advocacy required imagination and courage. He was a member of the Commission which drafted the zoning ordinance for the Village of Euclid, Ohio, and afterwards served as counsel in the celebrated case of *Euclid v. Ambler Realty Co.*,⁸ in which the Supreme Court held that ordinance constitutional. Moreover, the transformation of his treatise from the 500 page first edition in 1930 to the 2,500 page second edition gives evidence of the author's sustained and devoted industry in the service of the cause. Yet praise is difficult, even if the absence of analysis and evaluation is overlooked and the work judged strictly in accordance with its stated aims: to permit the reader to find the law without reference to any other source; "to make virtually all cited decisions clear in the very pages of these books, by quotations therefrom; to create a 'Rocking Chair' situation, where each reader may—while seated in his study, office or home—know precisely what each ruling has *actually* decided";⁹ to spare the reader any "index-hunting" by supplying cross-references throughout; and to facilitate reading by omitting footnotes altogether and citing all cases in the text itself. It is simply not possible

courts in several cases. See Norton, *Elimination of Incompatible Uses and Structures*, 20 LAW & CONTEMP. PROB. 305, 308-11 (1955), and cases cited. But it is probable that these compulsory amortization provisions will become dead letters. See HORACK & NOLAN, LAND USE CONTROLS 162 (1955).

5. Williams, *Planning Law and Democratic Living*, 20 LAW & CONTEMP. PROB. 317, 318-19 (1955).

6. YOKLEY, ZONING LAW AND PRACTICE (2d ed. 1953) in two volumes.

7. RATHKOPF, THE LAW OF ZONING AND PLANNING (3d ed. 1956) loose leaf in two volumes. HORACK & NOLAN, LAND USE CONTROLS (1955), a volume of materials in the American Casebook Series, is the only intelligent book on zoning law I have been able to find.

8. 272 U.S. 365 (1926).

9. P. vi.

to find the law in a procession of quoted headnotes and syllabi, and the author as much as admits it when he occasionally interrupts the procession by such remarks as "it would be fruitful to read this entire case,"¹⁰ and "this case merits full reading."¹¹ Instead of sparing us index-hunting, he makes index-hunting difficult, for the table of cases fails to distinguish between casual references and full discussions. Since many cases are cited many times—there are fifty-seven page references to *Euclid v. Ambler Realty Co.*,¹² thirty-six to *Arverden Bay Constr. Co. v. Thatcher*,¹³ twenty-two to *Rodgers v. Tarrytown*,¹⁴ and so on—the task of finding the most complete information possible in these volumes is arduous.

It would be unkind to labor the work's weaknesses any further; to enumerate instances where, after a collection of conceptual verbiage on one side of a given question, we are faced with a sub-chapter entitled "Somewhat Contra" and a similar collection on the other side, always without analysis or conclusion;¹⁵ to dwell on variations in the spelling of a case name;¹⁶ or to deplore the omission of such important cases as *Davis v. Omaha*,¹⁷ and *Fischer v. Bedminster Township*.¹⁸ Metzenbaum's work will provide a wide selection of words and phrases for quotation in a zoning brief, and its third volume usefully collects a number of illustrative zoning ordinances and forms for litigation before boards and courts. We must leave it at that.

If the law of zoning has been permitted to develop in a distorted and anachronistic frame of reference, the fault, after all, is not Metzenbaum's, Yokley's and Rathkopf's. The nature of zoning has been misunderstood quite universally. Even the most casual observer cannot fail to notice that the bulk of all residential and commercial building in American cities is done by large-scale corporate builders, contractors and real estate developers.¹⁹ But there seems never to have been a clear recognition that zoning must be a method of regulating a powerful industry. No one would suppose that it is possible to regulate financial markets or labor relations by local city ordinances. Yet the legal decisions and texts typically discuss zoning as if it were designed to permit Jeffersonian

10. P. 155.

11. P. 156.

12. P. 2366.

13. P. 2358.

14. P. 2383.

15. P. 72. Cf. the similar treatment of minimum area restrictions, pp. 279-287, omitting any discussion of the difficult policy questions involved. Cf. Haar, *Zoning for Minimum Standards: The Wayne Township Case*, 66 HARV. L. REV. 1051 (1953); Nolan & Horack, *How Small a House?—Zoning for Minimum Space Requirements*, 67 HARV. L. REV. 967 (1954); Haar, *Wayne Township: Zoning for Whom?—In Brief Reply*, 67 HARV. L. REV. 986 (1954).

16. Is it *Necktow* or *Nectow v. Cambridge*? Compare pp. 397, 560, 2377 (*Necktow*) with pp. 283, 745, 747 (*Nectow*).

17. 153 Neb. 460, 45 N.W.2d 172 (1950) (spot-zoning).

18. 11 N.J. 194, 93 A.2d 378 (1952) (upholding five acre minimum lot restriction).

19. More than 80% of all houses are built for sale to unknown buyers. See Hughes & May, *Housing: The Stalled Revolution*, Fortune, April 1957, p. 286.

farmers to live unmolested on their homesteads, instead of recognizing that zoning must provide a barrier to the abuse of massed corporate power.

Professor McDougal recognized this basic problem as many as fifteen years ago, when he called for "an institutional interrelation of . . . local and federal agencies in a way which, while preserving and channeling local initiative, will draw upon superior federal finances and superior federal ability to fight and defeat nationally-organized pressure groups."²⁰ But his diagnosis has drawn little response. Far from distrusting the vested interests of corporate builders and developers and their professional spokesmen, city administrations typically rely almost exclusively on the purported expertise of those interests when formulating policy.²¹ Hence, it is hardly surprising that many corporation counsels and city attorneys serving such administrations seem to labor still under the belief that the Fourteenth Amendment did, indeed, enact Mr. Herbert Spencer's *Social Statics*.

What is the explanation for the chaotic inadequacy of the regulatory scheme at a time when the explosive growth of our cities has become one of the foremost, if not the foremost, of national domestic problems? Professional planners and architects must share a large part of the responsibility, for their discussions are pitched on so esoteric and arcane a semantic level that it is not surprising when their admonitions go unheeded.²² Yet the basic cause lies in the almost incredible apathy of Americans towards their physical environment. It is not true that, in Professor McDougal's words, "humble millions are ever more insistently demanding healthful homes, homes at reasonable prices, and homes in stable, well-planned communities."²³ The millions, humble or arrogant, may be demanding bigger cars with more chromium, gaudier give-away shows on television and cuts in the defense and foreign aid budgets, but there is no evidence that they demand better cities.

Perhaps this apathy is the result of the characteristic contemporary disillusion

20. McDougal, Book Review, 54 HARV. L. REV. 526, 530 (1941). See also McDougal, MUNICIPAL LAND POLICY AND CONTROL 8-10 (1946).

21. This is particularly true of Washington, D.C. where building and real estate are the only large industries. The composition of a citizens' Zoning Advisory Committee appointed by the Commissioners of the District of Columbia to advise them on a major revision of the zoning regulations is symptomatic: according to my private and conservative compilation, of a total committee membership of 62, 20 members are in the real estate or building business, 3 are in mortgage banking, 2 are architects whose clients are large builders, 2 are lawyers representing prominent real estate and building interests, and one member is in the parking lot business. Thus almost half the total membership of the committee has direct financial interests adverse to reform. The sub-committee chairmanships, in which the actual power of the committee resides, are distributed even more unequally: out of a total of 13 sub-committee chairmen, 9 represent real estate and building interests. The committee does not contain any educator or government official; it contains only 1 clergyman, only 1 retired military man and only 2 representatives of labor.

22. For an example of highfaluting language, see Dukeminier, *Zoning for Aesthetic Objectives: A Reappraisal*, 20 LAW & CONTEMP. PROB. 218 (1955).

23. McDougal, Book Review, 54 HARV. L. REV. 526 (1941).

with all systematic thinking, ideological and utopian.²⁴ Perhaps it is the result of the loss of local roots which has turned most business executives and professional men into transients,²⁵ and which may be producing the kind of nomadic character structure that has always been contemptuous of the accidental momentary camp site. Whatever the reasons, we will have no decent city planning until there has been a revolution in public opinion. As we are learning in the field of desegregation, an enlightened Supreme Court is not enough.²⁶

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JUVENILE OFFENDERS BEFORE THE COURTS. By Max Grünhut. Oxford: Oxford University Press, 1956. Pp. 143. \$3.40.

AT THE first United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Geneva in 1955 it was resolved that "accurate knowledge of the fields of [juvenile] delinquency prevention and treatment lags far behind the good intentions of those interested in increasing social action, and so there is need for caution in determining the social action to be taken. It is desirable to make provision for evaluation whenever new social action is undertaken."¹ No one with any degree of knowledge in this field can doubt the truth of this only apparently harmless statement. The air is noisy with confidently asserted recommendations for the treatment of juvenile delinquents and for the development of programs of prevention; yet how slight, how very slight, is our knowledge of the success which our already existing methods of treatment and prevention achieve or fail to achieve. Without such knowledge how can we with confidence in other than our good intentions advocate changes in treatment methods? It is true today, as it was in 1933, when Michael and Adler affirmed it in their acidulous *Crime, Law and Social Science*, that "we know nothing about the deterrent or reformatory effects of any mode or variety of treatment. It is, therefore, impossible for a proposal of alterations in the modes of treatment to be defended on the ground that the proposed mode of treatment will have greater deterrent or reformatory effects. All changes in the treatment process offer opportunities for the study of their differential effects upon human behaviour. Any pro-

24. Cf. Riesman, *Some Observations on Community Plans and Utopia*, 57 YALE L.J. 173 (1947), reprinted in *INDIVIDUALISM RECONSIDERED* 70 (1954).

25. Cf. WHYTE, *THE ORGANIZATION MAN* 267-98 (1956).

26. "If those who govern the District of Columbia decide that the Nation's capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way." *Berman v. Parker*, 348 U.S. 26 (1954).

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1. Resolutions and Recommendations of the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, adopted Sept. 3, 1955. U.N. Doc. No. A/CONF. 6/L.17, p. 45 (1955).