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A Comparison of American and European Experience

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Transcripts

A Comparison of American and European Experience

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A few years ago, with support from the National Endowment for the Arts, I commenced an overview study of the preservation law and practice in eight Western European countries. I will discuss some of this with you this morning. I do not think that I have ever been as sensitive as I am now, in this position, to the complaint of that mythical university student who was once told by a professor on examination to do a history of the world in 20 minutes, and to be brief and be specific. In the interest of brevity and specificity, this morning I am going to confine my discussion to England, Ireland, France, Holland, West Germany, Austria and Switzerland. I hope that about a year from now, at the conclusion of this effort, you will have much more access to the legal details than you have this morning.

There are several things that need to be kept in mind as we proceed. First, source materials for European preservation practice and law are almost impossible to obtain in this country. Our European correspondents are busy people with better things to do in many cases than to respond to long questions from Americans. Second, of course, much of the material on which we rely is in a foreign language, a situation which presents all the problems of translation and rather subtle meaning changes from country to country. Even that small amount of material that is available in the English language passed through one or two intermediate translations before it got to us.

With this in mind, let me say that there is much to be learned from the preservation experience of European countries. First, for historic and geographic reasons, there is a very uneven distribution of monuments and sites in different countries. Monuments and sites are, relatively speaking, abundant in such

countries as France, the Netherlands, Germany and the United Kingdom, while in countries like Belgium, there are very few. My figures, from a report to the Consultative Assembly of the Council of Europe some years ago, are somewhat dated, but a comparative listing of monuments and sites which have been given some degree of protection underscores these variations: United Kingdom, 200,000; Federal Republic of Germany, 100,000; Netherlands, 40,000; France, 25,000; and Belgium, 1,800. These figures can be very misleading if one is not careful. In some countries, Switzerland and Germany, for example, these figures include sites of outstanding natural or scenic importance, while the figures from other countries include only monuments of a more traditional, structural type. A country's policy also affects this; France is very stingy in what it puts on its list relative to other countries.

Demographic variations have a considerable impact on the preservation of structures. Heavily populated countries, such as the Netherlands, Germany, and the United Kingdom, present less of a problem, for example, with respect to the abandonment of old buildings than France, where the inhabitants are moving from rural to residential or urban areas leaving houses in rural areas to be taken over by low-income families, with the inevitable over-crowding and lack of maintenance. Technological changes in rural areas influence this trend; the aggregation of small farms and the mechanization of farming lead to depopulation of rural areas. This depopulation, in turn, threatens the continued usefulness of monuments in these areas and significantly alters the character of the landscape as well. Natural catastrophies also pose very serious threats to preservation efforts, as did the 1965 flood in Venice, the Alpine avalanches, the forest fires that swept France, and so on.

Economic and social trends tend to affect adversely the private owners of monuments such as castles and country houses in the United Kingdom, Austria, Belgium and France. This impact is not felt in Switzerland, where most castles are owned by public authorities, have remained in active use for various periods, and, as a result, require very little attention. The secondary impact of economic change is less serious in the wealthier industrialized countries where the weekend home phenomenon has been a boon to rural areas. This positive impact, however, can be out-

weighed by the tourist industry, which has strained the capacity of fragile lands, monuments, and ecological systems.

I was interested in a publication presented to the Council of Ministers in 1973 which is an elaboration of threats to European monuments and sites. It sounds very much like it might have been written in America, speaking, as it does, of billboards and inappropriately designed and located filling stations, junkyards, air and water pollution, inappropriate building in rural areas, and over-crowding areas of natural beauty. In urban areas in every European country, any discussion of preservation problems will sound very much like our own discussions. The solutions to these problems also sound familiar: central area revitalization and the establishment of pedestrian zones, for example, have been very successful in countries like Germany, Switzerland and the United Kingdom. The design solutions to these problems that come from the European professionals could have been articulated by graduates of any American school of architecture or landscape architecture.

The issue of renewing ancient town centers while at the same time avoiding displacement is a hotly debated subject everywhere. The Europeans discuss this issue in terms of "integrated conservation." This concept refers to the coordination of traditional activities relating to monument preservation with programs of planning, adapted use, housing, and so on. Along with this discussion, one hears in every country a lot of debate about the use of contemporary building designs in old town centers. This is a general feature of planning legislation in Germany, which has incorporated control of high buildings into its planning legislation and has been able to maintain ancient skylines much more successfully than cities such as London and Paris.

Now, if the problems that I have quickly recited sound very similar to our own, the laws and policies for dealing with them in Europe are even more divergent than our own. A detailed comparison among the 50 states is extremely difficult, partly because of different governmental structures and legal systems. Our structural complexities are shared by some of the nations I studied. For example, from a structural point of view, West Germany, Austria and Switzerland operate under a federal system very much like our own. In Germany, the protection of monu-

ments is by regulation and is a matter for the lender; in the cities and in Switzerland, it is a responsibility of the cantons in Guimonda (Phonetic) or the municipality. However, in other nations, the division of responsibility for the most part is between a central government and individual localities.

The family of law to which different nations can be assigned may also have a substantial impact on the result in terms of preservation. The concept of real property in some countries allows a distinction between public property and private property. In others, it does not, and even with a single common-law country like the United Kingdom, there might be differences in legal approach between England, Ireland and Scotland. The English system gives wide discretionary power to the government to act on behalf of preservation through the various town and country planning and monuments acts. When such actions are taken in the public interest, the rights of the property owner tend to narrow. If the matter is litigated, the property owner often can only get into court on matters of procedural defects and, sometimes, on the amount of compensation for rights taken.

The notion of private property tends to be more sacred in France and Switzerland. One writer has mentioned that the first French act concerning historic monuments in 1887 did not permit a privately owned building to be classified as a monument unless it was of national interest and unless the property owner gave his consent. There was no mechanism for overruling that absence of consent. In the Romano-Germanic countries, such as the Federal Republic, property rights may be less sacrosanct.

The first act authorizing the compulsory acquisition of a privately owned historic monument by the state was in Essen in 1902, and the present Bonn Constitution spells out that private property may be subject to restriction for reasons of "social interest." One senses, overall, that Dutch planning legislation gives more weight to the interests of the community than to those of the individual; that, presumably, provides a better climate for preservation. In other words, from country to country, the traditional rights of property vary just as they do under the single common-law system that we have in this country.

Notwithstanding differences in legal systems, differences in roles of local provincial and central governments, varying degrees of financial support for the administration of national pro-

grams and the inventorying and listing of cultural properties, there are some common elements of European legislation that we can consider. First, I think there is a common recognition by all countries of the value of individual monuments. To a lesser extent, this recognition extends to groups of buildings and sites; and, because of the European concept of the word "site," in some countries, the recognition extends to include landscapes, spaces and places. As a general rule, European systems tend to protect by regulation only the more important cultural artifacts. Generally, some proof would be required to indicate that a protected property would be of exceptional or national public interest; therefore, what we would call "vernacular architecture," such as farm houses, would very rarely be found on any protected list. The listing of properties of national, state and local interest is not used to a widespread extent. There is still an emphasis on the protection of individual monuments or buildings, although this is changing.

It is not feasible in this forum to consider in any detail the administrative arrangements that have been established. All countries have specialized agencies dealing with monuments and sites under the direction of a minister, such as the Minister of Education in Austria, the Minister of Cultural Affairs in France and the Netherlands, and the Minister of Local Affairs in Switzerland. The United Kingdom has centralized both planning and historic preservation responsibilities in a Department of the Environment under one parliamentary secretary. In every country, all preservationists lament insufficient personnel and the lack of funds to carry out the momentous responsibilities, echoing, of course, the cries of the employees of federal and state agencies in this country. The degree of centralization or control by central government is highly variable, perhaps being strongest in France, and lowest in countries like Austria and England, where local authorities have more autonomy. The degree to which national planning, national programs of monument protection, and national programs of landscape protection are coordinated at the national level is highly variable.

A word should also be said about the extent to which private or quasi-private preservation organizations are authorized or supported by government. In Switzerland, for example, the Confederation has given the right of legal action to national as-

sociations for the protection of nature and landscape. These associations are consulted on all legislation relating to monument protection and assist the cantons with the preparation of inventories and with the running of certain monuments. In return for this assistance, they receive governmental aid, a situation not totally unlike the situation with respect to the American National Trust. In Holland, a number of associations own or administer certain protected reserves in which there are natural features of general interest.

In England, such private organizations as the Georgian Society and the Victorian Society are required by law to be given notice and an opportunity to be heard when consent for demolition of a listed building is sought. Under the Malroe Act in France, semi-public bodies have been established to accumulate the capital required for restoration work. The capital comes from the French government, localities and private owners; with this capital in hand, the semi-public bodies themselves undertake projects of restoration and rehabilitation. I suppose the American equivalent would be found in organizations like the Pittsburgh History and Landmarks Foundation, Historic Savannah, The Maryland Historic Trust, and so on. Revolving funds are a recent, but rapidly spreading, phenomenon everywhere, particularly in England and perhaps in Switzerland.

We turn now to a discussion of what is protected. The American concept of the historic district, either a National Register district or a local zoning district, is of relatively recent origin. The idea of the ensemble, an historic district with another name, is found in Great Britain. Originally, conservation areas in Great Britain were under the 1967 Civic Immunities Act, but are now incorporated into the Town and Country Immunities Act of 1974 and are totally integrated in terms of procedure with the various town and country planning acts. The legal embodiment of the notion of the ensemble is present in the Netherlands, in an act which deals with historic and artistic monuments. France has several similar laws dating from 1931 and 1962. Local ordinances dealing specifically with the ensemble are found in Austria, but they tend to be limited in their application to specific cities like Vienna and Saltzburg. Whereas the American concept of an historic district places primary emphasis on the associative values of architecture and history, the European concept places

much more emphasis on aesthetics, scenic quality, views, and so on, as well as on the more traditional values. There are, in this area as in the others we have seen, differences between European and American practices. For example, there is no direct American equivalent to such concepts as the Himot or the Himotshutes, for which such phrases as "landscape protection" or "preservation of national heritage" are not quite correct. The concept of Himotshutes, in contrast, includes national customs, costumes, dialect, music, theater, and the protection of flora and fauna, but excludes contemporary buildings.

Procedures for protective measures are roughly similar everywhere. These procedures generally begin with giving notice to the owner of the intent to list. In the absence of a protest, a protective order is set out. Sometimes, as in Belgium and France, consent is not required for relatively mild forms of protection. When an owner does protest, that objection can, in some cases, be appealed and overruled (as in France and in some of the lender in Germany). A provisional listing or an interim notice can be made where a monument or a building is immediately threatened. Most countries provide for publicizing the fact of listing and also provide for entry of the notice in the local land registry or property records.

The consequence of listing in Europe is very much the same as here. Once listed, a property owner may not alter, extend, demolish, or otherwise impair the integrity of the property without permission of the authorities. (In Europe the "authority" tends to be a single civil servant trained in architecture or architectural history or art history.) A more direct protective action is provided for by statutes under which the state may temporarily occupy a building or may acquire it by expropriation or the European equivalent of eminent domain. Temporary occupation by a government may sometimes also be had, as when a listed monument is not adequately maintained by its owner in Belgium, France or Switzerland. In Europe, as in the United States, compulsory acquisition, or eminent domain, is regarded as a last resort and is always subject to the very practical consideration of how much money is available for compensation.

Under a 1966 French law, buildings compulsorily acquired may later be transferred to a public authority or sold by the authority to a private individual who will maintain the property in

accordance with deed restrictions. This procedure is not unlike the old American Urban Renewal Programs and the occasional Historic Landmarks Laws such as we have in North Carolina. The use of this law is unusual.

Another frequent effect of the listing is the triggering of provisions like the following: that any work done by an owner must be under the supervision of a qualified state architect; that advertising, camping, and the cutting of trees on or near the premises is limited, and, in some countries, that traffic or parking near historic monuments or inside a protected zone is banned. This is, of course, a variable thing.

The sanctions and penalties for violation of monument protection laws in Europe tend to be much the same as those in the United States and subject to the same sorts of practical considerations. There are both criminal penalties, such as fine or imprisonment, although the latter is exceptional, and civil remedies. The belief, however, here and abroad is that actions for damages are not very effective even when they are authorized by statute and, further, that a more appropriate sanction is found in court orders requiring the restoration of the desecrated property.

Let us now speak about financial benefits that attach to designation. Again, the European approaches are diverse but somewhat comparable to American practice in terms of goals. The limiting factor is, of course, the availability of funds. All countries have some sort of system of grants or subsidies. Sometimes the funding originates with provincial governments and is paid to individual owners for maintenance, rehabilitiation, preservation or restoration of listed buildings, or buildings in an ensemble or an historic district. In several countries, however, the policies with respect to the amount of subsidy are quite different from our own. For example, Swiss legislation varies the subsidy according to the geographical significance of the monument: 25 percent of the cost is paid by federal subsidy for buildings of local significance, 35 percent for those of regional importance, and 50 percent for those of national importance. In France, these payments are generally 50 percent for monuments on the principal list, but only 40 percent for monuments in the supplementary classification.

Occasionally a means test is applied to determine subsidies

in Europe. Swiss legislation applies the means test to the canton itself, requiring a greater contribution to the subsidy from those provinces that are fiscally well off and less from the poorer ones. In Britain, under the Historic Buildings and Ancient Monuments Act of 1953, grants and loans from the Historic Building Council for properties of outstanding architectural or historic interest are predicated on a discrete and highly unpopular inquiry as to whether the owner's costs are beyond his means.

Subsidies are available in a number of countries for the conservation of an area as well as of an individual building. The Malroe Act in France is one example. Another is the scheme, in Great Britain, of grants or loans for the preservation and enhancement of conservation areas designated under the Civic Immunities Act of 1967 and the Town and Country Planning Amendment Act of 1972.

A Federal Act of 1967 of Austria (and subsequent laws passed by the lender, the provinces) makes possible grants to small dwellings in cases where they are being rehabilitated as part of an ancient building which has been listed under federal legislation or where they are located in an urban area protected by the province. This is roughly comparable to the initiatives contemplated under the American National Preservation Act of 1966.

An interesting fact is that the British Town and Country Amenities Act of 1974 gives the Secretaries of State the additional authority to make grants for the maintenance of gardens of outstanding historic interest, even where the gardens were not attached to or adjoining a building of outstanding historic or architectural interest.

Compensation to the owner may also take the form of payment for rights lost as a consequence of designation. I think this is of special interest in light of the *Penn Central* decision. In Belgium, for example, an owner whose property has depreciated by more than 50 percent as a consequence of a decision to list that building may compel the government to purchase it. Most countries now accept the principle that prejudice to an owner caused by the curtailment of rights can trigger compensation. Some writers, however, point to a contrary trend and cite examples in places like Belgium, France and Germany; these countries do not compensate for the loss of relatively minor rights,

such as the right to advertise on billboards. French law, since 1966, provides compensation to the owner only if "the curtailment of his rights and the obligations imposed result in a change in the state or use of the premises bringing about direct material and undeniable loss." An owner can no longer speculate on the demolition of his old building in order to claim compensation. Other aides and grants are, as in France, in the form of allowances paid to families living in rehabilitated structures to enable them to remain there notwithstanding the higher rents that may result from preservation. There are also, as I have previously mentioned, grants to national associations for the protection of sites and for the purchase and managing of such property.

I think the closing observation I would make in this connection is about the use, in Europe, of tax incentives as a preservation tool. In terms of building maintenance, the French system is probably the most advanced. There, the owner of a listed building which is not open to the public can deduct from his net income 50 percent of his annual expenses for the purpose of repair and conservation. He can also deduct his property taxes. In the case of buildings which are open to the public, the property owner may deduct 100 percent of these costs. In the case of buildings which are open to the public, the owner can also reserve a quarter of the building for his own private use; he gets a tax allowance of 75 percent of the cost of maintenance of this section, and 100 percent on the remainder of the building. If admission is charged, he gets to deduct an additional 10,000 francs per year, and if he also lets people tramp through his garden, he gets to deduct 15,000 francs per year. He also gets 25 percent of the take. This is admittedly fairly elaborate and generous, but on the other hand, in France there is no provision for any relief from what we would call estate taxes.

In the United Kingdom, a very different system prevails. The English tax system makes absolutely no concession for the maintenance of historic buildings. Maintenance is, in fact, relatively speaking, penalized: the cost of restorations and preservation are subject to the value added tax at the full rate of 8 percent while the construction of new buildings is totally free of the value added tax. On the other hand, in England, the story with respect to death taxes is the reverse. The Finance Act of 1975

substituted a capital transfer tax for the estate tax and made this payable on inter vivos gifts as well as gifts at death. Since 1975, houses of outstanding architectural or historic interest, their contents, and amenity lands (such as gardens or parks) are free from this transfer tax so long as they are regularly opened to the public for visitation.

Of special note for this audience is an Italian law. Special laws pertaining to the Venetian villas require reduced fees for attorneys who have to draw up the deeds required under local laws. This is truly a test of professional support for preservation. I don't know of any American equivalent.

By way of final comment, I've noticed that public sentiment is often exemplified by the large numbers and active programs of the voluntary societies that you encounter in Europe, some of which, in effect, carry on governmental functions. The Amenity Society movement in the United Kingdom is very highly developed. There are several thousand local Amenity Societies in a land area not much bigger than North Carolina and South Carolina together.

European equivalents of our National Trust exist everywhere. These are also substantially supported by government grants. There are Bonnhimscutt in Holland, the Deutsche Heimotgunde in West Germany, the Schweitzer Himotschutes in Switzerland, and so on, with memberships in local, regional and national societies estimated to be in the millions. The sense of pride in cultural patrimony that exists in these organizations by and large far exceeds our own. It's not very surprising that some European legislation is as wide ranging as it is. It comes back, again, to the need which underlies all legal systems, the need for political support in one form or another.

What do we learn from this? European laws are no less substantive, or complex, than our own. Each country has its own way of approaching preservation, just as each state in the United States has developed its own system. One is aware, by and large, of the same concern for traditional rights of property. There is a tendency, in some countries, to better integrate legal processes related to preservation with those related to planning and land use. There is also a tendency in some countries to better integrate preservation efforts with programs dealing with conservation of natural areas, natural beauty, scenic views, and natural

resources. There is also a somewhat greater concern in Europe for matters of aesthetics in historic areas than appears generally throughout our legislation. It would be possible, I suppose, to take the strongest features of each system and hypothesize an ideal for America, but in Europe, as everywhere else, there is a big difference between the law in books and the law in action. In the end, it is public support, expressed in the form of money and political agreement, that is the ultimate measure of success.

NOTES

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