

# LAW AND CONTEMPORARY PROBLEMS

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## URBAN PROBLEMS AND PROSPECTS—A FOREWORD

*Law and Contemporary Problems* has devoted its attention three times in the recent past to various aspects of urban America—to land planning problems in a democracy (Spring 1955), to the inter-related problems of urban planning and housing (Summer 1955), and to urban renewal (Autumn 1960 and Winter 1961). This time the editors have attempted a more general look across the urban scene and an assessment of the problems and prospects for their solution to be found there.

What is the justification for still another look at urban problems and prospects? Even a casual glance at back and current numbers of the nation's journals of opinion and at recent publications of both trade and scholarly books reveals that a great amount of attention has already been devoted to the "urban crisis" in the United States, much of it in the past several years. Moreover, hardly a week goes by without the announcement of the establishment of a new urban research program here, of an institute of urban studies there, or of the appointment of a committee to investigate some aspect of the urban situation or another. Indeed, if any topic in the realm of public affairs has been subjected to critical analysis of late, it is the general area of urban problems and prospects. Yet this entire issue of *Law and Contemporary Problems* is devoted to the subject. And the editors make no apology therefor.

One reason they do not is because the urban sector of American life *is* plagued with an increasing number of problems, to few of which entirely successful solutions have so far been discovered. If the result is not a crisis, as Professor Davies contends, it is very near to one. Rapid population and economic growth—most of which has been urban since World War II—has come on the top of an accumulated deficit in urban development dating back to the depression and the war years. Before the needs created thereby could be wholly met, additional pressures began to be exerted by the revolutionary changes in our ways of living and working brought about by increased automation and an ever higher standard of living. Virtually all the population increase in the foreseeable future will very likely be urban. How will it be accommodated in urban areas which are already rotting at the core, congested and overcrowded, increasingly subject to racial strife, more and

more expensive to operate, and less and less able to meet the broadening housing, recreational, and educational needs of its masses of citizens?

Despite the growing amount of attention to the urban sector of American life, answers neither to that question nor to the many urban needs it implies have been forthcoming. In part thus the purpose of this symposium is to explore a number of the most pressing urban problems and where possible to suggest solutions to them. Rather than attempting to be exhaustive in their treatment, the editors have chosen to be selective. No attempt has been made to deal with all the problems which plague urban areas. Unfortunately, there are far too many even to be listed, much less discussed within the confines of a single symposium. A good many have in any case received sufficient attention elsewhere and so have not been included in this review. The urgent need for well trained and efficient municipal manpower and the urban transportation problem, for example, have both been considered in depth and a number of recommendations made with regard to them, in the first instance by the Municipal Manpower Commission, and in the second by a number of exhaustive Brookings Institution studies. Neither thus needs to be considered again.<sup>1</sup>

Among the problems the editors thought deserved another look, as a glance at the table of contents reveals, are a number of physical problems. As an editorial writer recently put it, "try driving, or walking, or simply gazing, around one of our major cities. Who can bear the cityscape?"<sup>2</sup> To some extent at least these problems can be overcome by planning. Planning is a process, however, which so far has won only grudging acceptance in the United States. Even where it has been accepted, its full contribution has been lessened by what Professor Mandelker calls "the individualistic bias of American law," which is to be sure not irreversible but to undo which will require a major and coordinated effort in the years ahead. Put another way, present day planning approaches and techniques in America do not provide adequate tools for the most effective solution of a number of physical problems. In this respect, as Professor Mandelker points out, the United States may have something to learn from Great Britain.

Some of the problems to be faced are technical. The provision of adequate water supplies for the cities of the future, for example, may, as Professor Bryan suggests, depend on the development of new techniques and on the perfection of existing ones. In the same way, the problem of pollution in all its phases, a problem which is peculiarly urban in its cause and effects, requires a scientific solution.<sup>3</sup> In

<sup>1</sup> However, attention should be called to the urgent need to provide suitable training for persons participating in some newly emerging programs for curing urban ills. For instance, it is difficult to locate qualified personnel to administer urban renewal projects or to serve as community action technicians in preparing and implementing the community action programs which loom so large in the war on poverty.

<sup>2</sup> *America*, Jan. 2, 1965, p. 10.

<sup>3</sup> The problem of air pollution is taking on the same grave proportions as that of water pollution. It will be interesting to determine the extent to which the states, through interstate compacts, uniform

both cases, however, it will be up to the political forces in urban communities to win acceptance for the techniques devised and to find ways to get them into operation. Thus, science is irrevocably linked with politics, and what appears at first blush to be merely a technical problem becomes finally a complex political problem.

Nor is this the only political problem to be encountered on the urban scene. Geared as American cities have been to the traditional concept of the single and discrete municipality, each self-sufficient within its own boundaries, very little provision has been made for governing the actual urban entity of today, a metropolitan area which spreads with happy abandon over city, county, and special district lines. Professor Grant addresses himself to some of the trends in both the political and administrative sides of urban government. He offers no panaceas to the problems he finds there, however, and his judgment is supported by that of virtually every student of modern urban government. Here, too, is a field for investigation. The laboratory may be a different kind, and the director of research clad in something besides the white coat of the pure scientist, but the kind of need each faces is much the same: the development of something still unforeseen, something new for an urban entity still in the process of development.

Closely related to the political problem is a legal one. In many respects, municipal law has been restrictive, not permissive; designed to tolerate urban growth, not to direct and control it; directed to the laissez-faire climate of an earlier day, rather than to the interdependent society which has evolved in the United States. If municipal law served its purposes in a largely rural America, it is doubtful if it applies equally well to the megalopolitan America of today and tomorrow. The changes that have taken place in urban needs and values should be recognized legally to the end that the law permits changes in urban policies and programs.

Some changes have, of course, been made. Zoning, for example, began to be permitted many years ago, but only recently has the law of zoning been modified to meet more than minimal needs. In some jurisdictions zoning can now be candidly utilized to achieve goals that once would have been suspect; a few bold courts seem willing even to authorize zoning based on aesthetic considerations.<sup>4</sup> Similarly, con-

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and reciprocal legislation, creation of interstate authorities or agencies, and other means, will be able to solve these problems without seeking federal assistance or controls. The federal Clean Air Act of 1963, 77 Stat. 392, 42 U.S.C. § 1857-1857l (Supp. V, 1964), directs that the Secretary of Health, Education, and Welfare "shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution." The act also authorizes federal grants for support of air pollution control programs and creates procedures for federal action to abate interstate air pollution.

<sup>4</sup> See, e.g., *People v. Stover*, 12 N.Y.2d 462, 191 N.E.2d 272 (1963); *State ex rel. Saveland Park Holding Corporation v. Wieland*, 269 Wis. 262, 69 N.W.2d 217 (1955); *City of Santa Fe v. Gamble-Skogmo, Inc.*, 73 N.M. 410, 389 P.2d 13 (1964); *Town of Deering ex rel. Bittbender v. Tibbetts*, 202 A.2d 232 (N.H. 1964); *United Advertising Corporation v. Borough of Metuchen*, 42 N.J. 1, 198 A.2d 447 (1964); *Eskind v. City of Vero Beach*, 150 So.2d 254 (Fla. Ct. App. 1962), *decision quashed*, 159 So.2d 209 (Fla. 1963).

cepts of "public use" and "public purpose," as Dr. Anderson complains, have been expanded by both state and federal courts<sup>5</sup> to authorize takings of private property for urban renewal, public housing, and other programs avowedly designed to preserve urban areas and make them more livable. Similar changes in other areas of municipal law must be forthcoming. Fortunately, the increasing professionalism and competence of municipal administrators has helped remove some of the traditional limitations on municipal action, and others may be removed as imagination and talent are devoted to them.

Of course, the protection municipal law offers the individual must be preserved in any revision which takes place, and generally the expansion of governmental authority to meet urban problems has been accompanied by the imposition of safeguards against arbitrary and unfair governmental action. Moreover, under the authority of state constitutions and of the fourteenth amendment, judges have been alert to charges of discrimination in the execution of any municipal program. Where eminent domain will deprive the citizen of his home or place of business, there has been increased insistence that the public agency which proposes to take the private property make adequate provision for relocation;<sup>6</sup> and in some programs, such as urban renewal, relocation grants have been made available to protect the citizen against a type of economic injury ordinarily not compensable in an eminent domain proceeding. Still another protection for the citizen is the requirement imposed in some programs that there be broad citizens' participation in their formulation and implementation.<sup>7</sup>

Much remains to be decided in attaining a proper balance between municipal power and safeguards for the individual citizen. Moreover, municipal law must find answers to such questions as: Should further incorporation be permitted at all? To what level of government should planning be entrusted in multi-jurisdictional urban areas? How feasible is it to permit the further proliferation of special districts and authorities?

<sup>5</sup> Although Dr. Anderson centers his fire on *Berman v. Parker*, 348 U.S. 26 (1954), it should be remembered that an overwhelming number of state courts, some of them prior to the Supreme Court's decision, took the position that urban renewal does not violate state or federal constitutional guarantees, even though the property is ultimately disposed of to private parties. Of course, generally the property acquired by a local public agency for urban renewal is disposed of subject to various restrictive covenants imposing continuing controls which are part of the redevelopment plan and are designed to preclude the reappearance of blight.

<sup>6</sup> Federal urban renewal legislation requires that provision be made for relocation of displaced persons into decent, safe, and sanitary housing; and a redevelopment plan that fails to make such provision will not receive federal aid. In addition, failure to make adequate provision in the plan for relocation might also permit successful attack in the state courts, as was attempted in *Horton v. Redevelopment Commission*, 262 N.C. 306, 137 S.E.2d 115 (1964).

<sup>7</sup> The federal government has been insisting on citizens' participation in connection with urban renewal and the war against poverty; without a showing of such participation, local programs may not qualify for federal grants. Undoubtedly there will be major differences of opinion between federal agencies, on the one hand, and local authorities, on the other, in setting a minimum standard of citizens' participation—and especially so where minority groups are involved. For example, what should be the role of the poverty-stricken in formulating community action programs for the war against poverty?

Another urban problem which demands attention is that of adequate representation in state policy-making processes.

A prior symposium on "The Electoral Process,"<sup>8</sup> which appeared shortly after the monumental decision in *Baker v. Carr*,<sup>9</sup> contained extensive discussions of its portents for urban representation. One possibility envisaged at that time and now materializing is increased responsiveness of legislatures to urban problems by reason of judicial curtailment of the protracted rural dominance in state legislative bodies. Consequently some states may move against ailments which, by default, were left to the federal government for remedy; and a more healthy federalism may ultimately emerge.

However, the editors do not at this time join the Cassandra-chorus complaining of supposed federal interference in local affairs. Although in many instances the federal government has used generous grants-in-aid and low interest loans as a means of "purchasing" state and local powers of eminent domain, these powers—whether used for federally-assisted airports, public housing, urban renewal, or otherwise—have been exercised by, and under the supervision of, local public agencies; and often the abuses which have occurred resulted from local ineptitude or avarice, rather than errors by federal officials. In many instances, the maligned "federal interference" has consisted of attempts to make local authorities face up to their own problems and responsibilities, so that federal funds would not be poured down a rathole. A good example in this connection is the "workable program" requirement in urban renewal.<sup>10</sup> Often, too, the federal controls have been directed to assuring fairer treatment of the private citizen—perhaps by insisting that he be provided with adequate facilities for relocation when he is displaced by federally-assisted programs such as urban renewal. Indeed, sometimes the federal requirements have demonstrated gross inadequacies in state or local procedures.

In other instances federal attention has been directed to the not ignoble goal of attaining greater democracy and participation at the local level—not merely by condemning exclusion of minority groups but also by demanding that the local authorities demonstrate a broad base of popular support for, and understanding of, programs, such as urban renewal and the war on poverty, for which federal funds are being sought. Finally, some of Washington's "interference" has consisted of encouragement to ignore some traditional political boundaries and avoid waste and

<sup>8</sup> *The Electoral Process, Part I*, 27 LAW & CONTEMP. PROB. 157-326 (1962); *The Electoral Process, Part II*, 27 LAW & CONTEMP. PROB. 327-536 (1962).

<sup>9</sup> 369 U.S. 186 (1962).

<sup>10</sup> By virtue of this requirement, local officials are required to correct some of the conditions, such as absence of planning and inadequate or poorly enforced building codes and housing ordinances, which have generated blight in the past. Actually the results of urban renewal cannot be measured solely in terms of slums cleared in the execution of specific projects; the workable program requirement has also helped induce local public and private activity to prevent further spread of blight and to rehabilitate areas that could be salvaged without clearance. The current emphasis on community renewal programs is still another step in the direction of eliminating slums through an all-embracing, well-planned, and well-coordinated effort which utilizes every tool at the disposal of municipal authorities.

duplication by developing new political entities more geared to the solution of urban problems.

Perhaps the most difficult area in federal-local relations is that of finance.

How should responsibility be allocated between federal, state, and local governments in financing urban functions and services? Apparently the federal government will soon assume a new financial responsibility with respect to education; but it seems doubtful that sufficient aid, financial or otherwise, will be available in time to solve the serious problem of education in urban areas which Professor Schueler discusses. Evidence now abounds that to date the educational system has not provided the necessary basis for successful urban living for many urban residents; and there are signs that, without vastly altered educational programs in the near future, the gap will widen even further. The same may be true in areas other than education. While federal financial aid is of vital importance to urban governments in meeting their needs, of and by itself it is no panacea.

The editors are well aware that other problems could have been chosen for analysis and discussion and that even the attention devoted to the problems included herein will not lead to their immediate solution. But all the problems considered in these pages are serious ones already, and several are becoming increasingly so. They thus need as much attention from as many different points of view as possible if workable solutions are to be developed. *Law and Contemporary Problems* will feel its purpose has been served if even a few of the ideas suggested by the contributors to this issue are found to be useful in the process.

No symposium, however expert its members and voluminous its findings, could deal with all the problems of urban areas. New problems will arise to complicate the solution of existing problems, and the quest for solution will be a continuous one. Indeed, a second contribution the editors hope this symposium makes is to point out emerging problems and to ask questions posing still others. A number of such questions are explicitly asked by the articles herein; others are implicit. And the editors themselves feel no compunction in asking still more. What, for instance, will be the impact of continued and almost exclusively urban growth and of the development of a few metropolitan areas on the theory and practice of American federalism? How should the expanded activity of both federal and state governments in response to metropolitan area needs be handled from the administrative point of view? Should a federal department of urban affairs be created? Are state offices of local affairs necessary? Fortunately, the Advisory Commission on Intergovernmental Relations, created by Congress in 1959, is at work on some of these questions, and if its recommendations to date are any guide, it will make a considerable contribution to their solution.

Even more basic questions might be asked. Are cities obsolete, a recent magazine asked its readers. Is urban life as it has developed in the United States worth saving? What can be done to liberate the city from the domination of the automobile which

Mumford so deplores? Is Lewis Mumford's pessimism about the urban future justified? Is the new town movement the answer? Will Reston, Virginia, multiplied a thousandfold, prove a model for widespread adoption?

What do foreign experiences have to teach us? We have neglected comparative studies of urban problems despite the fact that there are many similarities between problems abroad and our own. How can we bring foreign experience to bear? What kind of a clearing house might be developed? Would any of the existing international agencies be suited to the task? If not, what kind of an agency should be created?

What is the impact of urban growth on rural areas? What should be the relation between the two areas? Is there a way to plan and develop both areas together? This is another neglected area of concern to which attention should be devoted.

In asking such questions as these, and indeed in presenting the entire symposium, the assumption has been made that man will continue to live in urban areas and that cities will continue to function. They may not function as well as they might, however, until a science of cities is developed. The Greek architect, Doxiadis, has coined the word "ekistics" to describe the science of human settlement, and that label will do as well as any other, as long as under it a good deal of creative work takes place in developing a methodology for use in tackling urban problems. To date, as Professor Davies concludes, they have been approached largely on the basis of intuition, guess work, and partial knowledge. How much better it would be if a comprehensive system of analysis could be applied to a solid basis of empirical data, if trends could be discerned and projected, and policy alternatives presented and evaluated. A beginning has been made in this direction by urban sociologists, as Professor Winsborough's piece illustrates, and the methods they have been using for many years are beginning to be adopted by other disciplines concerned with urban problem solving. Hopefully, the development of an urban methodology will not be left to the universities alone. Urban practitioners need to be involved as well. The example of Mr. Doxiadis needs to be multiplied a good many times if an ultimately successful process for solving urban problems is to evolve.

In the end, although, as this symposium makes clear, a good many remedies to urban difficulties can be devised, perhaps the basic problem and its remedy have not been specifically broached in these pages. In a governmental system such as that of the United States, motivation for action to solve any problem stems ultimately from the people. Urban prospects, in other words, depend to a large degree on the pressure the people of urban areas exert for their improvement. The past certainly gives no great hope that the urban citizenry will become roused to the need for action and remain alert long enough to see major remedial programs developed and launched. The present gives a little more hope. In a number of urban areas—Pittsburgh, Dallas, San Diego, to name only three—popular enthusiasm for action on urban problems has been enlisted and directed toward specific solutions. Re-

cently in Cincinnati, under a variety of auspices, a citizens' meeting was convened for an all-day discussion of the question, "Who Cares for the City?" The large turn-out was evidence that a great many do care.

Universities are beginning to take leadership in the area, as are a number of civic groups and business organizations. In some instances, the civil rights movement will probably induce greater overall civic participation and activity, both by members of minority groups and by the public generally. As a consequence of *Baker v. Carr* and its juridical progeny, urban residents may begin to feel that their votes are not in vain and may engage more willingly in municipal affairs. Encouragement of more broadly-based citizen participation in urban renewal and in the community action programs established to conduct the war against poverty may have desirable byproducts of participation in other fields of civic activity.

Through one device or another, urban residents must be made aware of the difficulties facing them and be persuaded that their long-term best interests will be served by acting now to alleviate those difficulties. A contribution to this end is the third and final justification for this symposium. The clientele of *Law and Contemporary Problems* is not only involved in bringing about some of the legal adjustment suggested herein but much of it is involved in community leadership as well. Hopefully, readers of these pages take seriously their responsibility for bringing about public understanding of the issues and are engaged already in persuading the public to act. The basic problem is one of education, of inspiration, of challenge and acceptance, and it is to its solution that this issue of *Law and Contemporary Problems* is actually devoted.

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