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ECONOMIC AND SOCIAL CONFLICTS IN LAND USE PLANNING

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American land history is, to a large extent, a record of the interplay between the private forces pushing for land development and the public forces pushing toward a degree of social control over land use.[1]

From earliest colonial days to the present, individuals and corporations have sought to develop land for economic reasons. There has been an extensive trade—speculation, to use a less neutral word—in land throughout our history. The private actions took place within a framework of laws and customs, of course, but the dominant thrust was private and profit-seeking. One should not underestimate the strength of this force in the past, nor today, nor, I venture to say, more or less indefinitely into the future. One need not endorse every developmental action as wise, but one makes a great mistake to ignore the strength and the potential for good of this private force.

Throughout our colonial and national history, there have been some social controls over land use. The pendulum swung toward unrestrained private action and minimal public controls during early decades, until by the mid-19th century there were comparatively few and weak controls over private land use. The doctrine of fee simple ownership was dominant; the land belonged to the owner, from the center of the earth to the zenith of the sky, to do with as he chose, and only as he chose. The legal doctrines of nuisance and of infringement on the rights of others existed in theory, but in practice few courts were willing to restrain actions on private land.

For one hundred years, with increasing tempo, the pendulum of social control over private land use has swung back; at first in rural areas, as laws for drainage districts, irrigation districts and weed control districts imposed limitations on some rural landowners, forcing them to do what they would otherwise not do or forcing them to pay for group activities which they would have preferred neither to pay for nor to engage in. More than half a century ago, social or public controls began to be exerted on urban land use, until today

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1. *Historical Overview of Land-Use Planning in the United States,* Environment: A New Focus for Land Use Planning (D. McAllister ed. 1973).

few cities lack a considerable paraphernalia of planning ordinances, zoning laws, subdivision regulations, building codes, health codes, and other rules which in varying degrees limit the use an owner can make of his (usually urban) land.[2] The rationale for such social controls, their nature, the way in which governments impose them, and something of their consequences are explored in later sections of this paper; but the present point is the near-ubiquity of such social controls over private land use. For better or worse, our society and economy have moved a considerable distance from a wholly free market in land and from a wholly unconstrained private use of land; and I argue that the trend will continue toward more such controls in the future.

ECONOMIC AND EQUITABLE RATIONALE FOR SOCIAL CONTROL OVER PRIVATE LAND USE

Society asserts its right to control private land use for one or a combination of four somewhat different yet partially overlapping reasons: externalities, interdependencies, indivisibilities, and efficiency.

Within the past decade or so, "externalities" has become a common word in discussing land use, environmental considerations, and numerous other aspects of modern life. The belching smokestack of the factory which provided employment to workmen and income to its owner, but imposed costs on other parties, is the traditional case of negative externality. One man or group undertook some action for his or their benefit, in the process causing damage to some person or group not a party to the decision and not a beneficiary of the action. But, for a long time externalities were believed to be relatively uncommon or limited, at least in economics literature; now they are seen to be widely pervasive in the modern economy and society. In particular, air and water pollution have become serious examples of negative externalities.[3] The existence of positive externalities, or of one person gaining from the action of others, has always been acknowledged but rarely ever developed in the literature with the same degree of detail as have the negative externalities. Many of the negative externalities have arisen because of the use of a common property resource, such as air which flows freely everywhere or water into which some people discharge wastes.

In land use, it is perhaps more informative to speak of inter-

2. S. Toll, Zoned American (1969).

3. A. V. Kneese & B. T. Bower, Managing Water Quality: Economics, Technology, Institutions (1968).

dependencies than of externalities.[4] The latter at least implies, if does not define, a line of causation flowing one way—from one actor to one or more recipients, while many of the land use relations run both ways, or all ways, between every set or pair of actors. The residential use of land leads to a demand for schools and parks, but provides an opportunity for a shopping district; to serve all these, roads and highways are necessary, but these group services in turn make the area more attractive for private residences. Each land use supports and sustains each other land use. Ecologists have long insisted that in nature everything is related to everything else, economists have retorted that the same is true and has long been recognized in the national economy, and now the land use specialist may with equal accuracy point out that each land use is related to every other land use. There is a maze of lines of interrelationship; one suspects that the "current" or "energy" of land value flows in each direction on each line.[5]

In many instances of land use there are marked indivisibilities; a service provided one tract is perforce available to other similarly situated tracts, and likewise a control exerted on one tract must be applied to others if the enterprise is to be successful. This was the rationale behind the drainage districts, for instance; a drain which carried away excess water from one tract likely carried away water from adjoining tracts as well. Today, flood protection works for some land also provide some measure of protection for adjoining land.

Social control over private land use may also have an efficiency rationale. It may be argued that the land in a residential district is more valuable if discordant uses are kept out, or that a large tract is more valuable than an equal area of smaller tracts; hence a zoning classification may require some minimum area to which it can be applied or, for other reasons, some pattern of land use may be more efficient than others. By "more efficient" we mean that the land values are greater, or that the sum of satisfactions from land use are greater, or that the costs of attaining given satisfactions is less, or some combination of these advantages. The efficiency argument is rarely made in just these terms, and still less often is backed up with reliable quantitative estimates of values and costs, but it often underlies, at least intuitively or implicitly, much argument for "good land use." If there are indeed efficiencies in some patterns of land use, which would not exist in their absence, then there is some ground for

4. M. Clawson, Suburban Land Conversion in the United States: An Economic and Governmental Process (1971).

5. Hirsch & Shapiro, *Economic Implications of City Planning*, 14 U.C.L.A. 1312 (1967).

social control over land use to gain such efficiencies. Economists have built up a substantial body of theory, based on Pareto optimality, about how the gainers might compensate the losers so that everyone would gain. Much of such theorizing may be socially and politically naive, but the efficiency argument for land use control does have some merit.

For any of these reasons, or any combination of them, one person has an interest in how another uses his land, and must in honesty recognize a reciprocal relationship. To acknowledge the existence of such mutual relationships does not prove the efficiency or value of any particular proposals for land use control, nor does it say that the process by which controls were decided upon was acceptably democratic, much less does it prove that the proposed control is the best one that could be devised. But, in a nation grown and growing more populous, with a complex society and economy steadily becoming more complex, a technology which increasingly destroys the isolation of everyone, and a deepening concern for the environment generally, social interest in private land use must be acknowledged.

GOVERNMENTAL POWERS AND MECHANISMS

In the United States, government (at some level) possesses a considerable range of powers and mechanisms, to make effective upon the private land owner the decisions of the electorate as to the social control over his land use.[6] These may be explored briefly and from the viewpoint of the economist, not that of the lawyer.

First of all, there is the police power; the right and the power to regulate private land use for the health, welfare, and safety of the general public. This power is stated, more or less explicitly, in the constitutions of the nation and of the states, or arises from common law, or is explicitly authorized in the acts defining the roles and powers of counties, cities, and other units of local government. In practice, it takes the form of zoning ordinances, subdivision ordinances or regulations, building codes, health codes, and the like. Some uses of land are authorized, and others explicitly or implicitly prohibited; some of these controls may be highly detailed, such as the setback distance for buildings from different sides of a lot for different land uses, or as to the kinds of use that may be made of structures within a defined zone. In planning theory, a zoning ordinance should follow and make effective a land use plan; in fact, two-thirds of the zoning ordinances rest upon decisions of the zoning authority without any land use plan, and still others are in contra-

6. The National Commission on Urban Problems, Building the American City (1968).

diction to the plan, even to an officially authorized one. The building code may be and usually is highly specific about wire size, protection of surrounding buildings from excess heat of chimneys, etc. On the other hand, had public health authorities had the courage or the political strength to have insisted upon controls over septic tanks which experience has clearly shown to be necessary, most suburban residential developments of the past 25 years based on septic tanks could not have occurred until sewers were built.

Government (at some level) has the power to tax land and improvements on the land. The primary purpose of such taxes is to raise revenue, but taxes have a significant effect upon land use as well; three illustrations may help visualize the role of taxes.[7] Unimproved suburban land has almost invariably been taxed more tenderly than improved property of the same value, thus reducing the cost of holding land unimproved and unused—a form of tax relief for land speculators—and contributing significantly to suburban sprawl. Buildings and other improvements on land are taxed, often assessed at a higher rate than for the land itself, and assessments are increased at once when the building is completed; the result is a significant deterrent to rebuilding or to major improvement of existing structures. The opportunity for accelerated depreciation on rental property, thus creating a tax-free cash flow for about eight years, and the subsequent taxation of the gain from selling the property at a substantially lower rate than would have been paid on annual income, has meant a powerful incentive to defer rebuilding of decadent structures as long as they could be rented at all. Taxation procedures have clearly retained more slum dwellings than public action has replaced by slum clearance and renewal. Taxation is never neutral as to land use; over a considerable period of years it may be the dominant force in land use.

Government (at some level) has the power of eminent domain, or the legal power to take private land with due compensation for public use; and virtually all governments in the United States have the legal power to own and manage land for public purposes. The definition of "public purpose" has changed greatly over the years; public purchase of land for urban renewal is a legally accepted public purpose today but has not always been; the legal basis of some public controls over private land use have changed in the past and may well do so in the future. Exercise of the power of eminent domain has its practical as well as its legal problems, and it is not the panacea for

7. Gaffney, *Tax Reform to Release Land,* Modernizing Urban Land Policy (M. Clawson ed. 1973).

public control of private land use which many not-so-well informed persons think it is. Public ownership of land in the United States is far more common than many people realize; one-third of the total land area belongs to the federal government in the proprietary as well as the jurisdictional sense; some is owned by States; some is owned by counties and cities; and the area of publicly-owned land is more likely to increase than to decrease in the decades ahead.

Government (at some level) has the power, and often the duty as well, to provide certain types of public improvements or public services—transportation arteries, sewer lines, water lines, schools, parks, and other amenities. The availability, or the nearby location, of these public services is often a powerful factor affecting private land use. The location and character of the public schools is a basic consideration in suburban residential location and development, for instance. This role of public improvements in affecting private land use is rather well recognized; less attention, both popular and professional, has been focused on the influence of the method of charging the private landowner or land user for these services. At one extreme, the costs of sewers may be paid for out of county general revenue; the older residents pay the same sewer tax as the newer ones, thus in effect paying once for their own sewers and later paying again for all newcomers' sewers. At the other extreme, the full costs of sewers and of central treatment works might be assessed on all land which the new sewer line was capable of serving, and the charges levied and collected from the time the sewer was capable of serving the land, whether or not there existed a sewer connection from a structure on the land to the main sewer line. In the latter case, the cost of holding suburban land unimproved and unused would be significantly higher than in the former case, and the effect upon the pattern of suburban development would be great—sprawl would be too costly to the landowner as well as to the community. Numerous alternatives, intermediate to these extremes, obviously exist. The situation for other services is perhaps less dramatic than for sewers, but an important issue of public policy, with significant effect upon private land use, is how the costs of public improvements and services are to be paid for.

Lastly, governments have the power to "wheel and deal;" many will deny, or decry, this power. A local government may offer to improve a highway or street system to carry more traffic or to carry it more quickly; or may offer to locate and improve a park, or may agree to locate a school, thereby making feasible some private residential development which otherwise would not be economically

sound; and it may, or may not, get some explicit return from the developers. One cannot know how often explicit bargains lie behind a combination of public and private actions; at one extreme, the public action may be taken "on its merits" (without defining a merit) and the alert private landowner simply takes advantage of the new situation in which he finds himself; at the other extreme, public officials may act in their public capacities to benefit themselves as private persons, by approving some public action which enriches some private parties, in a consciously planned manner, and with some of that profit finding its way back into the hands (and pockets) of the public officials concerned. Given the wealth-creating and wealth-distributing effects of public actions, discussed later, the wonder must be why there is not more of such profit-taking, not why there is any of it. If "plea bargaining" is becoming more common in criminal law, one should not be surprised when "zone bargaining" arises in land use control.

While wheeling and dealing are widely condemned, just because they are so often hidden in their operations and because private enrichment at public expense is so widely suspected even if not often proven, yet there is obviously a full legitimate field for integration of public and private planning and for public and private investment and action. A modern government is, to a substantial extent, an entrepreneur, not merely a servant, and governmental procedures and operations must evolve to recognize this role.

LEVEL OF GOVERNMENT EXERCISE LAND USE CONTROL

Although land use control, or at least influence over private land use, has always been exercised by each of the three major levels of government (federal, state and local) in the United States, the role of these different levels of government has changed somewhat in the past decade or so, and promises to change more in the future.

Until perhaps 1965, direct control over private land use was almost wholly a matter for local government. Counties and cities enacted zoning, subdivision, building code, health, and other ordinances which directly controlled land use. They operated under powers delegated to them by the state governments; with a few exceptions these powers were used without clear policy or procedural guides in enabling legislation, with little or no technical advice and help from the state, and with almost no state supervision over the exercise of the delegated powers. State legislatures, state executive offices, and even to a considerable extent state courts washed their hands of involvement in land use control.

It is not difficult to criticize the operations of the typical local government in land use planning and control. While some of the larger counties and cities had excellent professional staffs to collect and analyze data, prepare plans, and provide technical help to zoning or other special bodies or to the general governing body, the great majority of local government lacked such technical or professional staff.[8] A great many general governmental bodies and zoning planning or appeal bodies were parttime; the men and women who staffed them were often sincere and dedicated but lacked both time and professional competence to deal with the issues involved. Some aspects of this typical local land planning and control are considered later in this paper. Procedures were often sloppy; notices of proposed actions were inadequately distributed; meetings were badly conducted; information to guide the public was unavailable; decisions were taken in informal, not to say prejudicial, ways; members of such bodies either acted on matters in which they had personal interest or on matters in which fellow-board members had such interests (with distinct possibilities of reciprocal trade); and otherwise the actions were far from a model of correct governmental procedure. In a great many instances, appeals from actions were taken to the same body responsible for the decision appealed from; and in almost no case were appeals taken to a unit of government larger than the one in which the decision was made. The arbitrariness, even capriciousness, of this process has been noted by various commentators and writers. Even the courts have been far from models of logic, consistency and competence, in dealing with land matters. All too often land cases were the dregs of the courts' business and were treated as such.[9]

The states did not, as a general rule, exercise any guidance and control over the actions of local government in the matters of direct land use control. The states and the federal government did, prior to 1965, undertake various programs with considerable indirect impact upon private land use. First and foremost, there were programs to provide transportation facilities—major highways, including interstates, local roads, airports, and others. These have had major effects upon private land use. Other facilities for public use were provided by, or largely funded by, state and federal governments—parks, schools, and others. Grants have made possible construction or improvement of sewer systems. The federal government at various times

8. A. D. Manvel, Local Land and Building Regulation—How Many Agencies? What Practice? How Much Personnel? (Research Report No. 6, National Comm'n on Urban Problems 1968).

9. R. F. Babcock, The Zoning Game—Municipal Practices and Policies (1966).

has had major programs of assistance to the private housing market—loans, or publicly insured private loans, in particular. The terms on which these have been made, including appraisal practice, have affected private land use. The federal government has spent several billions of dollars in flood protection works, thereby making possible private land use which otherwise would not have taken place. And in other ways state and federal government programs affected the economic climate for private land use decisions, and, of course, the governmental programs of education, communications, business practice, maintenance of law and order, and others provided an economic and social climate within which private land use decisions were made.

During the past decade or so, this division of responsibility between levels of government has begun to change.[10] In a number of states the state government has begun to exercise direct control over the use of some kinds of private land. It is not possible in this article to review all such state activities as they exist today, and in several states efforts are being made to enact legislation which would considerably enlarge the roles of states in general, as far as direct land use controls are concerned. One must be cautious in any appraisal of these state efforts at direct land use control; the record is too short, to date, for a definitive judgment. One may reasonably point out that many new programs are begun at federal, state, or local levels with great enthusiasm, with dedicated and competent direction, and substantial popular support, only in time to lose some or all of these components of vigorous and competent activity.

Legislation at the federal level has been under consideration for several years to create a general national land use act, but it most probably will be a greatly watered down one, compared with the versions that were first introduced. The various federal bills have included provisions to encourage the states to undertake guidance of local planning and planning of situations of statewide interest, which they should have been doing all these years, and have included some federal funds to assist the states in such planning. They have also provided for a degree of direct federal activity in some situations if the states did not act. A federal act, if it includes any significant part of the subject matter of the various bills that have been introduced and considered, will enlarge the federal role above what it has been until now, and will almost certainly force the states to take a larger role than most of them have done until recently. In the absence of federal legislation, some states are likely to pass acts providing for

10. F. Bosselman & D. Callies, The Quiet Revolution in Land Use Controls (1971).

some degree of state activity in planning and controlling private land use, but many states, in the absence of federal legislation, are likely to move slowly, or only a little, or not at all.

The general trend toward greater social control over private land use, noted earlier as having been under way for the greater part of the century, will almost surely continue. It will increasingly matter to each of us how the other fellow uses his land. The path toward greater social control over private land use has not been a straight and clear one in the past, nor is it likely to be in the future. There are likely to be efforts made, some of which will be translated into legislation, or administrative decision, which would introduce a degree or a form of social control over land use which the majority of the electorate will later consider unnecessary, unwanted, or unwise; and one may reasonably expect some reversals at some stage of actions taken at an earlier stage. But the inexorable demands of an increasingly complex and interrelated society and economy will likely force greater social controls over private land use; the real questions relate to the exact form of such controls, how they are decided upon, how they are made effective, how regard is taken for the rights of nonconformists, and similar questions.

SOME CHARACTERISTICS OF LAND USE PLANNING AND ITS IMPLEMENTATION

Some characteristics of land use planning and its implementation must be emphasized, if one is adequately to understand the conflicts that have arisen or that may arise over land use controls.

First, competent land use planning and implementation is wealth-creating; that is, the system of land use which arises under a system of controls should and often does create more wealth from a given area of land than would a system of no land use controls. I realize full well not everyone will agree with this statement. I have not, and probably cannot, subject it to quantitative analysis and support. But one has only to observe the fervor with which the citizens of some pleasant residential areas unite (perhaps for the only thing they will unite on!) to oppose a rezoning which would open the area to what they regard as a discordant land use—a high rise apartment, for instance. These people, if asked, would doubtless not put their actions in terms of maximizing wealth in land, yet in fact that is what they are seeking, at least for the tracts of land they own. Or observe how a high-income suburb rallies to impose or to retain large lot sizes and/or high minimum house sizes, as a means of keeping low income people, of whatever race or ethnic group, out of their suburb.

Or observe the expenditures which a business group expends to get its land rezoned as it wants or to prevent the zoning of other land which it regards as competitive. One cannot but believe that land use planning and zoning, as actually practiced, has created at least some wealth in land that otherwise would not have existed.

The wealth-creating aspect of land use planning and zoning quickly merges with the wealth-distributing aspects of these activities, and about this there can be less doubt. If one tract of land is zoned for commercial development while adjoining tracts are not so zoned, then the zoned tract will, to some degree, pick up some of the land value which otherwise was spread over a larger area. Again, one need only observe the expenditures and the energy devoted to zoning and re-zoning cases, to feel sure that the owners of the land in question expect a substantial gain to them from the requested zoning action. The degree of wealth-distribution depends in large part upon the nature of the zoning; that is, if the area of land zoned for some purpose is relatively restricted, compared with the demand for such land, then the zoning action confers much wealth on the owner of that land. In contrast, if so much land is zoned for some purpose that the area far exceeds the most optimistic probable demand for it, then little value accrues to any particular zoning action. It does little good to zone land for oil well drilling, if in fact there is no oil to be extracted; nor to zone large acreages for industrial development when the probability of any, or much, industrial development is low. I pointed out earlier that taxation is never neutral in its effect upon land use; similarly, land use zoning is never neutral between land owners—it gives some owners more than it gives others, whether all achieve a gain in all land values, but some more than others, or some gain while others lose in absolute terms.

It is the wealth-distributing effect which makes land planning and zoning so difficult administratively. The public action creates a value, large or small, for one landowner, and denies it to another; how is objectivity and fairness preserved under these circumstances, and—perhaps more important—how does it appear to be preserved? It is far harder for a public official to give valuable gifts to someone than it would be to sell the action that conferred the value. This was one of the considerations behind my suggestion, some years ago, that zoning and rezoning be sold to the highest bidder.[11] At the least, the public would know the minimum, if not the full, value of the zoning action; the public would get some idea of the value its actions

11. Clawson, *Why Not Sell Zoning and Rezoning? (Legally That Is)*, Cry California (Winter 1966-67).

created; and the public official would be taken off the hook of criticism for giving away public property. As long as land use planning and zoning convey substantial amounts of wealth on some landowners while denying equally large gains to others, the charge and probably the truth of illegal and/or dishonest actions will persist.

As land use planning and zoning have operated in the United States over the past half century, they have been discriminatory in their effect and often in their intent—discriminatory to racial and ethnic groups, but even more so to economic groups.[1 2] Today, though perhaps not in the past, a well-to-do black can buy a house in many a suburb where a low income white cannot. The fragmentation of local government, noted by many writers on the subject, has enabled suburbs to practice discrimination in housing and as between housing and industry or trade. Some suburbs have sought industry, especially clean industry, whose employees with their children will live elsewhere, where some other unit of local government can provide the needed schools; other suburbs have excluded industry, wanting to retain their pure residential character; and none have sought to encourage the building of houses or apartments for really low income families with many children. The discrimination has not generally been outright; rather it is in terms of lot size, hence lot and house cost, or in terms of house size (again, cost), or in other terms that poor people cannot meet. Truly poor people can rarely buy new houses unless heavily subsidized; but many people somewhat below the median income might buy houses under more favorable land use controls.

But land use planning and zoning, as actually practiced, have often been discriminatory in other ways as well. When allied with building codes, they have often made it difficult for an outside builder to operate. Not only local builders, but also local labor groups, have supported this type of discrimination. Zoning as actually practiced in much of the United States has been notably un-firm—changeable when enough effort was exerted by the right person in the right way. Many a lawyer has had a lucrative practice from rezoning cases; it is clear to everyone that his batting average is high, even if it is less clear how he achieves his high percentage of successes. An outside lawyer is likely to be notably less successful in securing rezoning, particularly for an outside client.

All of the foregoing is to say that land use planning and zoning at the local level in the United States—and that is the only level where significant amounts of such actions have been done in the past—has

12. Modernizing Urban Land Policy (M. Clawson ed. 1973).

been in the hands of its beneficiaries. Students and observers of government have long noted that regulatory boards and commissions at federal and state levels in time come into the control of the group(s) they are to regulate; the same thing happens at the local level, as the control of land use planning and zoning falls into the hands of those with most to gain from the exercise of this power. The local beneficiaries may quarrel among themselves over the division of the spoils but they unite to oppose, or to milk, the intruder. As a formerly rural (perhaps agricultural) county undergoes rapid suburbanization, one of the interesting transformations to watch is the shift in political power. The rural courthouse gang and their affiliates are in control at first. Some members of the gruop may resist suburbanization because they prefer their area as it is, but all want a piece of the pie as land values rise, and few land use controls that might in any significant way adversely affect the rise in land values will be enacted. Later the new suburbanites become concerned for the suburban character or quality of the county (as contrasted to its former rural character), and they begin to seek land use controls, which the developers find onerous or fear may become so. A period of political struggle often ensues. In time, if the suburban settlement of the county goes forward, the suburban dwellers outnumber the developers and their allies, and political control shifts. I have personally seen this cycle in various parts of the Washington metropolis area. In Montgomery and Prince Georges counties, Maryland, the developers have long since lost effective control over county politics. The shift seems just to have occurred in Fairfax County, Virginia, and in Prince William County, where suburbanization is beginning, the developers seem more clearly in control. Politics are partly a matter of demography and of time.

National land use policy, such as it has been, has been made largely by the multitudes of local actions, each taken in the interest of the group concerned. One can well sympathize with each local group pursuing its interests as effectively as it can, but the result is not necessarily—one would argue, on purely statistical probability, almost never—in the regional or national interest.

RECENT AND PROPOSED LAND USE CONTROLS

There exists in the United States today a widespread feeling that the present system of land use planning and controls is deficient in one or more important respects.[13] This has rather clearly underlain the efforts to secure a national land use planning bill; it also underlay

13. The Use of Land: A Citizen's Policy Guide to Urban Growth (W. Reilly ed. 1973).

the legislation passed in some states. The California case is particularly instructive; bills failed in the legislature or were vetoed by the Governor, but the general public, with the referendum procedure which is possible in that state, passed a coastal zone planning and control act far stronger than the versions the legislature had rejected. One may assume that there is powerful political opposition to any effective land planning and land control legislation by the states. Those people who have learned to manipulate local governmental controls to their advantage, or to live with such controls, are understandably reluctant to see some new system of land use planning and control come into operation. Much of such opposition will not be open; that is, opponents are likely to be more effective as they try to influence legislators and others in private conversations, than they are in public hearings. The fact that cautious legislators have seriously considered, or have voted for, state land use legislation may therefore be taken as significant evidence that they perceive a strong popular support for such legislation; if they did not take the popular support seriously, state land use legislation would not have advanced as far as it has in several states.

New kinds of influences are being brought to bear on land use planning and land use control generally; no small part of this new influence arises from the increased concern over the environment, and from a feeling that present systems of planning and control are needlessly wasteful of environmental values. The urge for social equity or justice is not lacking, but is comparatively less strong, in my judgment But perhaps most of all, the recent moves for stronger federal and state control over land use reflect a desire of new groups of people or new interest groups to gain control over the process, or at least to have a far more effective input into the process than they have had in the past. There is a dissatisfaction with the way the presently effective groups have operated local governmental land use controls, and a drive to replace them or to modify their effectiveness.

It is precisely this suggestion of a shift in political power that arouses the strong political opposition to the pending national and state land use legislation. Those who have operated the machinery of local land use control in the past do not wish to give up their role and their power; they have learned how to use existing law and procedure, often to their advantage, or at least usually not to their disadvantage. Political struggles to shift power are, of course, very old and very common, and one should not be surprised that proposed federal and state legislation encounters obstacles—often obstacles not readily apparent or public, but nonetheless effective.

But those who would institute different land use controls must consider a range of difficult questions:

By what mechanisms are land use plans and land use controls to be formulated? In particular, what are the respective roles of the expert, the elite, and the general public? Almost everyone will agree that the expert, one with technical training, special knowledge, special expertise, and time to devote to land use planning and formulation of land control ordinances, should have a hand in the process; without him, serious errors are likely to be made. There is also likely to be fair agreement that the expert should not make the policy decisions; "on tap, but not on top," is one way to describe his role. But the way knowledge is assembled and presented can go far toward forming the decision which seems to flow "naturally" from the facts. While there is strong support for the idea of active participation by the general public, yet in fact a great deal of the public is indifferent until a decision is reached against which it may rebel; glorification of the role of the general public in the planning process often serves to identify accurately the advocate as a person with little experience in such matters. In a position between the technical expert and the general public lies some kind of an elite—persons and groups of more than average ability, with more than average information, willing to work and to concern themselves with community affairs. But elites are interest groups also, with points of view and objectives which they seek to gain.

The foregoing set of questions may perhaps be rephrased: who is going to do the land use planning and to formulate the land use controls, and for whom is this planning and control to be directed? In practice, it is nearly always rather small groups which do the planning; in the past, as we have noted, such plans have typically benefitted some groups far more than they have benefitted others. Some degree of this is perhaps unavoidable; some of the more flagrant abuses can be avoided by various administrative devices, such as public hearings. But no one who watches the operations of the land use planning and land control processes as they operate today can avoid some degree of skepticism or of pessimism for the continued staying power of the general public or some of its representatives; a new law or a public campaign may arouse much enthusiasm, but in the long run it has usually been the representatives of special economic groups who have persisted long enough to gain their ends.

What measures can or should be taken to safeguard the interests of various minorities, not only racial or ethnic minorities, but also any other kind of an interest group whose views diverge from those of

the majority. If the plans and the zoning action call for single family homes in some area, what about the people who want to live there but prefer a high-rise apartment—or conversely? If land use plans are to mean anything, they must be translated into action; and if the action has any meaning, it must prevent someone from doing what he otherwise would choose to do—if this is not true, then the planning process is purely an intellectual exercise. Can the person or group restrained from doing what it prefers be given a viable alternative? The courts have said that some profitable or practical use of land must be left open to the owner, otherwise land use control becomes taking of private property; but just how profitable must the remaining use be, compared with the desired use? As I read land use history in the United States in the past several decades, it seems to this non-lawyer that the courts have wrestled with this problem without a clear-cut answer which has stood the passage of time. Without in the least denying the legal dimensions of the problem, I think it is basically a political one—what is fair and equitable to the individual and to the total public? The question has typically been: has the landowner been left with a viable alternative for use of his land. Perhaps it might better have been phrased, how far is the public required to provide the landowner with a maximum profit opportunity?

The next decade is likely to see many interesting, perhaps significant, instances of new and stronger land use controls imposed by a different political power structure than has been dominant in the past, and aimed to produce different kinds of land use results than have typically existed in the past. There may indeed be a new and powerful public spirit toward the land, and it may succeed in achieving results to its liking, at least some of the time. But there will surely be opposition, both open and under cover, to land use controls that differ too much from those of the past. It is possible that the new efforts for stronger land use controls will offend so many powerful individuals and groups that the whole basis for the land use planning effort will be swept aside. As I interpret it, this is what happened to the two previous attempts at national land use planning—those by the National Resources Planning Board and by the Bureau of Agricultural Economics, both in the 1930s, both ended by Congressional action; one can surely argue that the conservationists overplayed their hand in the recent Alaska pipeline case—Congress stepped in to end a controversy, quite possibly on terms less favorable to the conservationists than they might otherwise have obtained,

and quite possibly setting a precedent for similar actions in the future.

Meaningful land use planning must bite someone; but whom, how often, how severely, and to what prospective end? Wherein lies political wisdom? How far, how fast? What about the near and the far future?