# LAW AND CONTEMPORARY PROBLEMS

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## FOREWORD

Proposals for economic and social planning inevitably arouse fierce controversy in this country today. Whatever their specific nature, there will be those who strongly oppose them because, rightly or wrongly, they fear that their interests will be adversely affected. Indeed there are many who apparently believe that such planning, if not fundamentally opposed to truly democratic values and principles, certainly is so hostile and incompatible that it should be kept at a minimum if the individual rights and liberties deemed so essential in a democracy are to be preserved against increasing encroachment by powerful government.

Land planning in a democracy, which is the subject of this symposium, involves controls over a form of individual property rights to which, historically at least, our common law legal system has often given a preferred position. Although our present industrialization does not, perhaps, in certain respects, place as much emphasis upon land ownership as a source of wealth, power, and liberty, as a more agricultural, feudal, or aristocratic society would, still the importance of land and home ownership in present day America cannot be denied.

In this country, any planning which involves control and limitation by the state of individual ownership and rights to land and property is bound to encounter constitutional limitations. So far as the Federal Constitution is concerned, land planning, particularly in the form of zoning, has on the whole encountered very few obstacles. The Supreme Court, although it has emphasized that fair and decent procedures must be followed under the due process clause and that the regulation must be reasonable as applied to the property involved in a specific case, has from the beginning recognized the constitutional validity of zoning and land planning and indeed now seems more firmly committed than ever to this approach. State courts have probably been somewhat less tolerant, no doubt because they are in a better position to see more clearly and frequently the possibilities in the day to day routine operations at the local level for abuses and inequities resulting from poorly devised or improperly executed zoning and planning schemes. In certain areas the courts may have hindered, though not blocked, orderly and rational land planning through strict adherence to a rigid doctrine that the Constitution does not sanction zoning and planning based solely upon aesthetic considerations. Currently this doctrine is gradually weakening and can usually be evaded without much difficulty.

More serious today are the new problems which land planning and zoning are facing which may well require an entirely fresh or reoriented approach to the whole subject. For example, traffic conditions in our cities and on our major highways have an importance for the contemporary planner not dreamed of in the first decades of the twentieth century. No zoning plans for a city can afford to ignore the crucial issues raised by traffic density and congestion. Again, the increasing prevalence since World War II of large scale housing and business developments, both private and governmental, poses new problems for planners through exposing gaps and inconsistencies in existing laws and regulations which did not envisage such large scale, overnight creation of entire communities. Also, urban communities, with their financial resources heavily strained by seemingly ever increasing demands for such services as water and sewer lines, schools, and streets, are rapidly awakening to the fact that haphazard development of new housing and business and industrial areas may prove too costly a drain on their diminishing ability to obtain adequate funds to meet the demands for services created by such growth. Older communities are also finding that planning for future growth and development is not enough. What is even more urgently needed is some way to remake the old, to eliminate incompatible structures and uses which long antedate current zoning and planning but which still continue to flourish with seemingly an interminable span of existence. Finally, as in almost every other field of administrative and governmental regulation and control, there are difficulties in obtaining sufficient competent planning personnel. In fact, there are indications already that some planning administrators are confused as to what should be the basic objectives of zoning and planning and may often be exercising their discretionary powers so as to thwart rather than forward the fundamental goals of land planning in a democracy.

Certainly we cannot afford not to have some land planning in a democracy. But the nature and extent of that planning—its goals and methods—are still largely unsettled, even though the needs daily become more urgent.

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