

Introduction

PRECEDENTS FOR THE FUTURE

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Lawyers understand the value of precedents and how to use precedents imaginatively. They study cases and apply the decisions to the situations they are facing in 1972. This allegiance to the lessons of the past bears a close relationship to the spirit which prompts the preservation of historic buildings. For the lawyer—and for the society which he serves—historic landmarks stand as valuable precedents for a better future.

Time has rendered a judgment on buildings constructed by previous generations. The perspective of the present allows us to determine which buildings were truly the finest products of their times. Lawyers and other preservationists can save the precedents from our past and use these historic structures as examples of quality to raise our standards of today; they ought to insist on improving the environment each time the government or private individuals build.

This symposium explores the legal techniques which may be employed to insure that these architectural precedents continue as standards for the future. The papers are selections from a conference on this subject sponsored by the National Trust for Historic Preservation. While the topics covered are varied, the underlying theme is the emerging awareness of legislators, municipal officials, judges, and lawyers of the need for effective and imaginative controls to save each community's historic landmarks and districts.

Historic preservation started as a rarity in America, often the creation of a rich benefactor; now the novelty phase of historic preservation is largely over, and the current challenge is to fit historic preservation into the mainstream of the life of America's cities, towns, and counties. Preservation groups are now looking for support from others in the community. Alliances with city planners will be formed. As a related point, the Philadelphia story presented by Dr. Margaret Tinkcom indicates that relationships with local urban renewal agencies may truly be reciprocal.

The search for support proceeds from a firm basis. Because of court successes and Congressional enactments, preservationists can today celebrate their status as equals with other causes and programs. (Oscar Gray's discussion of recent federal legislation reviews the struggle to keep 150-year-old landmarks from being the victims of the 15-year-old highway program or the 20-year-old urban renewal law.) With this

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equality comes responsibility. In fact, the task posed by this symposium can be expressed in terms of three R's: responsibility, responsiveness, and restraint.

Responsibility has more than one aspect. First, there is the need for a preservation program to be procedurally sound. Lawyers can do much to create the climate in which a preservation group is respected even by its critics. Recent decisions have made clear that early identification of landmarks and timely notice to all involved will be essential.¹ Second, lawyers can help greatly with identification of responsibility in others. When historic buildings are being saved, many people should share the credit. When historic buildings are being demolished, quite a few stories may be told. Fewer landmarks will be lost when the private and public decision-makers are identified.

A responsive preservation program requires an awareness in the preservationist that he is usually dealing with someone else's property. If every effort is made to understand the needs and problems of property owners, if our project and our law are regarded as opportunities to serve others, and if our activities are free of time-consuming red tape, then our programs will be responsive.

The paper by Michael Newsom criticizes those rehabilitation efforts that have the effect of driving out the residents of poor neighborhoods. His example is the Georgetown section of the District of Columbia. Does this criticism indicate the need for a new direction? Robert Stipe, the man whose efforts led to the conference from which these papers arose, has suggested one:

Our problem now is to acknowledge that historic conservation is but one aspect of the much larger problem, basically an environmental one, of enhancing—or perhaps developing for the first time—the quality of life for people. Especially is this so for those people who in increasing numbers struggle daily to justify an increasingly dismal existence in a rapidly deteriorating urban environment. . . . We have got to learn to look beyond our traditional preoccupation with architecture and history, to break out of our traditionally elitist intellectual and aesthetic mold, and turn our preservation energies to a broader and more constructive social purpose as well. We have got to look beyond the problem of architectural artifacts, and think about how to conserve urban neighborhoods for human purposes. . . . If we can achieve this, to some extent, at least, the architecture and the history will fall into place.²

Finally, if rapid restoration will injure some persons, then restraint is essential. In a different context, restraint also means negotiation rather than litigation. A lawyer will defend the integrity of his preservation program in court when other routes fail. But the aesthetic area is best served by persuasive guides rather than prosecutors.

¹ *South Hill Neighborhood Ass'n v. Romney*, 421 F.2d 454 (6th Cir. 1969), *cert. denied*, 397 U.S. 1025 (1970); *Kent County Council for Historic Preservation v. Romney*, 304 F. Supp. 885 (W.D. Mich., S.D. 1969).

² Address by Robert Stipe, 1971 Conference on Preservation Law, Washington, D.C., May 1, 1971 (unpublished text at 6-7).

A striking feature of current preservation efforts is the differences which exist in the scope and success of the various programs. Graham Ashworth's article gives one example of the extensive land use controls which are accepted by English and provides an occasion to contrast the British experience in preservation with our best efforts in this country. But even within the United States, the contrasts are stark. Our best preservation programs are as far removed from the type of program typically found in an American city as they are from the British model. Our best programs are substantial, and this is the time to bring them into far more communities and adapt them to local conditions. Professor Paul Wilson gives an indication of state legislative activity which should aid this increase in the number of communities having meaningful preservation programs.

In many localities, the emphasis is still on publicly-financed activities and the preservation of government buildings. But privately-owned buildings and non-governmental actions will get more attention from preservationists in the years ahead. If the work with private owners in historic districts is creatively done, it will strengthen the support for saving those landmarks the destruction of which involves government aid or approval.

The lawyer serving a public or private preservation group has a challenging task. The lawyer will assemble the facts and go behind the assertion that a landmark must be destroyed. He will ask a great deal from his adversaries, but he will also raise their sights and show that these higher goals can be achieved. The lawyer will help to organize a package that can be gracefully accepted—perhaps gratefully accepted—by the parties involved, including a busy mayor.

And so, the significance of this symposium may be that it makes possible a number of little triumphs in communities all over the country. Our vision of tomorrow includes the lessons and the spirit of our past, as seen in its buildings and their workmanship. As important as the buildings are themselves, however, the struggle to save them may be more significant. These projects, bringing together a cross-section of the community, can be a constructive and civilizing force. Reviewing our treatment of our past, we see how pointless so much of this destruction has been. The triumphs will make possible the saving of a courthouse, a church, a mansion, a row of nineteenth century houses, and an entire historic district. The success of these preservation projects will be important in indicating the type of environment a city wants and seeks to achieve. These triumphs can make a community a place with an understanding and an appreciation of the past which will guide the creation of a promising future.