

# I CONTEXT

## *The Land and Its Development*

Land has never been a scarce resource in America. Its great abundance has been a powerful influence on American attitudes toward the land, its development, and attempts by government to control its use. The total area of the United States (excluding Hawaii and Alaska) is 1,904 million acres. England and Wales, with a population about one quarter that of the United States, have a land area less than 2 percent of this. In an early Congressional debate on public land policies in 1796, Gallatin remarked that "If the cause of the happiness of this country was examined into, it would be found to arise as much from the great plenty of land in proportion to the inhabitants, which their citizens enjoyed, as from the wisdom of their political institutions."

The whole population of the United States could be housed within view of the Pacific Ocean. All cities and villages occupy only 10 million of the total 1,904 million acres. Of course, the fact that there are thousands of square miles of undeveloped land in, say, Arizona or Wyoming does not help the people living in metropolitan Philadelphia or New York. The population density in New Jersey and Massachusetts is greater than in most European countries. Rhode Island is almost as densely populated as the Netherlands. But the lack of any urgent concern for preserving open land as such, which has always been a dominant objective of British planning policies, is very characteristic of American attitudes. The cities of Dallas and Fort Worth are about thirty miles apart. Dallas has about 650,000 inhabitants, Fort Worth about 380,000. In the past five years the town of Arlington midway between the two has grown from 8,000 to over 40,000 and is still growing rapidly as the result of being selected by a group of New York developers for the site of Great Southwestern Industrial Estates, "the largest planned industrial development in the world." In England a similar situation would probably be met by a determined

attempt to keep the three communities from growing into one, and to preserve some vestige of a green belt. But there is no such concern in America. The growth of Arlington is applauded. As a Fort Worth businessman remarked to me, "Why try to stop it? In twenty minutes' drive in any direction I can be on a lake in my boat, fishing."

But the problems of land-use planning do not diminish in relation to the quantity of land. They increase in relation to the amount of development, and the pace of development in America is fantastic. The editors of *Fortune* have calculated that 3,000 acres a day are bulldozed for new development of all kinds. In England and Wales urban development takes about 30,000 acres a year. Housing production in America for the past five years has been running at the rate of about 1,300,000 units a year, of which the vast preponderance are single detached homes (and less than 2 percent are public housing). Other types of development are on a proportionate scale. In Phoenix, Arizona, from 1950-57 over 6 million square feet of shopping centers were built; 4 million square feet are under construction and 10 million are in the planning stage.

Between 1950 and 1960 the population of the United States increased by over 28 million. Bureau of Census projections for 1980 range from 230 million to 272 million, an increase over 1960 of at least 50 million and possibly nearly 100 million. At current densities the urban population of 1980 will absorb at least twice the amount of land used today. In many areas this growth can be absorbed without encroaching too noticeably on the surrounding wilderness of land. But in some regions open space has been annihilated. The Los Angeles urban area is already fifty miles wide and twenty-six miles long. By 1975 it may well have linked up the chain of settlements from Santa Barbara on the north to San Diego on the Mexican frontier, a distance equal to that from London to Manchester. Los Angeles County has grown from 3,500 persons in 1850 to over 4 million in 1950, and, incredibly, to over 6 million in 1960. Similarly, the New York conurbation is already 110 miles long, and by 1975 the east coast from Boston to Washington, a distance of over

450 miles, will probably form a single urban mass. As anyone knows who has driven route U.S. 1 between these two cities, the effect is achieved already by the unbroken string of roadside development. This is the "linear city" which some see as the American norm for the future, and which has been christened Megalopolis.

### *The Attitude to Growth*

Despite this rampant growth, it is very rare in America to encounter any antipathy to new development. Quite the opposite is usually the case. We were in west Texas when the first returns of the 1960 census were released. There was jubilation among communities that had grown, and indignation and despondency among those that had remained static or declined. In Sweetwater, the city council held an emergency session to pass a "motion of protest" at the fact that their population had barely shifted in the past decade.

There is general sympathy in America for the man who builds something, and especially for the man who builds a business. The bigger the building the more genuine the admiration, but even the most precarious enterprise in the most makeshift accommodation is accepted in a generous spirit, and be the advertisements ever so blatant (they get larger as the success of the enterprise diminishes) there is little urge to pull them down. As Professor Brogan has observed, the average American is not the sucker who buys wooden nutmegs but the guy who sells them.

Along with this acceptance of growth goes a thriving speculation in land. In 1959 a book with the engaging title *How I Turned a Thousand Dollars into a Million in Real Estate—in My Spare Time* remained high on *The New York Times* best seller list for thirty-eight weeks. Popular magazines advertise the attraction of investment (on hire purchase principles) in Florida real estate—"not under water" runs a reassuring phrase in the blurb. Quick fortunes are, in fact, still made in the land market. Land in Houston that was bought ten years ago for \$400 an acre can be sold today for \$4,000 or, in some parts of the city, for \$40,000. Large land-

holders are still powerful in this part of the country. One of Houston's pioneer families still owns a 60,000-acre ranch which now lies within the city limits and is being released in calculated amounts for development. Speculation in land has been a tradition in America and was in fact a major motivating force in opening the West. It was not the prerogative of the rich (none of the great American fortunes derived from real estate) but in an undeveloped country was available to all comers. This speculative bent still colors American attitudes toward the land and is a factor to be reckoned with in attempting to control its use.

### *Prairie Psychology*

The general unconcern for the rate at which land is consumed by new development, born of the confidence that the supply is virtually unlimited, has been called the "prairie psychology." And it is not altogether fanciful to see a persistence of the log-cabin tradition in the overwhelming American preference for the detached one-story house on a large plot. The customs and attitudes of the frontier still flourish. Even thirty miles outside of Boston, small townships have all the boisterous determination to expand and the indifference to the look of things that might characterize a pioneer settlement. New businesses are welcomed, and the developer barely bothers to clear the brushwood from the site before throwing up a flimsy shelter for his trade. Within a few years it will be replaced by something more substantial, if not more permanent, or it will be pushed aside by a competitor. One of the most marked characteristics of American development is its impermanence. Even settlements which have been staging posts on major routes west for a hundred years or more show no signs of historical continuity. The gas stations, motels, and other buildings on Main Street could have been (and probably were) built within the last ten years or less. Only in towns which have outlived their original purpose—like Tombstone, Arizona, "the town too tough to die"—does the physical appearance of the frontier remain. But the attitudes of a rapidly de-

veloping community in virgin territory still prevail. Except in the old communities on the Atlantic seaboard, an aggressive individualism remains a lively reminder that people came to America as a land of opportunity. There is a real antagonism toward anyone who presumes to limit a man's right to do as he pleases with his own property. Between 1860 and 1900, 14 million immigrants entered America; between 1900 and 1940 there were 19 million. One of the fascinations of America is to see what men made of this huge country in a hundred years. The run-down, blighted neighborhoods which cover the older cities are in fact the residue of the first wave of urban settlement in the New World.

### *The New Mobility*

The factor which has changed the whole context of development within a generation is, of course, the automobile. There are now 65 million cars on American roads. The forecast is two more cars for every three new Americans. By 1975 there will be over 100 million cars.

The result has been a revolution in the pattern of development. The location of new industry, homes, and shopping centers is no longer dependent on predictable or traditional requirements. Anything can locate anywhere, since the automobile provides the necessary link. Some new location factors are beginning to emerge, but they are not necessarily a reflection of desirable land use. The market has decided that major street intersections are the best place for shopping centers, and city planners replace the strip commercial zoning of an earlier era with an equal superfluity of commercial zones at every intersection, which from the traffic flow and safety aspects seems the worst possible location. Accessibility, which might have imposed restraint on strip development, is no longer an important factor, and nothing is more typical of the American urban scene than the marginal commercial enterprises that string out for ten or twenty miles along the approaches to major cities.

Similarly, housing need not be adjacent to shopping or

community facilities. The 1960 Parade of Homes sponsored by the Homebuilders of Houston and various utility companies and magazines (and liberally blessed by civic leaders) chose a site ten miles out of downtown Houston on a barren plain, miles from any similar development, where the only landscape feature was a flood protection ditch.

The American's idea of recreation also revolves around the car. Hunting is far more typical than hiking (despite a handful of honorable exceptions like the Appalachian Trail Club); two-thirds of all the deer taken are shot within half a mile of a main road. When the American family goes out for the day, it loads up the station wagon with fishing gear, portable barbecue, icebox, water skis, and perhaps a speed boat on a trailer, and heads at sixty miles an hour to the nearest State Park or National Forest. And these are surprisingly generous and accessible. Nearly 20 percent of California is reserved for state or national parks and forests. There are almost no neighborhood parks in which to take the dog for a walk or knock a ball about, but once in the car the most constricted urbanite is within relatively easy reach of the great outdoors.

### *A Barrier of Distrust*

Another characteristic American attitude that exercises a fundamental influence on the methods and scope of land-use control, as on other types of governmental authority, is distrust of politicians. Americans expect corruption in government and to a remarkable degree accept it. When a recent Chicago police scandal broke (police patrol cars were being used to cart off the loot from burglarized premises), a newspaper editorial exclaimed, "There is a limit to the amount of corruption that decent citizens will tolerate." In a seminar at the Harvard Graduate School of Public Administration, the professor asserted flatly that government without corruption ("gravy") is impossible. Professor H. J. Morgenthau, writing in *The New York Times* on the payola quiz scandal, remarked that "Pecuniary corruption in the political and commercial spheres must be expected. For

since the ultimate value of these fields is power, and wealth is a source of power, the possibility of pecuniary corruption is built into these spheres." Since the values conferred or denied by land-use controls are great, their administration affords exceptional opportunities for graft and by the same token exposes them to exceptionally strong pressures. The result, in America, has been a determination to eliminate the scope for discretion in land-use controls by formalizing them in a set of standard regulations and by laying down in advance the conditions under which, if at all, change may be allowed.

### *Free Enterprise*

It is at least a basic assumption, if not entirely a fact, that the American economic system—or, as the Chambers of Commerce prefer, the American way of life—is founded on unwavering adherence to the tenets of the free market and the private enterprise system. Although the massive intervention by the federal government in, for example, agriculture or house purchase finance shows that the system is less free and less enterprising than it is usually represented, there is in fact a very strong prejudice against government control over any aspect of the economy. In matters of land planning it is generally assumed that land uses are most efficiently organized if the decisions are made by the market and the objective of control under these circumstances is simply to moderate the maladjustments of the process. The reasons why, in the face of this antipathy, land-use controls have gained the hold they have in America is discussed in Part II, and the motives and objectives of American land-use planning are further considered in Part III. It is sufficient at this stage to note the dominance of this economic credo, and to observe that one important result is that American planners are much more diffident about interfering with the process of private development and the choices made by the market mechanism than British planners have been.

## *Agriculture*

No one in America feels any great concern for protecting agricultural land from urban development. The government's problem has been to hold down farm production. For twenty-five years farmers have been subject to restrictions on acreage but have been protected by a massive price support system which is currently costing the government \$9 billion. The alternative policy now favored is to extend greatly the land retirement program which dates back to 1933. Under this system the government "rents" land from farmers for five- to ten-year periods and places it in a conservation reserve or "soil bank." From 1956-59, some 22,500,000 acres were removed from production by this method. The aim is to adjust supply more nearly to demand, and remove the need for government storage, quotas, or price support except when sudden collapse threatens. Agricultural economists stress that to be really effective the soil bank must attract highly productive farms and not merely the marginal or inefficient ones.

If the farmer can sell his land to a builder, that is so many acres less to burden the soil bank. In the New England region, despite the vast amount of development in the past ten years, the amount of unused land has actually increased. The farmer finds it more profitable to sell out to speculators and retire to Florida or move west to the farm belt; the land remains idle until suburbanization catches up with it.

In a few areas, where specialist crops are grown and the productive value of land is very high, there have been attempts to protect it by adapting urban land-use controls to the needs of the agricultural community; these are described in Part IV.

## *Local Government*

Planning and land-use control are carried out by municipalities, incorporated units of local government. There were 3,164 municipalities in the United States in 1952. Other powers of local government are divided among the munic-

palities and a bewildering array of unincorporated units, school districts, and special districts—ad hoc authorities, usually serving one purpose (fire protection, drainage, soil conservation, etc.).

None of the 168 standard metropolitan areas is governed by a single, all-purpose authority. In 1900 there were 1,521 cities in these areas; by 1950, 1,354 new cities had been created, and half of these were in only sixteen areas. The five largest metropolitan areas include 748 municipalities. The total number of local government units in these five areas is even more bewildering:

New York	1,071
Chicago	960
Philadelphia	702
Pittsburgh	616
St. Louis	420

The next six areas in size have around 300 authorities apiece.

There are no effective planning authorities covering more than one local government unit; each municipality is its own planning agency, and the power of land-use control is one activity which is never relinquished to another authority. Inevitably it is made to serve essentially local interests, and, by very general admission, private interests are more likely to be observed than any conscious public objective. The reasons for this and the relationship between public and private interests (which are not necessarily contradictory) are considered in Part III.

Outside the incorporated areas, the counties may exercise similar planning powers to those of the cities. This is a comparatively recent development; ten years ago only a handful of states granted zoning and subdivision control powers to the counties; now all states but one have granted powers to at least some of their counties. This is important since, despite the flood of incorporations, the population of unincorporated parts of the standard metropolitan areas has increased much more rapidly than that of incorporated areas. A few of the more urban counties have developed

the controls available to the cities, and in a very few cases joint city-county regulations have been adopted. But the county planning function does not survive incorporation, and all powers of land-use control pass to the municipality whether its population is 50,000 or 500.

Whatever the effect of this multiplicity of units on the efficiency and economy of local government and its services (many cities contract with the county for all their services, simply retaining for themselves the right to say yes or no—particularly in matters of land-use), the effect is to render impossible any consistent or widely based planning policies for the metropolitan area.

There are a handful of “Regional Planning Authorities” of an advisory character set up on an ad hoc basis by state legislatures, but none have any powers of control and their influence seems to be minimal. In the 1930’s an attempt was made to build up state planning agencies but they disintegrated in nearly every state during the war years. More recently they have been revived as part of the federal government’s policy for administering its grants in aid for planning by smaller communities, but they exert little authority and only one or two engage in state-wide planning studies.<sup>1</sup>

Finally, the role of the federal government in land-use planning is at the present time insignificant and intentionally so. During the New Deal the National Resources Planning Board carried out a major program of research which demonstrated the inadequacy of traditional land-use controls and the need for plans and policies to guide the use of available controls. But the antagonism to any suggestion of federal dominance in what is regarded as essentially a local concern has defeated more recent legislative attempts to establish a “Department of Urbiculture” that would give Cabinet status to urban affairs.<sup>2</sup> Even where the federal

1. There has since been a revival of interest in the state governments as planning agencies, and the Department of Housing and Urban Development is encouraging the formation of metropolitan planning agencies. See Part VII.

2. The Department of Housing and Urban Development, with Cabinet status, became the eleventh executive department of the United States Government on 9<sup>th</sup> September 1965. See Part VII.

government under its "701 program" contributes half the cost of preparing master plans for smaller communities (under 25,000 population) administration of the program is left to the state planning agencies and no requirements are laid down even for the contents or character of such a plan. Similarly, federal officials emphasize that the urban renewal program (in which the federal government pays two-thirds of the net cost of the project) is a "local program locally administered." In fact the federal agency plays an important part in the program, but it is true that the important decisions are left to the local authority, and the initiative rests entirely with them. The Housing and Home Finance Agency exercises far more influence over the institutions of private enterprise (the mortgage market and the homebuilding industry) than it does over local governments.

### *Organization for Planning*

Although every municipality has the power to control land use and private development, the decision may be to do without it. There is no obligation to exercise control (unless the city wants to participate in the federal urban renewal program) and although most communities of any size have adopted a rudimentary zoning ordinance, the chances are that it will be thirty years or more out of date and be readily amended to admit any new tax-producing development. But even the rudiments are by no means universal. Of the 1,378 cities of over 10,000 population listed in the *Municipal Year Book*, only 791 had comprehensive zoning ordinances in 1953. Subdivision control, which is regarded by many planning officials as a more effective control was used in only 509 of those cities. The total may well have increased since that date, but there are certainly many communities which get along without any public control over private land use.

The planning agency within the city government has traditionally been a city planning commission appointed by the mayor from among leading citizens, not themselves members of the council. The commission has usually been vested

with power to advise in the planning and programming of public improvements, and responsibility for administering the subdivision regulations which usually allow little scope for discretion. The commission has generally also been charged with preparing a "Master plan," which is not so much a plan for land use as a broad picture of how the city might improve itself by a program of public works. The city council often reserves to itself the most influential function—that of approving changes in the zoning map, on which the planning commission might or might not be invited to comment. The planning commission has generally been expected and disposed to remain "above politics." Consequently it has never exerted much influence in city government or in major development decisions. More recently planning has begun to assume an important place in city management partly because of the need to control both public and private development, partly because it can serve a useful coordinating function, and partly because politicians saw in it a source of good publicity which they were reluctant to leave to the ineffective planning commission. It is very clear that many city planning departments, particularly those with a lavish budget and the glossiest publications, serve primarily as a public relations service for the city government—or, in the parlance, "front men for the mayor." Planning staffs are absorbed into the managerial hierarchy and the planning commission usually survives in an even more exiguous position than before. Its survival, even in this attenuated form, only serves to obscure the proper role of planning as an executive arm of government, and to blur the relationship between the planning function and political responsibility.

Finally, land-use control, like every other activity of government in America, has to stand the test of the Constitution as interpreted by the courts. Whereas in Britain land-use planning remains entirely within the control of the executive and legislature, in America the courts, not a Minister, are the final arbiters in disputed decisions. The courts will not substitute their judgment for that of the locally appointed body, provided that it has not acted un-

reasonably or gone beyond its acknowledged authority. But the American attorney is a resourceful character and the amount of litigation on planning decisions is formidable. Any student of the American system of land-use control can soon find himself sunk in a deluge of ingenious law journal articles from which there is no recovery.

### *The Outer Limits of Control*

A crucial difference between the American and British systems of land-use controls is that in America no compensation is payable to owners whose property loses value as the result of a planning decision.

In very brief outline, the British system confers compensation only where the land affected by the planning decision had development value before the present system of control was introduced.<sup>3</sup> If the land has acquired development value since then, no compensation is payable except where the decision cancels "existing use" rights. If, however, the land has become "incapable of reasonably beneficial use" as a result of a planning decision, then the owner can require the local authority to purchase the land. The compensation position in Britain and America is now somewhat similar, i.e. in general, no compensation for planning decisions. But whereas in Britain the introduction of the control system was accompanied by massive compensation (a fund of £300 million was established for the purpose), in America the system has never been accompanied by any provision for compensation. It is essential to understand the reasons for this, since the lack of power to pay compensation, and the absence of any "once and for all" settlement on the

3. The system introduced in Britain in 1947 also provided that persons wishing to carry out development should purchase the development value of the land from the state by paying a "development charge." This attempt to recoup betterment to offset the cost of compensation was abandoned in 1952, but a similar charge was introduced by the Land Commission Act 1967. The position now is that the developer generally has to pay a betterment levy if he obtains planning permission to develop his land but he gets no compensation if he is refused permission (except in the cases already referred to).

lines of the British system, obviously curtails the scope of land-use control in America.

The originators of the zoning system in America had to decide on which of two quite distinct governmental powers these new controls should be based: eminent domain or the police power. If property rights were condemned under the power of eminent domain (compulsory acquisition), then compensation would have to be paid. If on the other hand these controls could be brought under the police power (the general residual power of government to pass laws in the interests of the general public health, safety, and welfare), then no compensation would be payable and the controls would be analogous to fire or structural regulations. Casting its shadow over this problem, and causing the lawyers involved in this long debate to move with extreme caution, has been the Fifth Amendment: "No person . . . shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

This was the key problem facing the Commission on the Height of Buildings which was set up in 1913 to advise the city of New York on the means of controlling private development. The commission's report is a basic document in the history of American planning. The choice facing the Commission was an extremely difficult one, but they had no doubt about the answer. In practical terms proceeding by the slow and cumbrous method of eminent domain was impossible, and though the limits of the police power in this field were almost uncharted, it was the only hope of securing simple and uniformly effective control. The Commission concluded:

It is theoretically conceivable that a general plan of building restriction and regulation might be entered upon by resort to the power of eminent domain, but, practically, such a resolution is out of the question. The expense and burden of condemnation proceedings and litigation in multitudinous cases would create a tax burden that would increase rather than compensate for the injury to property interests. Moreover, the kinds of regulation

under consideration are not such as to justify individual compensation. While they restrict individual liberty to a certain extent, they do it in such a way as to conserve individual and public interests and rights. They subject the use of urban land to such restrictions as are appropriate and reasonable in the nature and history of this class of property.

This decision determined the direction and limits of planning controls in America. The controls had to be such as would not justify compensation to individual owners, and they must bear a clearly demonstrable relation to the public health, safety, or welfare. There was no knowing how the courts might interpret this relation, but it was clear that the controls could not extend very far beyond the basic objectives of separating out grossly incompatible uses and establishing minimum standards of development.