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A. Dan Tarlock
Indiana University School of Law

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“judges read scholarly works as regularly as scholars read opinions.” While recognizing this in part, the author states “All these objectives are good, but none of them provides specific guidance to courts having to choose between conflicting laws in hard cases.” In assessing a similar result from most suggestions he comments on the Restatement Second’s “question-begging formula,” the most significant relationship: “I view the question-begging character of ‘most significant relationship’ as a virtue insofar as it may induce courts to ask the right questions.” Should more be attempted now? Judges must judge—that is the reason for their existence when cases are sufficiently close and difficult that the parties cannot resolve them. If all cases were clearly predictable, there would be no litigation. But in the affairs of men and in the growth of law, there is always a penumbra of ambiguity—a fringe of uncertainty—where we must rely upon the wisdom of our judges. We should not strive for certainty to replace the iron clad rules we’ve now replaced. Our job is not to create dogma to substitute for dogma but to make the way clear so different cases can be decided in a thoughtful way by a consideration of the underlying basic policies of the law. New law is the result of value judgments and that which is today settled law was in an earlier day a value judgment. Reasonable men and reasonable judges will differ on these judgments in different states but this should not deter us. We are trying to make a federal system work, not to convert the federal system to a unitary one.

EUGENE F. SCOSSES

University of Illinois


The “urban condition” is our most urgent domestic problem. Decaying city cores, racial ghettos, polluted air, congested traffic, and wasted human potential are only a few of the problems which cry out for solution. Law schools must ask what they are doing toward training lawyers to participate in solutions to these problems. Until recently, as Dean Jefferson Fordham has frequently lamented,1 the answer has been precious little.2 Few schools have

38 P. 207.
39 N. 13, p. 208.
40 See p. 213.
41 Cf. pp. 222–223.


2 This reviewer examined seventy-three current catalogues to gain a rough idea of present course offerings in land use planning and local government law. Thirteen schools have no offerings in either of these two areas. Twenty-eight offer one of the two courses, usually municipal corporations. Twenty-eight offer both courses but no advanced work. Only eleven schools offer advanced work. Significant new courses include urban and human renewal and urbanism at Columbia; legal protection of environmental quality, eminent domain, and urban legal studies at Harvard; urban renewal at New Mexico; advanced work in both land use controls and local government and directed research in urban renewal at Stanford; legal problems of housing, eminent domain, and problems in local government at Wis-
revitalized the traditional course in municipal corporations to make it relevant to rapid growth of urban areas and sought people whose research interests are in this field and the course in land use controls often turns out to be little more than an examination of zoning as a means of preserving the character of the suburban community. Much of the failure to develop modern courses can be traced to the absence of functional materials. Dean Fordham's casebook is now eighteen years old. Professor Haar's is eight years old and lacks coverage of many subjects necessary to a comprehensive study of urban legal problems as does Professor Beuscher's casebook. However, with the publication of Daniel R. Mandelker's Managing Our Urban Environment lack of materials is no longer an excuse for our failure to develop new courses concentrating on the problems of urban growth. He has produced an exciting, first-rate casebook which introduces the student to the major legal problem involved in attempts to modify significantly the urban environment, namely tenuous legal control over the planning decision-making process, lack of functional concepts to deal with review of the decisions of local government bodies, and the stumbling blocks to imaginative planning solutions raised by existing land use doctrines. The book, as the author indicates in the preface, seeks to eliminate the artificial curriculum distinction between "the substantive content of controls over land use and re-use" and "the government structure within which these controls are exercised." Thus, the book merges material conventionally allocated to land use controls with coverage of governmental power, organization and structure usually taught in local government law. The coverage of the land use control problems is less extensive than previous casebooks but this reviewer believes the sacrifice is justified by the inclusion of the local government chapters.

Chapter I, "The Problems of Management and Control: The American Urban Pattern," introduces the student to some of the causes and consequences of urban growth and the responses of local governments. It concludes by examining the role of law in the planning process. This is done by presenting two cases illustrating the difficulties of obtaining judicial review on the merits of a land planning decision. The chapter can serve well to introduce the student to the lawyer's role at each stage of the decision making process. My only complaint is that it does not go far enough in introducing the student to the relevance of empirical data to the resolution of a land use controversy. I would suggest, for example, an approach along the lines used by Professors Goldstein and Katz in their new casebook, The Family and the Law, to

counin; and urban transportation, problems in land planning, and problems of the city at Yale. Professor Mandelker offers four courses at Washington University—land use controls, seminar in urban legal systems, urban legal techniques (e.g., housing, transportation and urban renewal) and an original research seminar. This seminar will form the model for a new course being introduced at the University of Kentucky during the 1967 Fall semester.

4 FORDHAM, LOCAL GOVERNMENT LAW (1949).
illustrate the kinds of expert testimony introduced when a zoning ordinance is contested.

Chapter II, "The Delegation and Sharing of Power," does not deal systematically with the range of local government activities, but rather with sources of limitations on their authority such as statutory grants, constitutional grants of "home rule", and charters. Also covered are standards imposed by federal programs, state pre-emption, and inter-governmental conflicts. The need for the development of a coherent and functional body of doctrine in this area emerges clearly from the chapter. The disadvantage of the organizational format is that consideration of the substantive matters which is essential to understanding the problems raised by the cases is impeded because the relevant materials are often scattered throughout the book. For example, the first case dealing with statutory authority to acquire negative easements to control billboards can best be discussed in the context of judicial attitudes toward aesthetic controls, yet this material is found in part both in the notes following the case and at the beginning of Chapter XVIII.

Chapter III, "Governing the Metropolitan Area," deals primarily with the structure of local government jurisdictions. The first part of the chapter treats extensively incorporation and annexation. An important addition to conventional materials is the section on special districts whose importance in urban growth has not yet been sufficiently appreciated. The second part of the chapter explores the movement toward area-wide planning and administrative units.

The remainder of the book, Chapters IV through VIII which contain the land planning materials, breaks most radically with traditional organizational concepts. Chapter IV is an introduction to the planning process and Chapter V outlines the major doctrinal problems such as the distinction between a police power regulation and a taking, the relationship between nuisance and zoning, the scope of enabling legislation, and the public purpose and use limitations. The remaining three chapters are organized around a geographical portion of the urban area rather than doctrinal problems. Chapter VI deals with city core, Chapter VII with suburbia, and Chapter VIII with the outer fringe.

To this reviewer the only disappointing portion of the book is Chapter IV, "Intervening in the Environment: Goals and Means." Insufficient attention is given to recent trends in American society which are generating a host of new problems which lawyers and planners will have a part in the solution. We have just begun to assess the consequences of increased life expectancy, the disintegration of the nuclear family and the reality of substantial increased leisure time for most people. For example, how should a court dispose of a zoning ordinance designed to exclude all people under 50, or vice versa, from a residential district? Yet no material specifically re-

8 The city of Southbury, Connecticut, zoned a 400-acre tract for an "A-Senior Citizen Planned Community District" but a trial court invalidated the classification because it was not designed to benefit all persons residing in the community. Hinman v. Planning and Zoning Comm'n of Town of Southbury, 214 A.2d 131 (Court of Common Pleas of Conn., Westbury Dist. 1965).

The city of Des Plaines, Illinois sued to evict four college students renting from a lady owning and occupying a home in a single-family residence district under an ordinance which defined "family" as "one or more persons each related to each
ferring to the problems of the aged is included. More material should have been included to aid the student in pondering the relationship between the individual and his environment. If, as Professor Jesse Dukeminier has observed, “We are beset by what Emile Durkheim has called anomie,” all those concerned with urban planning must begin to ask what concepts can be implemented to facilitate a better realization of human potential. Excerpts from Jane Jacobs’, *Life and Death of Great American Cities*, or Charmayeff and Alexander, *Community and Privacy*, would be helpful. Finally, the section on the grand design is too brief. The book does an excellent job of introducing the student to the technical aspects of current city planning, but I believe it is also important to expand his horizons by introducing him to the visionary. The search for a quality environment is coming more and more to be recognized as a vital function of planning and the future lawyer should be trained to accelerate this trend. Haar’s introduction remains superior here.

The planning materials Professor Mandelker includes in Chapter IV, especially Stoleman, *The Uses and Principles of Planning*, are symptomatic of “the pressures on the planner to remain within the realm of the physical environment, causing him to keep to a general level, and to focus primarily on the provision of facilities rather than to deal more broadly with urban services” because “of the sheer limitation imposed by existing methodological techniques.” The advent of the computer may enable the planner to handle simultaneously several interacting systems and thus expand the variables which can go into a given planning decision. Yet, the book contains no material designed to introduce the student to understanding the use of computers to apply methods of systems analysis to the solution of environmental problems.

My interest in systems analysis stems from the frustrations of teaching land use planning. The teacher must constantly strive to make the students aware of the complex of economic, ideological, and sociological factors relevant to any decision and to alternative institutional structures which might solve the problem. This frustration is inherent in the subject matter and is not a result of Professor Mandelker’s book. He has, in my opinion, successfully struck a balance between presenting a manageable set of teaching materials and making the student aware of the contributions of other disciplines to the decision making process. Perhaps the solution lies in an advanced course which limits its focus to a geographical area and forces the student to respond to problems with specific solutions.

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other by blood (or adoption or marriage) together with such relative’s respective spouses, who are living together in a single dwelling and maintaining a common household.” “A ‘family’ includes any domestic servants and not more than one gratuitous guest residing with said ‘family’.” The court declined to pass on the constitutionality of segregating people into zoning districts by marital status but held the definition was not authorized under the statute. *City of Des Plaines v. Trottner*, 216 N.E.2d 116 (111.1966).


10 "The Land Use Planners are under pressure to deal more extensively and more precisely with the social and economic impute to their work as well as with the potential impacts of physical structures on the other facets of life." Fagin, *Planning For Future Urban Growth*, 30 LAW & CONTEMP.POB. 9, 11 (1965).

11 Id. at 16.

12 California is already experimenting with this possibility by contracting with the aerospace industry for the development of a computerized solution to water pollution and waste disposal problems.
The last three chapters are built around a problem, or more precisely brief sketches of a typical area, its social problems and their legal consequences. Chapter VI includes the district concept of zoning and the nonconforming use. It also contains several new topics, the most important of which is housing code enforcement. New developments in this field such as the New York Rent Withholding Statute and receivership are covered. A recent conference on the Landlord-Tenant Relationship at the University of Chicago made it clear that housing code enforcement and other methods of improving living conditions within the existing legal structure must be seen in the context of a chronic shortage of low income housing. Strict code enforcement and shifting repair burdens to the landlord by reform of traditional landlord-tenant doctrines may in the end only hurt the poor by driving landlords out of the market with no foreseeable replacements. The notes on pages 667–670 and 685–687 begin to put the problem in context but do not go far enough to relate code enforcement to the economics of the current low income housing market.

Chapter VII, “The Suburban Community: Change Versus Stability,” has lengthy sections on aesthetics and the amendment process. Also included are materials on planned unit controls. The most important inclusion is a section on racial change in the suburban neighborhood. The sociological data presented is good, but broader consideration of recent fair housing legislation would seem appropriate.

The final chapter, “The Outer Fringe: Controlling the Shape of New Development,” covers subdivision maps and control, highway access, greenbelting, and new town communities. The last two are only briefly covered since full attention is probably most appropriate for a seminar. The book does not consider the special problems of rural areas, except for what Mandelker defines as a semi-rural fringe, thus Beuscher’s casebook remains the best for those wishing to cover these topics. He states in the preface that “my choice is motivated by what I consider to be the priorities in the urban field, and by the importance of giving the book a unifying theme.” Even accepting Professor Mandelker’s desire to give the book a limiting theme I would not have stopped with the semi-rural fringe. As so many of our cities approach megalopolistic conditions, controlling land use between them is an urban problem. A recent conference on Scenic Easements at the University of Wisconsin discussed the need for the creation of an ecological corridor between metropolitan areas which preserves and enhances the existing landscape before it is swallowed by two cities oozing toward each other like two slugs to form a “slurb.”

This reviewer is using the casebook in his land planning course and can agree enthusiastically with Professor Mandelker that “the book is geared to policy making, to understanding the legal, administrative, and environment

13 VIII–IX.
14 “The character and quality of such urban sprawl is readily recognized: neon-light strip cities along main traveled roads; housing tracts in profusion; clogged roads and billboard alleys; a chaotic mixture of supermarkets, used car lots, and pizza parlors; the asphalt plain of parking spaces instead of parks, gray-looking fields forlornly waiting to be subdivided. These are the qualities of most of our new urban areas—of our slurbs—our sloopy, sleazy, slovenly, slipshod semi-cities.” WOOD AND HELLER, CALIFORNIA, GOING, GOING . . . 10 (1962).
considerations that go into decision-making at the urban level, when decision is used in the broadest possible sense." The author has sifted through the endless stream of analytically undistinguished local government and land use decisions to find those most suitable to develop his theme and the cases are extremely well chosen. The notes following the cases are well constructed because they strike a balance between giving necessary background information and provoking further thought. They generally indicate the relevant secondary material, help focus the student on the implications of the case, suggest alternative analytical approaches, and illustrate attempted statutory solutions. But most important, the book is successful because it engages the concern of the students in their environment and conveys an appreciation of the dynamics of the planning process.

A. Dan Tarlough

University of Kentucky


Presumably, one task of a book reviewer is to analyze and criticize a book by using a rifle which is aimed at the author's target, and then, to comment on whether the target is penetrated close to the bull's-eye. The authors of the Study Outline have two stated goals. As noted on the cover of the book, it " . . . is designated primarily as material for use in Courses of Study. However, it is as complete as any Practice Handbook the Joint Committee has published, and it can be used as such without complementary material." Undoubtedly, the courses of study which the authors have in mind are those courses operated by the American Law Institute and the American Bar Association. Nevertheless, due to the void of superior, and dearth of adequate, estate and gift tax course materials available for law schools, it was impossible for me to examine this book without considering its potential value as course material for my law students. Unfortunately, the book is not suitable for this latter purpose.

The scope of the Study Outline is excellent. Divided into three parts, it treats the three significant areas of: (1) federal estate tax problems; (2) federal gift tax problems; and, (3) federal income tax problems of trusts and estates. Nevertheless, despite the breadth of coverage, some readers undoubtedly will be disappointed due to the lack of the typical estate planning material and the inadequate treatment of Revenue Procedure 64-19.

The organization of the Study Outline is good, in that it uses the subject-matter approach. For a one-volume work, this approach is preferable to a discussion of the various Internal Revenue Code sections in numerical sequence. The estate tax part progresses from gross estate to taxable estate, discussing the Code sections in numerical order only because the Code's organization allows this approach. At the end of the estate tax portion is a discussion of the method for computing the estate tax and credits, along with

15 XI.