

Introduction:

A Somewhat Embarrassed Memoir

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A survey of the papers in this volume gives one a vivid sense of how far we have all come, and in how short a time. At first glance, this must seem an odd (not to say pretentious) remark. Topics like commuter taxes and eminent domain may be important, but they probably do not present themselves as profound. And the authors voice no special claims for their work. The war changed us, no doubt, and the civil rights revolution—but not the field of local government law.

Well, not so fast. At one level these may be mere technical exercises. But they strike deep roots into the fabric of our being, as much because of as in spite of their ordinary facade. For this is where we all *live*: where we make our own space, where we encounter our neighbors, where we try to assemble something coherent out of the bits and pieces of our world. The nature of the papers means, in the first instance, that we are facing human problems in a human dimension, among friends, or (what is hardly the same thing) neighbors. Moreover the very limits on the scope are themselves invigorating: the authors look for solutions which, thank heavens, are not ideal—but which may get us through to another day.

For a law review to think of such material as interesting or even worthwhile is a remarkable fact—and right here is my main point. It is that we have come home, at last, to see the necessity of living in the world, and the virtue of doing small things well. One does not have to cast one's mind very far back in time to grasp how strange this proposition would have sounded through most of our political history.

A few words on that history may help to bring the point home. For local government has often stood high on our political agenda—but what a different style! Think, first, of progressives at the turn of the century, and the first great campaign for urban reform. It

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must have been marvelous to be a reformer in those days with all the vigor, the busyness, the optimism (generally obscuring the spirit of smug self-congratulation) in that first crusade. Marvelous, also, if one could have known it, would have been the sense of being on the ground floor, of establishing the parameters of local politics for the half century to come.

For that is what became of the progressive spirit. Only slightly deflected by the First World War, the campaign for urban reform revived itself and became one of the mainstays of 20th-century liberalism. Married to older and thus more dignified philosophical traditions—pragmatism, the empiricist temper—the campaign became one of the major outlets for academic social science.

Unlike other reform movements, the campaign for local government made great strides in the twenties, the decade of regressive republicanism. The chief of these was the battle for land use control. “Zoning,” says Richard Babcock (*The Zoning Game*), “reached puberty in company with the Stutz Bearcat and the speakeasy.” Indeed, few public acts in any time have been received with such serene applause as the decision of the U.S. Supreme Court in *Village of Euclid v. Ambler Realty Co.* James Metzenbaum, counsel for the City of Euclid, recounts it all with lapidary care in his treatise, *The Law of Zoning*. “[T]he keys of the newspaper offices clicked. . . . The public began to realize the possibilities for the betterment of conditions, not only for the present but for the coming generations as well. The American home, too, had found shelter and protection.”

Land use control *via* zoning was perhaps the most conspicuous, but it was not the only great transformation of the twenties. The other was the emergence (or perhaps re-emergence) of the “city planning movement,” with its harmonious vision of a slumless future, all set forth in multicolor maps like Jungian mandalas, refashioned for the imaginative vision of the American urban spirit. Together, planning and zoning provided a conceptual framework for the generation to come. The New Deal added little but money—some in the form of low-income housing, but much more in subsidies for the middle class. The postwar years added an important wrinkle: the urban renewal program, whereby the power of eminent domain joined the healing value of money in an effort to turn the planners’ mandalas into reality.

It is probably impossible for anyone who came to maturity after 1960—for the authors of this volume, in short—to appreciate how right this all seemed to the people who were embroiled in it. Not cynical, simply right. There were other voices, of course, but they were the voices of “the businessmen” or “the bosses,” trying to stand athwart the avenues of progress for their private gain.

Similarly, it is probably impossible for anyone to say just when it came apart at the seams. One problem was the amount of sheer dry

rot within. The planners emerged almost at the beginning as sheer fantasists, whose grand designs were no more rooted in reality than a good Asimov novel. But dry rot alone does not kill institutions—rather, ineffectuality frequently gives them a reprieve. Something more sinister was at work. Urban reform was, after all, intellectually an offspring of liberalism, and it grew old and disreputable with its parent.

For it was liberalism that helped us to manipulate our way to freedom in the nineteenth century, but sought to manipulate us right back into subjection in the twentieth. The temperament that sponsored the good government crusade was the same as the temperament that sponsored the Watsonian behaviorists and the scientific management movement. Put nicely, the goal of all of these was a more harmonious society. More bluntly, the idea was that we should all shut up and sit still.

It seems surprising, in retrospect, that this liberal temperament retained its respectability as long as it did, for the collapse, when it arrived, came quickly. True, we all remember the Vietnam War as the assassin of the establishment world-view. But in the local government game, the jig was up before the war got going.

A personal recollection, of which I am not specially proud, may be in order. For me, the turning point was probably Martin Anderson's *The Federal Bulldozer*, a fairly bellicose knock on urban renewal that came to my attention first, I suppose, sometime early in 1963. Bred in the establishment tradition as I was, I figured I didn't need to read it: just another piece of special pleading, probably financed by the real estate lobby.

I can't remember exactly what turned me around, but I do recall my sense of chagrin when it sank in on me that Anderson was really saying something worthwhile. For all I know he was financed by the real estate lobby, but it was right there that it dawned on me that a proposition has a truth-value apart from that of its asserter and that Anderson, whatever his tone, might just be onto a good thing. Urban renewal might in fact be the tool of the big bankers; it might well be destroying stable neighborhoods, and increasing the misery of the poor. Worse still, it might be so even in the hands of an attractive young president and a cabinet secretary who was Black.

For me, that was an unsettling insight. It drew greater force from another book, which, for its inherent virtues, I cherish much more. That is Jane Jacobs' *The Death and Life of Great Cities*, the manifesto of the blue-collar community against the technocrats at city hall. I still remember how my hair stood on end when I first read her explosive, but largely impregnable, argument. What an adversary she must have been across the table from a squad of previously drowsy planning commissioners, going through the motions of a hitherto tedious "public" hearing!

A third book was soberer in tone, but more trenchant still. This was Meyerson and Banfield's *Politics, Planning and the Public Interest*, about how public housing projects really get built (or don't get built) in Chicago. Actually, this was something of an anachronism: the Meyerson-Banfield book came out in 1955. But I hadn't noticed it, and I suspect that not many people grasped the revolutionary implications of its hardboiled realism, at the time. For Meyerson and Banfield had exactly what the older generation of planners lacked: a sense of the particular, which enabled them to look for the bridge between plan and reality, and to see the individual human beings behind the pious generalities.

But anyone who missed the point the first time could have found it crystal clear in Banfield and Wilson's *City Politics*, which came out a couple of years later and which remains, to my mind, the best single account of local government at the end of the age of liberalism. I stress Banfield's work here for two reasons: first because I think he was (and is) so right, but also because I think he has fallen into undeserved disrepute. Banfield went on to become something of a conservative ideologue, and sometimes friend of the Nixon administration, conduct not calculated to win him esteem among the people who make and break intellectual reputations in this country. Some of the abuse he has experienced for these defections is probably well deserved, but it should not obscure his continuing merits. Moreover, his very defection permits a vital insight: that is, the onslaught against establishment liberalism was not strictly a "radical" or "left-wing" triumph at all. Rather, many of the important issues in urban politics over the past decade are ones on which radicals and conservatives meet each other coming the other way.

Perhaps the chief of these is the issue of "community control," which has a way of emerging from so many surprising places. It is a good enough tag for the campaign of Jane Jacobs' blue-collar ethnics against the grand designs of the bureaucratic elite. It was the banner of the black separatists in the great New York school fight of 1968. It is the same principle, albeit not the same name, when young people retreat to the commune for a bout with chemical and sexual experimentation, unfettered by the deputy sheriff. It is the idea behind the slogan of "home rule"—perhaps the oldest local-government chestnut of all, still dusted off and pressed into service whenever a tight little suburban island wants to hold onto its school funds or slap a lid on low-income housing.

Seen in this light, the new temperament in local government brings us back to one of the basic themes of modern (i.e., post-1789) society. This is the issue of "infrastructures," the question of what sort of families, communities, networks, we will erect between ourselves and an abstract government. Read Burke and de Tocqueville and the demand for infrastructures sounds like a very conservative

issue. But read a contemporary Marxist like Stanley Diamond and he sounds much the same.

Conventionally, of course, we see the law on the side of “abstraction,” not of infrastructure, and that is one of the exciting aspects of the material in this volume. For while the new temperament may have rejected the idea of grand designs, it has rejected the allure of utopianism. In this material, we see people trying to put the law to use to solve human problems, in a human dimension.

How to build viable “infrastructures” may be one pervasive issue in these materials, but there is another and that is “Who is my neighbor?” At least in large part, this is a problem of equity. We may be able to pull apart from one another, but some of us still have more pull than others. It is one thing to retreat to the ghetto, something else to retreat to Beverly Hills—leaving the rest of the world behind. From another standpoint, this is a problem of civility. One issue on which the planners were undoubtedly right is that this is only one planet, and we cannot get beyond the sound of our neighbors’ axe-handles. Even aside from the issue of equity, too much retreat behind local boundaries breeds a kind of communal solipsism which, in the last analysis, must be unstable.

Perhaps enough has been said to suggest how invigorating the issues in this volume seem, both in the context of history and in their present situation. Perhaps my saying it will help to convey my gratitude to the writers and editors of the *UCD Law Review* for the time, the thought, and the care that they have given to advance a little further on the frontiers of our understanding.

