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Book Reviews

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Book Reviews

Urban Planning and Land Development Control Law. Hornbook Series. By Donald G. Hagman. St. Paul: West Publishing Co. 1971. Pp. xxvii, 559. $13.00.

Less than a year after Professor Hagman published *Urban Planning and Land Development Control Law*, a little-known town in Rockland County, New York, won a legal victory which stamped it indelibly on the map. The decision,[1] May 3, 1972, in the New York Court of Appeals, permitted the town of Ramapo to freeze development of its vacant land for as long as eighteen years. Citing a tremendous growth in population—285.9 per cent in unincorporated areas in twenty-eight years[2]—the town argued that municipal facilities and services were stretched to the limit and that it could not afford to expand them. Courts in Pennsylvania[3] and New Jersey[4] had already ruled on this question. The courts found that the ecological and financial arguments presented to them in these cases were insufficient to overcome the need for a burgeoning population to live somewhere, and ordered the townships of Concord, Pennsylvania and Madison, New Jersey to make room for all those who wanted to move in. Disregarding these precedents, the New York Court of Appeals gave Ramapo a respite. It thus swung behind a venerable line of authority, led by Aristotle and Plato. Human settlements, they say, have optimum population limits; communities which grow over them become unpleasant to live in and impossible to govern. Aristotle, in *Politics*, described the optimum number as "the largest" which "suffices for the purposes of life, and can be taken in at a single view."[5] Plato, in *The Laws*, was more specific. For him 5,040 citizens, with their attendant wives, children and slaves, were enough.[6] Of course, neither ever imagined anything like urban America.

In the United States, as of April 1, 1970, 73.5 per cent of the population lived on 1.53 per cent of the land.[7] Nevertheless, people con-

1. Golden v. Planning Bd., 30 N.Y.2d 359, 285 N.E.2d 291, 334 N.Y.S.2d 138 (1972). For a recent treatment of this case, see Note, 1 Fordham Urban L.J. 516 (1973).
2. 30 N.Y.2d at 366 n.1, 285 N.E.2d at 294 n.1, 334 N.Y.S.2d at 142 n.1.
3. Concord Township Appeal, 439 Pa. 466, 268 A.2d 765 (1970).
4. Oakwood at Madison, Inc. v. Township of Madison, 117 N.J. Super. 11, 283 A.2d 353 (1971).
5. Aristotle, Politics, ch. 4, at 288. (Modern Library ed. 1943).
6. 4 Plato, Dialogues of Plato 256-57 (Jowett transl. 1871).
7. U.S. Dep't of Commerce, News Release, Apr. 21, 1972, at 1.

tinue to crowd into urbanized areas. As they do so they generate familiar evils: ever more cars, roads, garbage, crime and pollution. Ecologists consider these places habitats under stress.[8] So, of course, are their residents under stress, succumbing annually in large numbers to automobile accidents, criminal attacks, mental breakdowns and heart disease. It seems plain that one place can support just so many people—a simple notion, but one that has failed to catch on. The resultant problem, keeping population concentrations from increasing and dispersing those which have come to exist, is the most urgent problem facing American land planners today. Brought into sharper focus by recent cases, it is nevertheless an old problem. Yet in *Urban Planning and Land Development Control Law* Professor Hagman gives it only a sentence or two. At one point,[9] for instance, before discussing the ruling of the Pennsylvania court on Concord's attempt to exclude new population, he says: "A city cannot use its zoning to stand in the way of population seeking to leave the cities in search of jobs and a more pleasant environment." I should have liked him to go on to the larger problem of which the Pennsylvania ruling is only a small part; to tell us what others (including the Greeks,[10] Romans,[11] English,[12] South Africans[13] and Israelis[14]) have

8. As ecologists explain it: "[A] habitat under physical or biological stress tends to have low diversity—a relatively few number of species compared to the total number of living things present. New York City is a good example of a good example of a stressed, low diversity area. Through man-made changes to the environment, diversity has dropped to where few species exist, but there are many of each species—essentially, man, rats, starlings, pigeons, sparrows, and cockroaches." N.Y. Times, Oct. 31, 1971 § 1A (Brooklyn, Queens, Long Island, at 10, col. 3).

9. D. Hagman, Urban Planning and Land Development Control Law 490 (1971) [hereinafter cited as Hagman].

10. Plato described the Greek method neatly: "[I]f there be an excess of citizens, owing to the too great love of those who live together, and we are at our wit's end, there is still the old devise . . . of sending out a colony." 4 Plato, Dialogues of Plato 259 (Jowett transl. 1871). That is what the Greeks did. In the 200 years from 750 to 550 B.C. Greek cities had sprung up all around the Aegean, the Black Sea, the Libyan coast, south and west Italy, Sicily, the south coast of France and the east coast of Spain. H. Kitto, The Greeks, 80-81 (1964).

11. The Romans used the incentive of citizenship to get people to move around. F. Cowell, Cicero and the Roman Republic 18-20 (1948). Rome, nevertheless, grew to an estimated 1,200,000 people within four square miles. See 19 Encyclopaedia Britannica 565 (1971). Life within, as described by Juvenal, is a chronicle of modern urban inconvenience—fires, falling houses, high prices, noise, crowds, thieves and sudden death. See Juvenal and Persius 47-55 (Ramsay transl. 1969).

12. The English attack on population concentration was launched by Queen

done about controlling and disbursing population concentrations; to assess the effectiveness of their methods in their countries; and to com-

Elizabeth I in 1580. Her approach was surprisingly modern. After describing London's crowded conditions and the haphazard growth which marked its suburbs, she banned all new buildings in Westminster and London, and within three miles of London's gates; she also limited residential densities to one family per house. 11 Tudor Royal Proclamations at 466-68 (1969). This modest beginning ripened into the present nationwide scheme. Town and country planning is, in a nutshell, compulsory planning to restrain industrial employment and population growth, vertical growth by control of residential densities, and lateral spreading by means of metropolitan greenbelts. It also aims to redistribute existing population and employment by over-spilling it to new towns. See D. Foley, Controlling London's Growth 54-55 (1963); Britain 1971: An Official Handbook 170-77 (1971). The net effect, according to the government, has "been a decline in the numbers of people living in inner urban areas, balanced or surpassed by the increase of population in and beyond the outer suburban fringes." Id. at 16.

13. The South African government, in the name of "separate development" or "apartheid" is presently engaged in supervising the largest program of population removal ever seen in peacetime anywhere. Its object is concentration of 71 per cent of the country's population (all the Africans) into 13 per cent of its land. The remaining 87 per cent of the land, including all cities and major urban areas, is reserved for those who are white. Government methods are extremely repressive: banning (banned individuals are restricted to the districts where they live, must report regularly to the police, may not communicate with each other, speak in public, write to newspapers or publish, enter any educational institution or belong to any political organizations); banishment (banished individuals are sent to remote areas where they find themselves in different ethnic groups from their own, speaking different languages); mass arrests under the "pass" laws; and incarceration in resettlement camps, where disease and malnutrition abound. Despite the government's best efforts, Africans continue to come to the cities. The 1970 census showed eight million Africans, compared to seven million ten years before; the number is expected to increase to nine million in 1980 and thirteen million in 2000. See African Contemporary Record, Annual Survey and Documents 1970-1971, B493, B494, B496; E. Brooks, Apartheid, A Documentary Study of South Africa 204-06 (1968).

14. This tiny country has absorbed about 1.5 million immigrants of different nationalities and backgrounds in the twenty-five years of its existence. The plan in effect since 1951 has been directed toward dispersion of this large population away from the three urban centers of Tel Aviv, Haifa and Jerusalem into new types of development towns. A variety of sweeteners is offered by the government to induce people to forsake urban living; they include lower rents, lower taxes and higher wages. Government resettlement centers give six months of sheltered settlement—this means Hebrew lessons, job help and housing. By 1970 only a third of the country's Jewish population lived in its three largest cities; the comparable figure in 1948 was 60 per cent. S. Eisenstadt, Israeli Society 71-72 (1967); A. Eckhardt & R. Eckhardt, Encounter with Israel 94, 96 (1970).

ment on the appropriateness of applying such methods in America.

Treatment of this and other compelling problems, however, is not Professor Hagman's concern. His goal in writing this book was, in his words, "to distill, summarize and state textually the wisdom on planning and development control law collected" in nineteen casebooks[15]—a herculean task. Professor Hagman, nevertheless, set out to do it and has done it as well, I suppose, as anyone could. The question which plagues the reviewer plodding through nineteen chapters and 274 sections, ten of which contain the author's own review of existing treatises, texts, casebooks, periodicals, digests and symposia in the field, is why Professor Hagman set himself the task in the first place. Why not leave law professors and students to consult the casebooks themselves? The answer, not altogether satisfactory, is given in the preface to the work. The book was "specifically designed to supplement D. Hagman, *Urban Planning and Controls: Problems and Materials.*"[16] Professor Hagman and others who use those problems and materials thus have a supplementary text. What of the rest of us? For teachers who do not use his "problems and materials" Professor Hagman does not offer so much. We have, at best, a handy deskbook, which, though it contains its share of planning jargon,[17] awkward sentences[18] and fancy words,[19] is a useful single volume from which to refresh memory, retrieve lost citations, or brush up quickly before class. For our students Professor Hagman has produced a long awaited Planning Hornbook. As good as most available in other fields, it may give students the comfort and security in urban planning and land development law which they, if not their teachers, think they need.

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15. Hagman, supra note 9, at xi.

16. Id. at xii.

17. E.g., "The definitions-descriptions of functional, project and comprehensive planning are not very discriminating in part because these categories of planning are a continuum." Id. at 7.

18. E.g., "In a general way, restrictive covenants play a role in public land use planning in that planners may be able to achieve objectives beyond the scope of their regulatory powers by persuading developers to include restrictive covenants in the deeds to property contained in a subdivision." Id. at 306.

19. E.g., "wholistic." Id. at 3.

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Public Workers and Public Unions. Edited by Sam Zagoria. Englewood Cliffs: Prentice-Hall, Inc. 1972. Pp. vi, 182. $5.95 Cloth, $2.45 Paper.

The most dramatic development in the field of labor since the enactment of the Wagner Act in 1935 has been the unprecedented organizational growth of public service employees in the past decade. The astonishing growth rate of unions and other employee organizations representing public employees is without parallel in the labor field.

The traditional reluctance of private sector white collar employees to organize or to join unions has been clearly absent in the public sector. This difference in attitude was not the result of superior educational or organizational techniques in the public sector, but rather it appears to have resulted from a realization on the part of public employees that any significant enhancement of terms and conditions of employment could only be accomplished through organization and resultant collective negotiations. The financial pressures experienced by governments at all levels and the response of governments to those public employees whose organization and militancy evoked an answer was an indication to all public employees that silence was not golden. Rather this situation gave credence to that old adage: "The squeaky hinge gets the oil."

To an observer it appears that this rapid rate of growth of organizations representing public employees resulted more from public employees reaching out to organizations than from organizations seeking to enlist public employees.

This book, *Public Workers and Public Unions*, represents a commendable effort by the editor, Sam Zagoria, to bring divergent views into focus so that the reader can make an independent, but informed, judgment.

Some of the presentations in the book set forth extremely partisan views, partisan to such an extent that in noting the name of the particular writer one could predict with unerring accuracy the content of the paper. Indeed, some of the thoughts presented have been reiterated by the same person almost ad nauseam so that the educational value thereof could only be sustained by the ancient saying: *"Repetitio est mater studiorum."*

John W. Macy, Jr., the former chairman of the United States Civil Service Commission, raises a most interesting question in his presentation. He asks, what obligation does a public employer have to its employees? There are varying responses to this question. One might be that the terms and conditions of employment in the public sector are to be

determined separately and apart from those existing in the private sector. This of course assumes that conditions of employment in the public sector are essentially so unique that any comparison with the private sector would be lacking in validity. Another response might be that the role of a public employer should be that of an innovator; that a public employer should set an example or standards to be emulated in the private sector. This response is confronted immediately with the seemingly insurmountable fiscal problems which beset every level of government and which necessarily limit the innovations a public employer may pursue. In fact most levels of government would protest that their role is not that of an innovator but rather simply to continue to function. Such a contention has admitted validity.

Nevertheless, it would seem that a public employer should take the lead in establishing a more realistic minimum wage than is contemplated by current federal legislation. Such a course of action by a public employer would not be simply altruistic but would provide a meaningful differential between welfare benefits and gainful employment.

Another view of the responsibility of a public employer to its employees might be that public employees should receive wages comparable to that being paid in the private sector for similar work. This statement has strong appeal in that it recognizes the principle that public employees should not be subsidizing the operation of government.

Throughout the book, in the views expressed by the various authors, runs the question of whether the right of public employees to negotiate collectively with their employer is a meaningful right in the light of the prohibition against strikes. Victor Gotbaum,[1] an enlightened and most articulate spokesman for public employees, contends that the statutory impasse procedures provided by most state legislatures as an alternative to a strike[2] are of such inflexibility or rigidity that they inhibit meaningful collective negotiations.[3] However the examples of this inflexibility put forth by Mr. Gotbaum to support his contention reflect more upon the ineptness of the parties than upon the rigidity of the procedures. In essence, Mr. Gotbaum's contention, echoed later in this collection by Arnold M. Zack, is that the availability of impasse procedures stultifies effective negotiations. However, the experience in New York under

1. Victor Gotbaum is the executive director of District Council 37 of the American Federation of State, County and Municipal Employees, AFL-CIO.

2. See, e.g., N.Y. Civ. Serv. Law § 209 (McKinney 1973).

3. Public Workers and Public Unions 82-83 (S. Zagoria ed. 1972).

the Taylor Law[4] is to the contrary. In 1972 there were 2800 contracts negotiated involving public employees. Of this number approximately 70 per cent reached agreement without the intervention of a third party neutral, that is, without involving the statutory impasse procedures.[5] Clearly in these 2000 sets of negotiations there were meaningful and effective negotiations without reliance upon the statutory impasse procedures.

One of the contributors to this book, Arvid Anderson,[6] is clearly one of the most knowledgeable men in the field. In essence his presentation deals with a question frequently propounded in the field of regulation of public employment labor relations. This question is whether or not there is any substantial difference between labor relations in the public sector and labor relations in the private sector. There are many experts in the labor field, including public employee representatives, who contend there is little, if any, significant difference. Mr. Anderson is of the opinion that there is a difference. However, he recognizes that the vast reservoir of knowledge and experience in the private sector, while not controlling in the public sector, should not be ignored, but in fact should be considered in analysing public sector problems.

Mr. Anderson's presentation deals with the vital issue of the scope of bargaining in the public sector. Initially he raises the question of the difficulty experienced because of the uncertainty of the public employer's bargaining authority, due in large measure to the separation of powers between the executive and legislative branches of government. Specifically the problem is that the executive branch's agreement on terms or conditions of employment is ineffectual unless the legislative branch enacts enabling legislation. Mr. Anderson also considers what may be described as a most fundamental question. The question may be posed as follows: "Is it appropriate or even in the public interest for major policy questions to be determined by a quasi-public structure—the negotiating table?"

This question is not an academic one. There are serious questions as to whether the following issues should be resolved at the negotiating table: (a) the level of benefits to welfare recipients; (b) the standards of health care provided in municipal hospitals; (c) educational policies;

4. N.Y. Civ. Serv. Law §§ 200-14 (McKinney 1973).

5. N.Y. St. Pub. Employment Relations Bd. News, Feb. 1973, Vol. 6, No. 2.

6. Arvid Anderson is chairman of the New York City Office of Collective Bargaining.

(d) the standards of protective services to be provided by the police or the fire departments.

Clearly all of these issues involve questions of the establishment of priorities and allocation of the government's resources. Obviously these questions are not to be resolved by the militancy of an employee organization and the power such an organization may have because of the essential nature of the services its members perform. However, in dealing with professional employees, social workers, nurses, teachers, and police and firemen, should not a government have and consider the input of their respective expertise? Of course a government should have the advice and counsel of their professional employees. The unanswered question is whether such input is at the negotiating table, a mandatory subject of negotiations, or relegated to a policy committee to provide the professional input to government, with the basic decision to be made by the government.

This latter issue is highlighted by the contribution of Frederick R. Livingston,[7] even though limited to the area of public education. Mr. Livingston points out that public school teachers seek to bargain over a broad range of issues that include fundamental policy decisions. Here we see a difference between the public and private sectors. In the private sector, as pointed out by Mr. Livingston, the right of management to design a product, to decide quality control and the kind of product to be marketed, is relatively unchallenged. Yet teachers, social workers, and nurses, relying upon their professional expertise, do contend that they should be participants in policy decisions affecting the standard of services to be provided.

Arnold M. Zack[8] deals with the issue of procedures designed to resolve impasses in collective negotiations involving public employees. His contribution is a significant one in the light of his vast experience in this area. Mr. Zack points out that the mediatory procedures should be private and not open to the public. This posture has substantial merit. Admittedly the public has a right to be informed as to all matters affecting policy decisions and the cost of their government. Yet most, if not all, experts in the field of labor relations would be of one mind, that detailed reporting of the mediatory proceedings would inhibit the

7. Frederick R. Livingston is an attorney in New York City and former special assistant to the Secretary of Labor.

8. Arnold M. Zack is an experienced mediator, fact-finder and arbitrator; he is also a labor arbitrator and referee with the National Mediation Board.

negotiating process and thus would not be conducive to achieving the objective of mediation, which is of course, a negotiated agreement.

Mr. Zack states that mediation has the greatest potential for stimulating a voluntary settlement between the parties. However, he contends that the availability of fact-finding following mediation tends to assure its invocation and thus diminishes the likelihood of settlement in mediation.[9] This contention has a logical appeal in that one would assume that the parties would use every step in the impasse procedures in the expectation of gaining a "little bit more." However, as noted previously, the experience in New York does not support this contention. First, 70 per cent of negotiations in New York reached agreement prior to mediation and second, of those which went to mediation, 42 per cent reached agreement before going to fact-finding.[10] Thus the spectre raised by Mr. Zack has little vitality in New York.

Mr. Zack does make the extremely cogent observation that parties in public sector negotiations rely upon fact-finding to support a settlement that might be politically unwise for either party to have accepted prior to fact-finding. The onus of the settlement is thus placed upon the fact-finders and the parties avoid political responsibility for the settlement simply by acceding to the fact-finders' recommendations.

Throughout this book there is a debate on the question of whether or not public employees should be permitted the use of the strike weapon. Lee C. Shaw's[11] presentation is an excellent historical accounting of the abhorrence the law has exhibited to strikes by public employees. Courts rarely require (except in Michigan)[12] the demonstration of the lack of an adequate remedy at law and a showing of irreparable harm, before they will exercise their equity jurisdiction and enjoin a strike by public workers.

Obviously, many of the duties of public employees are such that the cessation thereof would not seriously discombobulate the citizenry. Yet a nagging question is whether the vaunted labor relations expertise of this nation should be concerned with the right of public employees to strike or whether it should be concerned with the development of pro-

9. See note 2 supra.

10. See note 5 supra.

11. Lee C. Shaw is a Chicago attorney and author of many articles on labor problems.

12. School Dist. for the City of Holland v. Holland Educ. Ass'n, 380 Mich. 314, 157 N.W.2d 206 (1968).

cedures to reduce the incidences of strikes in both the private and public sectors.

This book is one to be read by all those who are concerned with the problems of the regulation of labor relations in the public sector. The book does not provide a definitive answer but it does provide a most comprehensive delineation of the problems encountered. Finally, I would commend to all the historical contribution provided by A. H. Raskin.[13] New York City has led the nation in the experience of labor relations in the public sector. Mr. Raskin provides a most perceptive summary of the developments in that city. This history has particular value because it is written by one of the most knowledgeable and objective observers of the labor scene in this nation.

Mr. Raskin sums up the issue in a typically concise fashion: "Public employees will not be supplicants at the community table, but they cannot be dictators either."[14]

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13. A. H. Raskin is assistant editor of the editorial page of the New York Times, and well known commentator on labor matters.

14. Public Workers and Public Unions, supra note 3, at 146.

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