National Land Use and Land Rights

Continuing *Land Planning Panaceas in the U.S.* in our previous issue

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STRIPPED of hyperbole, national land use planning emerges on the surface as a zoning act; nothing more—nothing less. Advocates and critics of the measure wrangle endlessly over this very point but their arguments, for all their validity, rarely approach the deeper, fundamental points at issue.

The protagonists, especially environmentalists, would have the government assume even greater control powers than present proposals contemplate. The legislative sponsors may well share such sentiments but, politics being the act of compromise, they are perhaps fearful of going further: for the moment.

The prospect of federal zoning powers enrages the opposition; strict constitutionalists in particular. They view the proposals as further assaults on property rights; a taking of private property without compensation and therefore a violation of Article V of the Bill of Rights. Logically they are right; legally they stand on very shaky ground. The authority of government to enact and enforce zoning laws has been well established by case law stretching back some 50 odd years. Of perhaps greater significance are more recent decisions upholding the government's right to take property (with compensation), but for private, not public re-use; as occurs in most urban renewal acquisitions. Logic, again, would seem to characterize these actions as even more violative of Article V; but, anyone who confuses jurisprudence with immutable holy-writ is either self-deluding or no student of history.

History's bloodiest pages are punctuated with legally sanctioned terror, plunder, murder, grand theft and sundry assorted injustices; not a few of which relate to land.

Land! The good earth beneath our feet. Shakespeare's stage where we all act out our dubious destinies. Spaceship earth orbiting through celestial cathedrals. No subject so inspires both bard and politician. Rightly, so; for much as we may boast of our unalienable right to life, liberty etc., the simple, inescapable, but generally unappreciated fact is that man's most fundamental right—life itself—is totally dependent upon reasonable access to humanity's *only* life support system; the earth.

Spaceship earth seems huge; a giant sphere 8,000 miles in diameter. However, earth's life support zone ,the biosphere, is only a thin fragile envelope some 12 miles thick. Even here, 95 per cent of all living things are restricted to a mere 2 mile segment of the 12; and for man this is further reduced. Three-fourths of the globe is water, and man must find his life support on the remainder: the land area.

If evolution has brought us to the point of agreement with Jefferson, that *all* men are created equal, and that the Creator endowed *all* men with the unalienable right to life, has it also brought us to the point where we will admit that it deductively follows that *all* men have an equal claim to the only source of life support: the biosphere? Simply put, all men have an unalienable right to equal use of the land. It would be a cruel Creator indeed, who would give man life, and at the same time deny him access to essential life support. Yet, such denial does exist, the ill-advised work of man; and we must note: primarily the work of "civilized" man.

Anthropologists have yet to discover among the so called "primitive societies" any significant evidence of private property rights in land. This is not to say that such groups considered the land to be of little value or that they dismissed it lightly. Quite the contrary: without exception the land was held in the highest esteem, even reverence, for these "primitive" people rightfully recognized the earth as the source and support of life for all. Moreover, one should not assume that the territorial imperative played no role among primitive cultures. Mutual respect for reasonable sole use of a planting site, or for each other's domicile were characteristic; but such attitudes were instinctive, rather than the outcome of a legalistic device called title.

Title, land tenure, is greatly revered in Western civilisation, and as a concept has become institutionalized beyond reproach. Custom, legalistic tinsel and unthinking acquiescence all support this conventional wisdom; but a long backward glance raises some disturbing questions. Consider colonization in America: Pennsylvania for example.

The first European to sail up the Delaware was a Dutch captain named Hendrickson, who in 1616 went as far north as the Schuykill. Other Dutchmen, Swedes and Finns soon followed. The Indian inhabitants, Lenni-Lenapes, Shawnees, Susquehannocks and Nanticokes all welcomed the white man and thought little of sharing the land and its bounty with the new arrivals. The Indian tribes had occupied and cultiva-

ted the region for at least three thousand years, and if they asserted a prior claim to the lands it was by simply proclaiming: "We came out of this land." In effecting such "purchases" of land as did occur, (frequently financed with trinkets and baubles) the settlers introduced a concept of ownership so foreign, so alien to the Indians that it was completely beyond their comprehension.

The Indian could understand and appreciate private exclusive rights in articles of utility: tools, weapons, shelter, clothing or anything which represented the products of labour. But land, which no man laboured to create, land provided by nature for the sustenance of all men, how could such a thing be considered as a private exclusive entity? To the Indian, this concept was totally devoid of reason and logic, and outrageously ridiculous. His education on this point was not long in coming.

Overlooking the Indians' long tenure, and the more recent "legal" title of the Dutch, Swedes and Finns a new claim jumper arrived in 1664. Having converted New Amsterdam into New York without firing a shot, two ships of the English fleet sailed to the Delaware, engaged in a brief skirmish that took the lives of a few Dutchmen, and claimed the lands on behalf of the English Crown.

In late October 1682 the three-masted, three-hundred ton ship Welcome, newly arrived from England, made its way up the Delaware and dropped anchor at New Castle. William Penn came ashore to begin his "Holy Experiment." Carrying a royal charter from Charles II, Penn had been designated as the proprietor and governor of the province of Pennsylvania: "to enlarge our English Empire." William Penn, age thirty six, possessor of over twenty-eight million acres, was, next to the Crown, the largest landholder in the British Empire.

Penn was a remarkable man for his time. Leaving aside for the moment, the dubious quality of his land "title", his "Holy Experiment" was a unique endeavor. Sickened by the excesses of his English peers, a monarchical elitist society who cared for little beyond their own prerogatives and self indulgences, Penn was determined to create a new and different community.

Incorporating in his new venture the finest elements of charity and democracy he could envisage, Penn's philosophy harmonized with the then newly established Indian Five Nation Confederacy and their "Kayenerenkhowa" or "Great Law" or "Great Peace" as it was known. As a consequence Penns Woods were peaceful and remained undisturbed for over seventy years. But pernicious custom, in this instance laws of land title, had, like syphilis and tuberculosis, also crossed the Atlantic; and by the 1750's European Settlers, pushing westward in Penns Woods were moving across the Alleghenies, " . . . in full self-reliance, felling trees and Indians with equal aggressiveness. . . ."(1)

Today, a Pennsylvania attorney searching a land title takes great professional pride in his work if he can verify an unbroken, unliened chain of title back to William Penn's original grant from Charles II. Presumably every transfer back to that point is blessed by "sanctity of contract", a willing buyer and a willing seller both motivated by the most noble of sentiments and neither acting under duress or compulsion. Neat, legal, and ethical. But what were the ethics of Charles' title? The divine right of Kings! Translated this means "Regal Grand Theft." It is odd that lawyers invariably stop title searches at the first sign of "Regal Grand Theft." Why don't they go beyond the thief? Why don't they go all the way back? For example:

> "In the beginning God created
> the heaven and the earth."
>
> GENESIS I:I

You could scarcely ask for a better starting point in a chain of title than that, but the lawyers never go that far back; perhaps because there were no lawyers around at that time. In fact they are not even mentioned in the good book until much later: the New Testament — Matthew 22.35. The Old Testament has many references to Law, but none to lawyers; and probably just as well. If they had been around to really start the chain of title, Genesis I:I would no doubt look like this:

> *WITNESSETH: In the beginning, THIS INDENTURE, made the day and year hereinafter cited and incorporated by reference herein, and hereunto, the same as if written herein: on said day God, also known as Ur, El, Yau, Molech, Baal, Astarte, Jahveh, Jehovah, Odin, Elali, together with One Hundred Forty-two* (142) *additional co-equal, pseudonymous proper names as set forth in Appendix "a" attached hereto, and by reference made a part hereof, the same as if written herein; hereinafter known as the party of the first part; did cause, create, compose, fabricate, constitute, institute, establish, generate, beget, and call into being the Heavenly Bodies, Stars, Luminaries, Nebulae, Galaxy, Milky Way, Sun, Moon and Celestial Spaces; together and concomitantly with the Earth, Globe, Firmament, whole and complete the all and singular Ways, Water Courses, Rights, Liberties, Hereditaments and Appurtenances whatsoever thereunto appertaining, and the . . . well, you get the idea!*

This majestic mound of verbiage (rhymes with garbage) is typical of the mumbo-jumbo that has, for centuries, obscured the true nature of the land and mankind's real relationship to it. Protected by this most classical of sophisms, a greedy minority have brought misery and exploitation to millions. Natural commercial, municipal and social growth patterns have been distorted, delayed and at times destroyed, all at enormous cost to the community at large. Yet it goes on; nourished by the deep-wells of historic

(1) Wallace, Paul A.—*Pennsylvania Seed of a Nation* Page 64, Harper & Row 1962.

error ,this legacy from ancient Rome, down through the Norman Conquerors, the English Crown, the Founding Fathers, and on to the present is a concept which has shackled much of mankind with what Winston Churchill termed: ". . . the Land Monopoly, the Mother of all Monopolies."

These subtly accumulating injustices now culminate in agitation for a National Land Use Bill. The arguments marshalled in support of such a measure are impressive and accurate, in so far as they outline the evils of the present condition. However, the proposed solution is wrong, totally wrong. Such a measure would be more than a mere zoning act; in all probability it will be a long step towards land nationalization; a return to "Regal Grand Theft." Oh, to be sure it will not take on the trappings of the ancient royal land transactions; after all we are a democracy. In all respects the egalitarian form must prevail. But the substance? Well, that no doubt will be structured to persuade "the victims that they are being robbed for their own benefit." It is curious that we cannot learn, if not from our own experiences, then from others. We know that our land title system came from England. How are conditions there?

The June 15th, 1974 issue of *Forbes Magazine* reported that British real estate prices soared anywhere from 20 per cent to 100 per cent just between 1971 and 1973. Accompanying all of this has been the emergence of a proliferating bureaucracy, devoted to zoning and land planning of all sorts, just the sort of thing National Land Use Planning will bring to the U.S.

Planning councils empowered to grant development rights, building and zoning permissions have assumed enormously powerful roles in Britain. As these powers have grown so also has corruption, enormous speculative gain for favoured designees and an uncomfortable and outraged citizenry, many who, seeking relief, act out of a sense of frustration and call for land nationalization, a call that has come up in Britain before. In 1964 the Labour leadership, heeding the call, but fearful that outright nationalisation would alienate too many voters, tried the halfway house of the Land Commission, a bureaucratic monstrosity which succeeded, before its demise, in recruiting more than 10,000 civil servants and acquiring just over 2,000 acres of land! Now, with their new Community Land Act, which nationalises practically all building land, and their new 80 per cent development tax on values added by planning permission, they have just about brought everything to a standstill. The British condition is slightly different from ours. A difference which largely accounts for their more advanced state of disorder. Britain's property tax (rates) does not tax capital values, only rental values. Vacant parcels thus go untaxed and land speculators have no incentive to make land available.

If we decry the social disruptions, poverty and injustice that arise from unequal distribution of the land, how much more so should we now be concerned over proposals such as National Land Use Planning. This master plan zoning concept will further inhibit utilization of necessary resources; will further impede productivity; will further increase the conditions favouring poverty, injustice and expanded welfare. Individual liberty will decline as elitest state power will grow. This trend, these schemes, the socialization of the land advanced under the banner of the "general welfare" will move the nation further and further from the goal we seek.

NEW YORK ON THE BRINK

Robert Clancy

THE PAST several months have witnessed an unprecedented event: New York, the largest and leading city in the U.S.A., went bankrupt and was about to default on its debts. An appeal was made to the State government, thence to the Federal government and the ball kept bouncing back and forth.

How did it happen? How did the great, rich, bustling city come to such a pass? For the answer one must dig into the background. The present Mayor, Abraham Beame, reaped a harvest which he helped to sow because he served for many years as the city's Controller, and he has been severely criticized for the way he kept the city's books so that it was nearly impossible to tell what was going on.

Former Mayors John Lindsay and Robert Wagner have come in for blame, also former State Governor Nelson Rockefeller, for the escalation of New York's deficit financing.

In an earlier time New York operated on the spoils of the Tammany machine. Ward politicians took bribes and in turn took care of the poor in their neighbourhoods in exchange for votes. On the respectable level, the property tax was the basis of public finance.

A change took place in the administration of Fiorello La Guardia in the depression days of the 1930's. Honest La Guardia overturned the Tammany system and installed a New Deal bureaucracy—and as it turned out, the remedy was worse than the disease. New Yorkers got bigger and bigger bills to pay, and more and more taxes. (Interestingly, Chicago is still on a political system resembling New York's old system, and is financially in better shape.)

The next big development was the change in population. Up to the 1950's New York had absorbed numbers of newcomers who had been upwardly