

A REVIEW OF LEWIS MUMFORD, 'THE CITY IN HISTORY'

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INTRODUCTION

What can a lawyer expect from a book of this kind? As a wide-ranging document of social history, it deals expansively with the form and function of the city in western civilization, from ancient times down to the present. Although Mumford is concerned in the larger sense with the city as a citadel of law and order, he is not concerned in the narrower sense with the legal structure that lies behind planning and other municipal functions. Nevertheless, the book has great value to the lawyer for the perspective it can give him.

The book is diffuse. Mumford's major themes do not stand forth clearly, his preferences are merely implicit in what he says, and he certainly offers no cure-all for the ills which he sees as besetting the modern metropolis. Still, two themes which have a bearing on municipal and land planning law do stand out. They deal with the necessary conditions to the proper internal order of a city, and with the organic factors that must be taken into account if external limits are to be placed on the size of a city.

Mumford clearly prefers the intimacy of the medieval town. He deplores the devastating effects of what he calls the baroque period, starting with the era of centralized national power in Europe, which brought forth the sweeping vista and the broad boulevard in city design, and the grandiose in city architecture. Coupled with the standardized lot and block of the land speculator, the baroque influence has removed all sense of the intimate and the informal from city life. In land planning and zoning, our legal structure has reinforced these standardizing trends.

Throughout the book, Mumford makes much of the necessity of limits on city size. He feels that there are necessary organic limits to the size of any city, beyond which giantism is the result and decay sets in. He clearly deplores the overgrowth of the American megalopolis, which he considers to be a formless mass beyond redemption. In this area, we are just beginning to develop legal techniques for limiting urban growth.

I.

I was selected to participate in this symposium in part because of a year spent in England, tramping green belt villages and medieval

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towns in search of a planning policy. If my own sight and sense are any guide, they amply confirm the aesthetic pleasures of the medieval town, which Mumford so fully reports. He speaks of "The short approaches to the great buildings, the blocked vistas, [that] increase the effect of verticality. . . . [T]he direction of the walker's movement, always changing, would constantly help to create dynamic, three-dimensional spatial forms through every farther passage, with a feeling of constriction in the narrow streets and of release as one suddenly came out into . . . the market place."¹ Mumford quotes a medieval town planner who spoke affectionately of the curved and narrow medieval streets,² preserved even today in many an English town, which in turn form a labyrinth protecting a central core that gives unity to the whole. Of course, a street plan like this is death to traffic, but I am not sure whether this is a curse or a blessing.

Mumford also has warm praise for the residential and vocational decentralization of the medieval city, carried out in integrated neighborhoods and enclosed precincts.³ On the Inns of Court in London: "To form a notion of medieval standards of open space in building, one must turn to such surviving semi-public buildings as the Inns of Court in London. . . . And one must not look at the narrow streets between the houses without remembering the open green or the neatly chequered gardens that usually stretched behind."⁴ You may enter the Temple precinct of the Inns of Court through narrow passages leading off busy Fleet Street, passing from the noise of a commercial district to the hush of a protected enclosure. Polite signs, neatly lettered, suggest that you might be removed if you talk above a whisper. As Mumford suggests, the high density of building coverage contrasts with the open lawns to make for a very pleasing effect, heightened for a lawyer by the historical legal associations. As in medieval times, many of my English lawyer friends seemed to work and live quite happily at the Inns.

Into this environment stalked the baroque planner. "[T]he new plan distinguished itself from the older medieval informality by the use of straight lines and regular block units, as far as possible of uniform dimensions. . . ."⁵ Washington, D. C., is cited as a classic example. Though an imaginative planner, Major L'Enfant "was not able to escape the usual baroque sacrifice of all the other functions of the city to space, positional magnificence, and movement."⁶ And

1. P. 278.

2. P. 303.

3. Pp. 310-11.

4. P. 239.

5. P. 388.

6. P. 404.

Washington reflects all the aspects of the baroque in "the siting of the public buildings, grand avenues, the axial approaches, the monumental scale, the enveloping greenery."⁷ Mumford puts the growth of the baroque order down to the formation of the modern state, with its ascendant military and civil bureaucracies and despotisms. Thus the broad avenues, shaped ideally on an asterisk plan, which permit military control of the approaches to the city. In Washington's case, only the "sixteenth-century fortifications" were missing, an "embarrassing oversight" which led to the sacking of the public buildings by the British in 1812.⁸

With the growth of capitalism and the speculative order in commercial life came another disturbing influence—the speculative ground plan. Although the gridiron plan had ancient origins and may have once served religious rather than speculative functions, gridiron lot and block design in recent times has been closely associated with the commercial exploitation of the city. Mumford has a devastating section on the destructive impact of the gridiron system.⁹ Perhaps its real vice is lack of differentiation. What the gridiron plan really sought to accomplish was the standardized lot and block unit, easily shifted from one use to another, and easily exploited for quick gain. As a result, differing neighborhoods with differing uses were not functionally differentiated. Part of the problem was a lack of functional differentiation among streets. Traffic streets turned out too small and residential streets turned out too large, while the overall result was waste due to a general overdose of paving.

II.

What has been the effect of the baroque order and the gridiron plan on land use regulation? Lot and block standardization, and the resulting private ownership of small and indistinguishable parcels, have made land use determinations a matter of individual choice with quantitatively minute effects. These have proved very difficult for a regulatory system of planning and zoning to control. By way of comparison, in medieval times the public and semi-public ownership and management of comparatively large aggregates of land was common. The Temple precinct of the Inns of Court, for example, is still under central ownership. Modern counterparts are rare. Municipal ownership of land needed for expansion, as an example, still survives only in scattered instances, as in Stockholm and (by accident) in Coventry, England.

Zoning, as it was first conceived, has tried to differentiate what the

7. P. 405.

8. P. 404.

9. Pp. 421-26.

speculative ground plan failed to differentiate. If filling stations intruded into residential areas, this could be attributed to a failure to differentiate the residential neighborhood from its surroundings. To paraphrase Mumford, every intersection might become a business intersection.¹⁰ Of some interest on this point are the early prototypes of zoning ordinances, which predicated the zoning power on the stage of development in an area. Thus, early ordinances might classify as residential any block in which a majority of the buildings were residences. Or an ordinance might classify an area as residential if a majority of the buildings within a specified distance of a proposed business use were residences. These ordinances had a hard time of it in the courts,¹¹ quite properly in view of the fact that zoning ought to depend on more than just a ratification of the existing state of affairs. But the accident of development in an area might often be the only means of differentiating one neighborhood from the next.

Or consider judicial attempts at defining a neighborhood in zoning cases. One example is spot zoning. A corner parcel is rezoned for a filling station. Neighbors allege that the rezoning will injure a prime residential neighborhood. But what is the neighborhood? Is it the immediate four-block area? Is it a larger area? If so, how large? How can you define a neighborhood in a gridiron of standardized lots and blocks?

Perhaps because it is often imposed on a formless urban mass, zoning has not always been successful in differentiating land uses. The overuse of the variance, exception, and amendment powers is symptomatic of this failure. A variance, for example, is supposed to be based on proof of unnecessary hardship resulting from the application of the zoning ordinance. But in the case of a variance for a change in use, isn't it difficult to prove hardship when units of ownership are standardized? More realistically, I suspect that variance and exception provisions may be used as a licensing power to achieve a selectivity in control that the zoning ordinance can't attain. Another example is the common provision that prevents the expansion of nonconforming uses. Although intended to limit the life of the nonconforming use, in practice these provisions have given the planning authorities a supervisory power over proposed expansions which can be exercised on a case-by-case basis. Sometimes the resulting

10. P. 422.

11. For a case holding unconstitutional an ordinance of this kind see *In re Kensington-Davis Corp.*, 239 N.Y. 54, 145 N.E. 738 (1924); *accord*, *Spann v. City of Dallas*, 111 Tex. 350, 235 S.W. 513 (1921). *Cf.* *Phillips v. City of Denver*, 19 Colo. 179, 34 Pac. 902 (1893). For a case discussing the authorities on a related type of ordinance, which makes a variance or other change dependent on the consent of adjoining property owners, see *City of E. Lansing v. Smith*, 277 Mich. 495, 269 N.W. 573 (1936).

decision is hardly restrictive, whether taken by a board of adjustment or by a court on an appeal.¹²

Mumford's comments on the uniform dimensions of the baroque order and the standardizing effects of the gridiron plan fit interestingly with legal notions of fair play that are enshrined in the equal protection clauses of our federal and state constitutions. Equal protection means equal treatment. As applied to zoning and land use planning, the constitutional requirement helps to ratify the indiscriminate development that takes place in a gridiron system because it requires uniform treatment of what are essentially uniform units of land. For example, an argument is commonly made in zoning cases that a classification of a particular block as residential rather than commercial is unconstitutional simply because some commercial development has already taken place. The result may be a meaningless discussion centering on the number of stores, restaurants, or filling stations already situated in the area. We are back to our zoning prototypes that based their classifications on the proportion of residences in a neighborhood. In the case of a transitional district, the court may not know how to jump.¹³

Without questioning the basic premise of the equal protection clause, the argument could be made that diversity rather than uniformity is needed in the urban environment. Mumford suggests as much in his section on the Hellenic city,¹⁴ and Jane Jacobs has made a strong plea for diversity in her recent book, *The Death and Life of Great American Cities*. But this approach challenges some of the basic assumptions behind zoning and planning practice.

For example, Mrs. Jacobs argues for varying setbacks along a city street, in an irregular and almost unplanned fashion. If a district has grown up this way, a zoning ordinance could ratify the existing pattern. But a court would fairly scream at an ordinance which positively required discriminatory setbacks at various depths in a city block.

The result is rigidity. Zoning can take things as they come, but

12. For a case illustrating this tendency, see *Miller v. Zoning Bd.*, 2 Bucks 237 (Pa. C.P. 1952). The court granted a variance from the provision of an ordinance limiting the extension of a nonconforming use to not more than fifty percent of the area occupied on the effective date of the ordinance. The applicant was allowed to build a motel behind four pre-existing tourist cabins located on a highway.

13. See *Hermann v. City of Des Moines*, 250 Iowa 1281, 97 N.W.2d 893 (1959). Consider also the difficulties that have been experienced in adapting zoning regulations predicated on lots and blocks to unit developments such as garden apartments. *Norwood Heights Improvement Ass'n v. Mayor & City Council of Baltimore*, 191 Md. 155, 60 A.2d 192 (1948).

14. Pp. 160-65.

when it seeks to act positively it must act in even measure. When land is held in small and generally uniform quantities, the difficulties may be insuperable. This is probably why more might be achieved through administrative escape measures than through the original classifying ordinance. An example is the special use, which is allowed in a zoning district only after permission received from the governing council, the plan commission or some other body. Lists of special uses in zoning ordinances have tended to grow.

But administrative dispensation is also subject to the equal protection clause, and an authorizing ordinance may be unconstitutional if it does not provide standards sufficient to prevent arbitrary decision from one case to the next. Again, one of the drags on the development of meaningful standards is the uniform nature of the gridiron environment with which the dispensing board must often deal. How can you find the words to indicate where in a residential district a private nursery school or a church should go, when one block is much like the next?

In short, the uniformities of the zoning ordinance reflect the uniformities of the speculative ground plan. I tried to imagine how a modern zoning ordinance would handle the complexities of a medieval town. The answer is that it couldn't because it is irrelevant; witness the fact that whenever we have the balanced diversity that approaches the medieval order, we create a special historic zone to preserve it. And the precinct example of the Inns of Court is just beginning to creep back into planning thought, while legal sanction will probably have to take the form of a special exception in the guise of a planned development district.

III.

Mumford himself offers no specific solutions to the urban design problem. But his bias against the grand and the formal is clear. "The bastard estheticism of a single uniform style, set within a rigid town plan, arbitrarily freezing the historic process at a given moment, was left for a later period, which valued uniformity more than universality, and visible power more than the invisible processes of life."¹⁵ While we cannot recreate the medieval form which Mumford does seem to prefer, we can perhaps adapt some of its commendable features. For example, there is much to be said for integrated neighborhoods in which one can live near his work, a type of urban environment which London has been able to maintain better than most cities.

Mumford also sees hope in the assembly of large aggregates of land for unified development, a proposal first suggested by Ebenezer

15. P. 312.

Howard for his garden cities, and which has been carried forward into the organizational structure of the English New Towns.¹⁶ There is need for legislative encouragement of this kind of development corporation in America, for there is a point to Mumford's observation that the most successful urban plans have been executed at one time by persons having control of the whole entity. This was one of the reasons for the success of seventeenth century Amsterdam,¹⁷ among other examples.

We have not been as successful in the clearance and assembly of large tracts for redevelopment under our urban renewal program. Perhaps this experience underlines Mumford's observations, for one of the real problems in this program has been the division of responsibility for design and execution between the redevelopment authority and the private developer. Mumford also speaks approvingly of intermediate forms, such as the German *Lex Adickes*, under which the municipality supervises the assemblage of private parcels and their subsequent redistribution under a better plan.¹⁸ Selective condemnation could be mixed in, so that the municipality would have more trading power. For example, the owner of an overcrowded tenement might be traded out in part with municipally-acquired land in the renewal area, or in some other section of the municipality.

IV.

The inner order of a city reflects the outer limits that have been placed on its organic development. At present, at least in this country, these limits have been cast aside. As Mumford puts it, the urban container has burst open, and the result is urban chaos. Once more, a medieval comparison may be instructive.

Commenting on the medieval pattern of town growth, Mumford distinguishes it from the contemporary concentration and consolidation of population in great, overgrown centers. "The medieval pattern was that of many small cities and subordinate villages in active association with their neighboring towns, distributed widely over the landscape. *Elisée Reclus* discovered, indeed, that the villages and towns of France could be plotted with amazing regularity, forming the pattern of a day's walk from the most distant point to and from the market."¹⁹ Similar patterns are easily discernible in England, and still characterize the English countryside. Indeed, for so urban a country, the successful survival of villages and small towns is something of a marvel.

16. P. 426.

17. Pp. 439-45.

18. P. 424.

19. P. 314.

Viewed from this perspective, a dominant purpose of English planning is the preservation of the medieval framework. This purpose is implemented by a policy of growth restriction, dispersal, and decentralization of which the green belt and New Towns policies are a part. One important prerequisite to the medieval pattern is a limitation on the size of the constituent communities, so that no one community will dominate the others. For this reason, London, Birmingham and the larger towns are surrounded by green belts. These are concentric rings, several miles wide, within which new urban development is to be severely restricted. Population is to be dispersed to New Towns or towns planned for expansion which are located beyond the green belt rings. Of course, London and the other large urban centers are considered far too big, but an important secondary effect of the green belts is to preserve the small villages and towns in areas where the medieval balance has been maintained. This in part is why New Towns are limited to a population of sixty to eighty thousand and are also held back by their own green belts.

Several successful New Towns have been built, mainly around London, and a good bit of dispersal has taken place to these and other planned town expansion schemes. However, most of the population dispersal that has occurred in the metropolitan areas since the war has been voluntary, in the sense that it has gone to private developments not part of the New Town and planned expansion schemes. Nevertheless, all new housing development is subject to strict planning control in England, so that even private projects have been kept to the existing and still largely medieval framework.

When I was in England, I tried constantly to probe my English planner friends in order to seek a contemporary basis for the size-limitation policy, for it clearly permeates English planning as one of its most distinctive attributes, and most differentiates it from American planning practice. I have to report that the results of my questioning were not too satisfying; the policy of size limitation is more assumed than proved, although it is now being questioned in some circles. One of the problems with the English approach is that the form of the medieval pattern may have been maintained, but its content is now vastly different. Perceptive studies of the London region are beginning to show that commuters rather than farmers are filling up the hinterland, and that in many districts agriculture, except as a tax-loss hobby, has ceased. Whether or not the maintenance of the medieval grid has other compensations is an unexplored question.

Mumford puts his preference for growth restriction on more than a liking for medieval forms. He seems to feel that any social organism is innately subject to growth limitations. Mumford accepts Ebenezer Howard's theory "that every city, every organ of the com-

munity, indeed every association and organization, has a limit of physical growth, and...every plan to overpass that limit must be transposed into an etherialized form."²⁰

V.

American planners are beginning to think seriously about the problem of urban size. Hawaii, like England, an island with a pressing space problem, has just enacted a green belt law. Santa Clara County, California, has experimented for several years with a green belt policy in order to protect its diminishing orchards. The Year 2000 plan for the Washington, D. C., metropolitan area envisages radial corridors of urban growth separated by green wedges. All of these are green belts fashioned on the English model of growth restriction.

Mumford deals briefly with a solution to the size problem by proposing a regional grid in which controlled communities would function and be linked through modern communication and power systems.²¹ Communities in the network would apparently be separated by green belts preserved as open space. Mumford does not work out the details of his plan, but a functional grid of interrelated cities would have to alter our entire conception of local government. We tend to think now in terms of urban versus rural forms, towns and cities as against townships and counties. But the implementation of Mumford's ideas would require a new form of municipal government that could knit together the interrelated parts and relate them, in turn, to the intervening countryside.

Mumford must have had some such organization in mind, for he speaks highly of the New England town, which embraces both country and village in one unit of government.²² Another analogue is the English rural district, a junior form of local government which also covers both the small villages and the surrounding countryside. I have not been able to examine the New England town at close hand, but from my observations the English rural district is moderately successful. One problem is that the larger towns are carved out of it as separate governmental entities, and this separation destroys the opportunity for governmental integration over a substantial rural-urban area. Another problem is that the rural district has lost many of its functions to the nationalized utilities and to the counties.

However, the English administrative county does provide some of the missing unity, for it has assumed many important functions such as planning and education, and it has a supervisory power over most of the junior cities, towns, and rural districts within its area. An

20. P. 524.

21. Pp. 564-66.

22. Pp. 332-34.

attempt has been made to restore the power balance further through a system known as delegation. The smaller communities and rural districts enter into agreements with the county under which they share in the administration of the county's functions. Delegation has not been tried extensively in this country as yet, although the Dade County, Florida, metro plan is based on this principle. There it seems to have been productive of a good bit of friction, and similar difficulties have developed in England. These may simply be the normal by-product of any system which provides for checks and balances at the local government level, and I am not yet convinced that the idea should be dropped entirely as a principle to be used in metropolitan organization.

We may have an urban grid sooner than we realize, for the completion of the interstate highway network will give us a lymphatic system with the interchanges acting as nodes around which new communities could sprout by the score. In Indiana, for example, the highway between Louisville and Indianapolis might conceivably be dotted with commuting towns that will pull toward one center or the other. If this kind of development occurs extensively, entire states may have to be treated as urban regions.

The difficult problem is how to keep the areas between communities open, undeveloped, and free from urban sprawl. Legal opinion is currently much divided on the means of implementing a green belt policy. This is a problem which will force us to rethink pretty clearly the dividing line between the conventional police and eminent domain powers. We have always assumed that agricultural land may be developed for something, and the constitutionality of a police power restriction to agricultural use over large areas of open space may well be in doubt. If we accept Mumford's explanation, the assumption of relatively unrestricted opportunity for the exploitation of open land is too embedded in our political and social structure to be easily eradicated.

Furthermore, a restrictive planning policy is going to have rather substantial effects on land prices. Areas held against new urban development will depreciate or will retain their present value for agricultural uses, while areas marked for urbanization will appreciate in value. As a result, we may be presented in acute form with the problem that the English have called compensation and betterment—how to compensate those who suffer from planning restrictions, and how to extract the betterment from those who benefit from planning restrictions. The English have given up on the collection of betterment, and have compromised on the compensation issue.

All kinds of administrative problems will develop, not the least of which is the problem of the speculator who buys up the land earmarked for building and then holds it off the market as a build-

ing reserve or for further speculation. And the effect on the consumer must be noted. In England, the homeowner who seeks a site in the countryside may well be refused on the basis of the green belt policy, and if he looks for a town or village site he may be told that some communities are closed to him. Some English green belt villages, for example, have tried to limit new building to local residents and their "natural increases."

These administrative problems have been extremely tough to crack in England, and I am not sure that we can come up with the right answers. Because they face a quantitative limit on available space, the English have had to be over-restrictive in order to prevent the complete spoilation of the countryside. This necessity has considerably curtailed the choice of building locations. And in many areas of the country the green belt policy has contributed to an absolute shortage of sites.

As we have an entire continent to deal with, we may be able to avoid some of the English dilemmas. For example, a limited amount of overzoning on selected community sites would take the pressure off the open areas and increase the range of consumer choice. Overzoning creates problems of its own, but this may be the price we will have to pay for an open space policy. Our new highway network may also solve some of these problems. Mumford talks of the natural green belts created by the spaced station stops of the railroad suburb of not so long ago.²³ Houses had to be sited within easy walking distance of the railroad station. To some extent, the desirability of a location close to an interchange may create natural green belts for the motor age.

VI.

Mumford clearly prefers an urban environment in which growth-controlled communities are associated in a regional grid. These communities would reflect internally the functional decentralization and close informality of the medieval town. I am not sure that we have to perform such radical surgery on our towns and cities, although Mumford assures us an ultimate deterioration and decay if we don't. Other recent appraisals have not been as pessimistic.

We are going to see deep changes in the conditions under which we live, however, and books like this will have a considerable influence. Washington's radial corridor plan, which has been mentioned, approximates Mumford's grid. In typical American fashion, we will no doubt continue to proceed pragmatically, a step at a time, tinkering here and fixing there. In the process, our policies for land planning and zoning, our forms of local government, and our conception of the police and eminent domain powers will have to undergo a fundamental revision.

23. P. 504.