BOOK REVIEW

MANAGING OUR URBAN ENVIRONMENT. By Daniel R. Mandelker.[1] Indianapolis: Bobbs-Merrill Company, Inc., 1966. Pp. xi, 1003. $13.50.

With this book Professor Mandelker has given us an unusual teaching tool which might well help persuade miserly curriculum planners to expand courses in Local Government Law from two to three, perhaps even to four semester hours.

The book represents such a radical departure in format, coverage, and basic orientation from the conventional coursebooks that it must be discussed on its own terms, divorced from its precursors. Gone from its table of contents is the familiar litany of "Creation, Powers, Contracts, Tort Liability . . . and Municipal Indebtedness." Structural symmetry with its orderly doctrine-by-doctrine presentation has been sacrificed for a functional-transactional approach which centers upon a given physical setting and examines problems as they manifest themselves there. I have used the book three times with an ever mounting enthusiasm which, as selective interviews as well as my general assessment of classroom response have indicated, has been fully shared by the majority of my students.

In the first chapter (37 pages) the reader gets a binocular view of the American urban pattern, the realities of metropolitan problems, the structure and organization of local government, and the role of the legal system. (The legal system vacillates between sterile restraint, exemplified by the Dillon Rule and by constitutional debt limitations, and the conscious or unconscious abdication of judicial responsibility, evidenced by the overuse of generic concepts such as "public welfare" as problem-solvers and by noninterference with local legislation on the slightest showing of a "fairly debatable" issue.) This introductory chapter, particularly its section on the "Substance and Semantics in Local Government Law,"[2] serves as a valuable guide to an intelligent reading and comprehension of all municipal law cases that follow.

The second chapter (173 pages) deals with the vertical power structure and delineates the points of contact (or collision) between local, state, and federal control. Dwelling only briefly upon the formal sources of power (statutory grants, constitutional home rule, etc.) it focuses primarily upon the dynamic allocation and sharing of power among the several levels of government. By its legal-analytical, empirical, and quantitative assessment

1. Professor of Law, Washington University.
2. D. MANDELKER, MANAGING OUR URBAN ENVIRONMENT 35-37 (1966).

of state and federal intervention through the imposition of standards and through pre-emption it manages to put the role of local governments into sharp and realistic perspective.

The third chapter (211 pages) concentrates upon the formation of various types of local governments and the resulting structural deficiencies of metropolitan areas and proceeds to a superbly interrelated presentation of remedial devices ranging from conventional annexation and interlocal co-operation by compact to the more novel experimentation with urban counties and metropolitan federalism.

The author's functional approach is perhaps most evident in the remaining five chapters (573 pages) which are devoted to land use control, using that term in its broadest possible sense. Instead of presenting processes such as planning, zoning, and the regulation of subdivisions as unitary legal constructs, he deals with them as environmental controls that derive their utility, and in fact their legal coloration, from the setting in which they are employed. To this end the author divides the metropolitan area into three zones—the congested and blighted core, the suburban ring, and the outer fringe marked by incipient urbanization. Land use problems are then examined and given the priority which is or should be accorded to them by the various local governments situated within the different zones. Thus, the adoption and enforcement of housing codes, urban conservation and renewal, and the nonconforming use as a zoning characteristic are discussed as core city problems. Zoning for aesthetics, variances, exceptions, the amendment process in zoning, and the problem of racial change and panic peddling are taken up in connection with the suburban ring. Long range programs such as official mapping and the control of highway access and interchange development under the impact of the interstate and national defense highway systems are discussed primarily in connection with the outer fringe.

However, no summary can begin to cover all that is in the book. What makes it so eminently "teachable" is not the breadth of its coverage, nor its stimulating forays into "terra incognita" such as Green Belts[3] and New Town Communities,[4] nor even the gratifying abundance of the most recent cases,[5] but the presence of several editorial features of which I shall list only the most salient.

(1) At or near the beginning of each chapter the student is given what one might call an orientational framework which gives meaningful direction

3. Pp. 904-36.

4. Pp. 994-97.

5. According to my (hopefully accurate) count there are 78 principal cases of which 44 were decided since 1960. All but 5 were decided since 1950.

to his reading of the rich decisional and statutory materials which follow and which facilitates discernment of the precise points the author is trying to bracket.[6] This is particularly significant in light of the lengthy cases which have a forbidding aspect since the author has often refused to preshrink them by paring away their complex factual situations. Similarly, each of the last three chapters is given a central unifying theme by a mapped description of a problem neighborhood typical of the central core,[7] suburbia,[8] and the outer fringe[9] respectively. This feature impels the student to scrutinize his materials for concrete solutions to concrete problems vividly presented.

(2) Topics are so arranged as to afford progressive reinforcement of the learning behavior. Abstractions are generally elucidated by a wide range of examples that differ in as many aspects as possible while still containing the common property that characterizes the abstraction. To illustrate: the concept of home rule is not allocated to and disposed of in any single section. It takes nearly 400 pages to unfold. After a few introductory glimpses at home rule,[10] followed by a fairly concentrated dosage,[11] the student is repeatedly required to revisit home rule by examining it in various settings, such as in connection with special districts,[12] annexation,[13] and intermunicipal co-operation.[14] The same can be said of zoning,[15] urban renewal,[16] and other concepts.

(3) Decisions and statutes are amply noted and are interlaced with information-packed textual evaluations and an occasional social science reading on an advanced level. Professor Mandelker's own contributions in particular, although largely taken from various law review articles, seem specifically written for the didactic purposes the book is meant to subserve.[17] They are excellent vehicles for probing concepts and afford the additional benefit of obviating the need for excessive lecturing in class.

Curiously enough, the one feature which I considered the most promising

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6. *E.g.*, Pp. 39-40, 103-05.
7. Pp. 614-17 ("Rosewood Neighborhood").
8. Pp. 729-32 ("Riverview Hills").
9. Pp. 857-60.
10. Pp. 14-15, 39-40.
11. Pp. 54-86, 167-76.
12. Pp. 267-76.
13. Pp. 299, 328-36.
14. Pp. 366-77.
15. Pp. 25-28, 345-50, 617-55, 732-840, 875-78.
16. Pp. 91-97, 113-43, 574-83, 687-728.
17. *Eg.*, Pp. 243 (Standards for Municipal Incorporation on the Urban Fringe), 761 (Delegation of Power and Function in Zoning Administration), 220 (A Note on the Inherent Right to Local Self-Government).

and appealing has turned out to be singularly unattractive to many students and has to this extent detracted from the book's teachability. It is the inclusion of several major and quite involved problems[18] which are designed to induce role playing—requiring that the student put himself into the shoes of the legislator, the city attorney, the federal administrator, the advisor to a civic association, and so forth. Although students had been given enough raw material in the book to come up with at least colorable proposals, their performance was on the whole very disappointing. I suspect, however, that the fault did not lie with Professor Mandelker's book, but with our still prevalent teaching philosophy. By concentrating upon autopsies and archeological expeditions that rehearse the struggle to formulate rule "a" or to unseat rule "b," accompanied by an insistence upon a sinister diet of four cases per class period, we have perhaps unwittingly oriented our students towards the role of the pathologist rather than the planner or practitioner of preventive law. I have made similar observations in other courses. When teaching Business Associations, to name but one instance, I have never ceased to be amazed at the ease with which students administer and distribute the assets of a defunct partnership and their obvious discomforts when asked to draft the articles for a viable enterprise.

In his preface the author states that the casebook is designed "for an introductory four hour course." Not being the beneficiary of such largesse at the hands of our curriculum committee, I have to make do with two hours. Since I suspect that such parsimony is the rule rather than the exception, a brief description of my attempts at tailoring the book to fit my truncated course may be of some utility to colleagues who contemplate using the book for the first time.

Although the materials leave a wide latitude for course organization to the instructor, I have found it to be inadvisable to interrupt the finely tuned developmental sequences by the usual short cut of expunging a case here and a comment there. Instead I found it better to exscind whole chapters and sections and salve my conscience by substituting brief lectures on the problems thus omitted. I usually assigned Chapters 1 and 2, Sections A, B, and C (subsections 1 and 2) of Chapter 3, Chapters 6 and 7, and Sections A, B, and C of Chapter 8. Of the omissions I am willing to defend only one. Without any economical means of testing whether students read their assignments, and fortified by the conviction that textual materials are given critical attention which varies in inverse proportion to their length, I simply eliminated Chapter 4; it consists of 75 pages of pure and unadulterated information on planning.

18. *E.g.*, Pp. 131, 685, 855.

It is now high time that I broach the topic of inherent weaknesses and deficiencies lest I be accused of evading my primary obligation as a reviewer! Here the carefully chosen title—*Managing Our Urban Environment*—nearly disarms the critic. Whatever can be said about this book, it is certain that one cannot accuse the author of missing the point of his title. Yet one might well ask whether a book designed for the only course that affords the fledgling lawyer a glimpse into the urban law complex should be thus restricted to environmental controls. One basically commendatory reviewer suggests that it would have been better if the book had concentrated just a bit more on the stress suffered by people who live under overcrowded conditions than on the problem of standing in relocation suits, and comments that "in this remarkable, even fascinating, book the only thing missing is people."[19]

It must be admitted that there are no close-ups of rats and leaking ceilings to dramatize the plight of the slum dweller, but it appears to me that the "people materials"[20] that are included, although a bit abstract and dry, serve as adequate and informative portrayals of the problems to be solved. Besides, the book is permeated by certain assumptions about, if not descriptions of, man's condition and his real or imagined needs and aspirations which make intelligible the discussion of such depersonalized constructs as official maps, comprehensive plans and workable programs for community improvement.

One might also deplore the omission of materials relating to other dimensions of the urban problem which cannot be resolved by a mere manipulation of man's physical environment: the quality of education, rather than the quality of plumbing, equal employment opportunities, juvenile delinquency, the treatment of alcoholics, police review boards, consumer protection from the depredations of loan consolidators, the whole spectrum of legal services to the poor.[21] Yet their inclusion, even their most cursory treatment, would have produced a book suitable for nothing less than a 10 semester hour course.

By the same token one might question the slighting of such old favorites as municipal tort liability[22] and deplore the author's decision to relegate large segments of the municipal police power, such as licensing, to the traditional courses in constitutional law and administrative law. By eliminating

19. Schulz, Book Review, 51 MINN. L. REV. 592 (1967).

20. *E.g.*, Pp. 667-70, 842-54.

21. This was Professor White's criticism. White, Book Review, 35 GEO. WASH. L. REV. 855, 859 (1967).

22. Pp. 526-34. Exactly six lines are given to the proprietary-governmental dichotomy. *Id.* at 533 n.1(1).

inquiries whether a city may triple the number of employees required to operate a Good Humor truck,[23] or may require that people wear only "customary street attire",[24] or may outlaw "The performance of any dance . . . the purpose of which is to direct the attention of the spectator to the breasts, buttocks or genital organs of the performer,"[25] Professor Mandelker has unforgivably cut off a rich source of classroom entertainment. Yet it seems that the worst that can be said about all these omissions is that they are the product of a conscious choice dictated by the necessity of producing a book that is both manageably concise and yet intelligibly detailed. Since this presents issues that are fairly debatable, as a reviewing court would put it, "the author's exercise of discretion will not be disturbed."

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23. Trio Distributor Corp. v. Albany, 2 N.Y.2d 690, 143 N.E.2d 329 (1957).
24. People v. O'Gorman, 274 N.Y. 284, 8 N.E.2d 862 (1937).
25. Adams Newark Theatre Co. v. Newark, 22 N.J. 472, 126 A.2d 340 (1956).

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