

## The Legal System of the United States in its Relation to City Planning.

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The legislation with regard to the regulation and acquisition by the public of interests in land in this country is fundamental in planning in the United States as in other countries. A statement in detail at this time of the laws on this subject in the United States, with its forty eight states, Federal District of Columbia, Territories of Alaska and the Hawaiian Islands and its Island possessions, would serve no useful purpose, even if it were possible within the limits allowed me. I will therefore first briefly summarise these laws, and then state certain general aspects of the subject essential to any thorough study of it which you may desire to undertake hereafter.

There are no laws in any jurisdiction in this country especially for the acquisition of land for the carrying out of planning schemes, or any particular types of planning, such as garden cities. Except with relation to an experiment in Massachusetts on a small scale<sup>1)</sup> and the war emergency housing by the United States government during the late war there are no laws for housing, subsidies for housing, loans for housing or acquisition of land for housing by any governmental agency in the United States; but as an emergency measure there was during the war period exemption from taxation of certain classes of housing and rent regulation in a few jurisdictions.

As a rule government agencies of all sorts have the power to purchase or "condemn" land for any purpose which they are authorized to promote, such as roads, open spaces, sites for public buildings and certain public utilities; and if any of these agencies are not so authorized, laws for this purpose may be passed under all of our constitutions. In a few states additional land for use in connection with the primary use, or resale, may be acquired by what is known as "excess condemnation". In some cases land may be obtained at once by entry, leaving it to the owner to resort to the courts for compensation; or the public agency may enter at once upon the beginning of legal proceedings, the damages to be fixed later in those proceedings. There is no power to reserve land for any purpose, except in so far as zoning is a reservation, or except by condemning and paying for an easement or servitude in the land. No land has ever been reserved in any way for agriculture. There are no powers of preemption or compulsory exchange.

At this date (April, 1926) there is no law in the United States which prevents building in the bed of mapped streets, except in the State of Pennsylvania. From an early date in many States such laws were passed but in every case, except in Pennsylvania, where these laws have come

<sup>1)</sup> See "The Housing of the unskilled wage earner", by Edith Elmer Wood, New York, The Macmillan Co., 1919, p. 220.

before the courts they have been declared unconstitutional. There are at present bills pending in one or two States for the prevention of such building except in so far as it is proper to allow it. These bills are drawn on well established principles which have never heretofore been applied in this connection and, it is believed, will soon be passed and upheld by the courts<sup>2</sup>).

There is a general belief that the law of the United States is less favourable to City planning than that of other progressive countries. In some ways American law is peculiarly adapted to planning. For instance in the countries of continental Europe land often cannot be expropriated by local governments for some of the most necessary public purposes at all, or only after obtaining special authority to do so from the higher administrative authorities or the legislature; while in this country existing legislation as a rule authorizes the taking of land for all purposes here recognized as public, often without delay or any but the simplest procedure. Nevertheless on the whole the American law does lend itself less to planning than the law of most other countries.

At the basis of the legal system of the United States are our written constitutions. These constitutions are interpreted and enforced by our courts; no legislative act of the nation, of the states or of local governments being valid unless it conforms to these constitutions as construed by the courts. Thus, prior to the great war a statute granting any governmental agency the power to give or lend money for the housing of wage earners or build houses or take land for this purpose would have been held by our courts to be an attempt to use public money for a private

<sup>2</sup>) See a paper by the writer in the proceedings of the International City and Regional Planning Conference held at New York City, April 1925, p. 392, and the paper by Philip Nichols, *ib.*, p. 378.

Two of the three bills above referred to have now (May, 1926) become law. They are Laws, New York State, 1926 Chapter 690, applicable to cities, and Laws New York State 1926 Chapter 719, applicable to villages. These laws are identical in purpose and practically identical in phraseology.

The paper by the writer cited above, with its references, gives, in full the considerations upon which the laws just passed were based, which in brief were the following:

The previous laws laid down rigid rules — that no building should be erected in the bed of any mapped street, all plats should set aside a given percentage of their area for parks, etc. The laws just passed establish rules on these subjects for the guidance of the discretion of administrative bodies, in close touch with the facts of each case; and provide for a court review of the use of this discretion if the claim is made that the result is not reasonable and just. It is therefore impossible for the courts to hold the laws unconstitutional because they bring about unreasonable and unjust results.

The previous laws required the subdivider to give land for streets and parks to the public, thus violating the constitutional provision that property shall not be taken for a public use without compensation. The present laws require him irrevocably to set aside lands necessary to the health and safety of a development which he is creating for his own profit, and does not go beyond what may be demanded under the police power.

A novelty in the present laws, in entire accord with their general spirit, is that they give an administrative body, subject to court review, the power in platting — which is planning details subject to a general city plan — the right at the same time to vary the details of zoning, within the limits of a general zoning ordinance. It is hoped in this way to obtain something of the flexibility which has led to such good results in English site planning.

use and therefore unconstitutional; and very probably most if not all of our courts would so hold today. It is this system, based upon written constitutions, which is generally regarded as the cause of most of the legal difficulties which city planning encounters in this country.

In spite of written constitutions supposed to be fixed city planning law is making progress in this country. This is due in some measure to more refined methods of applying and enforcing law which have lately come into use. In the latter part of the last century, for instance, the administrative board, acting under a rule laid down by the legislature, but with a wide discretion as to details, began to be employed and is now common. Zoning, unknown in this country prior to 1916 and now adopted by more than a quarter of our people, no doubt succeeded as it did because the American people appreciated its usefulness and justice; but without boards of appeal it is difficult to see how the courts as at present constituted, under constitutions as they now stand, could have sustained it, as they are so generally doing<sup>3)</sup>. The same device has now been applied, in pending legislation, to the establishment and enforcement of the city plan<sup>4)</sup>, and it is the belief of any planners that, so administered, this branch of the subject will in the next ten years make the same rapid progress that zoning has made in the last decade. In the main, however, city planning and the law upon which it is dependent, is advancing because it has an increasing amount of popular support, for the law in this country like that in all democracies is the expression of public opinion, which really passes statutes and construes and amends constitutions.

The progress of city planning and city planning law in this country, therefore, is dependent upon the progress of education in city planning here. Nowhere is this education more needed than in the legal profession. It is a remarkable fact that the lawyers, from among whom in our earlier history such a large proportion of our statesmen emerged, are today so lacking in the social viewpoint. The recent movement, spreading rapidly throughout the country, to give instruction in social problems to students in law schools, is for this reason most encouraging. In no way can progress be obtained more quickly for it is the lawyer who aids the judge of today in construing the law and himself becomes the judge to construe it tomorrow.

### Summary.

Except on a small scale in Massachusetts, under a constitutional amendment, and as a war measure during the late war, there never has been any government housing or aid to housing in the United States. There is no power to reserve land for any purpose except by taking and paying for it, or power of preemption or compulsory exchange. There is no power especially for the acquisition of land for the carrying out of planning generally or any particular type of planning.

Except under legislation just passed in the State of New York, and older laws in Pennsylvania, there are no valid laws to prevent building in the bed of mapped streets. The New York legislation also provides for the setting aside of small parks or playgrounds, and the varying of zoning ordinances to some extent, in platting undeveloped areas.

<sup>3)</sup> See the paper of Edward M. Basset at p. 433 of the proceedings of the International Conference, already cited.

<sup>4)</sup> See Note 2.

In the grant of power to local governments to expropriate land for any purpose here recognised as public, the United States is somewhat more liberal than many other countries. In general, however, the law of this country lends itself less to planning than laws elsewhere. Undoubtedly this is due to our written constitutions interpreted and enforced by our courts.

In the main, however, city planning and city planning law is advancing because of increasing public support; for law is the expression of public opinion. Most hopeful is the recent movement to give instruction in social problems in law schools for it is the lawyer who aids the judge of today in construing the law and himself becomes the judge who construes it tomorrow.

### Sommaire.

Sauf dans le Massachusetts, sur une petite échelle, en vertu d'un amendement constitutionnel, et comme mesure de guerre durant la dernière guerre, il n'y a jamais eu de construction par le gouvernement ou d'aide gouvernementale à la construction de logements aux Etats-Unis. Il n'existe aucun droit de réserver du terrain, en vue d'un usage quelconque, sauf par achat ou d'échange forcé. Spécialement, il n'y a aucun droit d'acquisition du sol pour l'exécution d'un aménagement général ou particulier.

Sauf sous le régime de la législation récemment adoptée dans l'Etat de New York, et de quelques lois plus anciennes en Pensylvanie, il n'y a en vigueur aucune loi empêchant de construire sur le tracé de rues projetées. La législation de New York pourvoit aussi à la mise en réserve de petits parcs ou terrains de jeux, et à la modification, en quelque mesure, des ordonnances de « zoning » pour l'aménagement des espaces non encore urbanisés.

Les Etats-Unis sont un peu plus libéraux que beaucoup d'autres pays pour octroyer aux gouvernements locaux le droit d'expropriation du sol pour tout but reconnu ici comme public. En général, toutefois, la loi de ce pays se prête moins à l'aménagement que les lois d'ailleurs. Sans aucun doute ceci est dû à nos constitutions écrites interprétées et fortifiées par nos tribunaux.

En général, toutefois, l'aménagement des villes et la législation sur l'aménagement progressent à cause de l'appui croissant du public, car la loi est l'expression de l'opinion publique. Plus encourageant est le récent mouvement en faveur d'un enseignement des problèmes sociaux dans les écoles de Droit, car c'est le légiste qui aide le juge d'aujourd'hui à interpréter la loi et lui-même devient le juge qui l'interprète demain.

### Auszug.

In den Vereinigten Staaten hat es nie einen staatlichen Wohnungsbau oder eine staatliche Unterstützung des Wohnungsbaues gegeben. Die einzige Ausnahme bildet Massachusetts, wo auf Grund eines Gesetzesantrages während des letzten Krieges in geringem Umfang eine Unterstützung des Wohnungsbaues stattfand. Es gibt keine gesetzliche Vollmacht, auf Grund deren die Verwendung von Grundstücken auf bestimmte Zwecke beschränkt werden kann, es sei denn, daß man sie ankauft; auch gibt es kein Vorkaufsrecht oder zwangsweise Grundstückumlegung. Eben-  
sowenig gibt es ein besonderes Gesetz für Grunderwerb zur Durchführung allgemeiner Bebauungspläne oder besonderer Arten von Plänen.

Außer dem eben beschlossenen Gesetz im Staate Neuyork und älteren Gesetzen in Pennsylvanien gibt es keine gültigen Gesetze, die den Häuserbau auf den Grundflächen der vorerst nur im Bebauungsplan vorgesehenen Straßen verbieten. Die Neuyorker Gesetzgebung sieht auch die Bereitstellung von kleinen Parkanlagen und Spielplätzen vor, sowie Festlegung verschiedener Bauzonen bei der Aufstellung von Bebauungsplänen für noch unerschlossene Gebiete.

In der Ermächtigung örtlicher Behörden, Land für irgendwelche hier als gemeinnützig anerkannte Zwecke zu enteignen, sind die Vereinigten Staaten etwas großzügiger als viele andere Länder. Im allgemeinen jedoch berücksichtigt die Gesetzgebung dieses Landes den Städtebau weniger als die Gesetzgebung anderer Länder. Zweifellos hängt das damit zusammen, wie unsere geschriebenen Verfassungen von unseren Gerichten ausgelegt und durchgesetzt werden.

In der Hauptsache jedoch schreitet der Städtebau und die Städtebaugesetzgebung infolge der zunehmenden öffentlichen Unterstützung vorwärts; denn die Gesetze sind der Ausdruck der öffentlichen Meinung. Sehr vielversprechend ist die neue Bewegung, in den Rechtsfakultäten Vorlesungen über soziale Probleme zu halten, denn der Rechtsanwalt hilft dem Richter von heute das Gesetz auslegen und er selbst wird der Richter, der es morgen auslegen wird.