INFORMATION TO USERS

This material was produced from a microfilm copy of the original document. While the most advanced technological means to photograph and reproduce this document have been used, the quality is heavily dependent upon the quality of the original submitted.

The following explanation of techniques is provided to help you understand markings or patterns which may appear on this reproduction.

1. The sign or "target" for pages apparently lacking from the document photographed is "Missing Page(s)". If it was possible to obtain the missing page(s) or section, they are spliced into the film along with adjacent pages. This may have necessitated cutting thru an image and duplicating adjacent pages to insure you complete continuity.

2. When an image on the film is obliterated with a large round black mark, it is an indication that the photographer suspected that the copy may have moved during exposure and thus cause a blurred image. You will find a good image of the page in the adjacent frame.

3. When a map, drawing or chart, etc., was part of the material being photographed the photographer followed a definite method in "sectioning" the material. It is customary to begin photoing at the upper left hand corner of a large sheet and to continue photoing from left to right in equal sections with a small overlap. If necessary, sectioning is continued again — beginning below the first row and continuing on until complete.

4. The majority of users indicate that the textual content is of greatest value, however, a somewhat higher quality reproduction could be made from "photographs" if essential to the understanding of the dissertation. Silver prints of "photographs" may be ordered at additional charge by writing the Order Department, giving the catalog number, title, author and specific pages you wish reproduced.

5. PLEASE NOTE: Some pages may have indistinct print. Filmed as received.

University Microfilms International
300 North Zeeb Road
Ann Arbor, Michigan 48106 USA
St. John's Road, Tyler's Green
High Wycombe, Bucks, England HP10 8HR

78-11,166

PLOTKIN, Sidney, 1948-
KEEP OUT: LAND USE CONTROLS AND POLITICAL CONFLICT IN AMERICAN DEVELOPMENT.

City University of New York,
Ph.D., 1978
Political Science, general

University Microfilms International, Ann Arbor, Michigan 48106

© COPYRIGHT BY

SIDNEY PLOTKIN

1978

KEEP OUT: LAND USE CONTROLS AND POLITICAL CONFLICT IN AMERICAN DEVELOPMENT

by

SIDNEY PLOTKIN

A dissertation submitted to the Graduate Faculty in Political Science in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York.

1978

This manuscript has been read and accepted for the Graduate Faculty in Political Science in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

December 20, 1977
date

Robert Engler
Chairman of Examining Committee

12/22/ 1977
date

Executive Officer

Professor Martin Fleisher

Professor Marshall Berman

Professor Michael Harrington

Professor Robert Lekachman

Supervisory Committee

The City University of New York

TABLE OF CONTENTS

Chapter One INTRODUCTION 5

The Structure of Land Use Politics
The Evolution of Land Politics
Land and Social Power
History and Public Policy Analysis

PART ONE 43

Two THE MERCANTILE ROOTS OF AMERICAN LAND PLANNING . . 44

The Political Economy of Mercantilism
The Royal Inheritance
Land and Revenue

Three PUBLIC LAND AND THE STRUGGLE OVER NATIONAL GROWTH 105

Social Change and the Changing Politics of Land Disposal
Cultivating the Main Chance
The Changing Uses of Mercantilist Policy
Land Reform and Laissez-Faire
Summary and Conclusion

Four CONSERVATION AND ZONING: LAND USE PLANNING IN THE PRIVATE INTEREST 169

The Lessons of Scientific Planning
Of Pigs and Parlors
The Same Old Deal
Conclusion

PART TWO 228

Five THE CONTEMPORARY POLITICS OF LAND USE PLANNING . 229

Introduction
The Political Economy of Exclusion
Pressure From The Top
The Environmental Aspect

Six THE NATIONAL LAND USE POLICY PROPOSALS 286

Land and Confusion
Conservation Revisited
The Administration's Response

Seven THE SENATE PASSAGE 349

A Sober Discourse
Standards
Federalism
Property Rights
One More Time

Eight KEEP OUT 402

The Politics of Time
Putting the Public House in Order
Bad Tidings
1975: A Ghostly Replay

Nine LAND AND THE PUBLIC INTEREST 456

A Dead Issue
Death Notices for the Landscape
Twigs of Hope
In the Driver's Seat
Public Land, Public Opportunity

BIBLIOGRAPHY 504

CHAPTER ONE

INTRODUCTION

The Structure of Land Use Politics

This is a study of the political conflicts underlying the establishment of land use controls in the United States. Its thesis is simple. Controls have been introduced where property owners, industrial users, and government have agreed that market forces should not, by themselves, rule the land business. Conflicts over the introduction of land use controls have not centered primarily on differences between business and the representatives of more general social and ecological needs. Rather they have focused on differences within American business - between those forces driving toward centralized industrial production and those operating in the more marginal arenas of competitive real estate and small scale agriculture. The former have favored national land policies administered from the top of the governmental system while the latter have benefitted from the protection afforded by the thousands of niches in the lower reaches of federalism. Regulation has reinforced the system of private property rights in land, as well as the treatment of land as a commodity. It has not replaced marketplace with social criteria so much as supplemented the marketplace allocation of real estate values to conform with the special claims and interests of organized land owners and users. Government control therefore, while defended in terms of protection of the land, has been shaped in response

to business needs. Thus it has not functioned primarily to protect the environment, nor to encourage socially necessary uses, such as the provision of adequate low-income housing, but rather to divide unequally the right to use land as a public resource or to limit competition in the land business. In sum, the message of land regulation has been synonomous with the ancient declaration of the private property owner: keep out.

This has been a general tendency in American development; there are exceptions to it. National conservation policies have helped to protect wilderness areas as well as farm and forest lands; and local zoning has spared some residents of cities from the worst consequences of the economics of industrial location. But while there are business interests which have suffered from public land use decisions, the structure of decision itself has not only been consistent with, but has supported private property rights, merchandising in land, and the logic of business expansion. The major examples of land policy in United States history, disposal of the public domain, conservation, and zoning, have each reflected the power of economic interests in molding land regulation to meet the conflicting needs of centralizing industrial capitalism and competitive real estate.

In 1970 however, an effort was begun to moderate the hold of economic power in the determination of land use control. With the strongly worded encouragement of President Richard M. Nixon, Senator Henry M. Jackson of Washington and Representative Morris K. Udall of Arizona attempted to win passage of a

bill, the National Land Use Policy and Planning Assistance Act, to finance state planning and regulation of land use in connection with critical environmental areas and large scale development projects such as airports and energy plants. For a variety of fascinating reasons, including impeachment politics, Jackson twice succeeded and Udall twice failed. It is important to understand that the bill's proponents did not want to halt development. They merely hoped to enlarge the range of values which public decisionmakers would be required to consider in writing and implementing state and local land regulations. Thus, in the quarrelsome spring of 1974, four years after the measure's introduction and after two successful Senate votes, Udall was forced to admit that even this advance in public regulation was not a direct step to prevent exploitation of land, but merely an effort to widen the public framework within which the existing forces of development might continue to expand indefinitely. Coming from Arizona, he understood the native penchant to sprawl. All he wanted to do, he said, was plan it publicly.

> "There is a city councilman in my area of Arizona who has made a career of being for sprawl. He says sprawl is what America is all about, he says neighborhoods sprawling all over the place are good. We are saying if a community wants to choose sprawl constitutionally and openly after having public hearings they can damn well choose sprawl under this. 1

In effect, a good deal of America's sprawl was chosen publicly long before the Jackson-Udall initiative. This does not mean it was chosen democratically. The fact is

American economic development never obeyed purely market signals. It was always stamped by more than trading in real estate futures and physical transformation of the landscape. At every stage of the nation's growth these economic and technical processes were conditioned by politics.

The land business in particular has been deeply influenced by the interaction of government policies and market forces, that is, by the cooperation of public officials and private developers. The interactions have not been haphazard, ad hoc or short term. They have expressed an underlying tension between the expanding scale of industrial capitalist production and the local character of merchandising in land. In turn this has been reflected in different attitudes toward the economic functions of land itself. The modern industrial attitude, while eager to exploit land as a profitable resource, has passed beyond the simple-minded view that it is an exchangeable commodity whose manipulation requires the same degree of economic freedom as any other object. For the incorporated resource giants, use is the thing, not ownership. International Paper Company for example, proudly explains that it is helping other "private landowners increase their yield" in exchange for "the right to buy a landowner's timber at competitive prices." And Georgia-Pacific does not hesitate in its corporate advertising to add the 1.5 million acres upon which it has "exclusive cutting rights" to the 4.5 million acres it "now owns." The oil industry too leases vast amounts of land in order to obtain control of that precious liquid which

rests beneath the surface.[2] This mature power to discriminate between the productive potential of land as a useful resource and the mere property right in land separates the industrial branches of the larger political economy from the lower ranks of real estate. The latter as Veblen so brilliantly captured it, is little more than "an enterprise in 'futures', designed to get something for nothing from the unwary, of whom it is said that 'there is one born every minute'."[3] To the industrially untrained eye of the real estate man "when you take away property rights you take away value."[4] As the operation of the oil and timber industries suggests however, a greater return is derived from the power to "take away value" from the landed "property rights" held by others, especially the public.[5] Nevertheless, local real estate profits are based on land ownership and exchange, and on control of the municipal apparatus of public regulation to keep out the big or disreputable users whose presence might drive down the value of land for single-family homebuilding. It is a fundamental mistake to forget, warns one builder, "that houses are built locally, under local rules, with local labor, and are sold to local residents."[6] The appearance of extra-local forces is a disruption in this packaged environment.

This difference between the industrial users and commercial traders of land is a main clue to the persistent cleavage in American development between centralizing capitalist forces and local business. The cleavage could probably be traced in connection with other issues as well, for example,

labor, foreign policy and a range of federal regulatory activities. But the conflict over land is particularly useful as an example of this division because it runs so deep into the country's past and reveals important changes in the balance of social power. Since the formation of the public domain itself, representatives of centralizing capital have looked to Washington for aid in obtaining control over resources and to provide administrative rationalization for an ever larger scale of development. At the same time, local land merchants have looked to local and state government for legal and political help in gaining access to, and control over, land. In this way, the substance of land use politics has been determined, in large measure, by the conflicting needs of business reflected in battles about the organization and level of public authority over land. The politics of land regulation shows enduring tensions within American capitalism and federalism.

The conflict over the Jackson-Udall legislation is an expression of this deeper strain within the business and political systems. Because it would have subjected the landscape to more centralized control corporate users would have found a more manageable and predictable setting within which to operate. Thus it was supported by some of the nation's top corporations, land use lawyers, industrial home builders, as well as by environmentalists. In the United States Senate these forces joined in sober praise of land use planning. It was proclaimed a sane and rational response to the multiplying pressures of big development and environmental decay. Coordi-

nation, however, implies bringing otherwise disjointed elements into phase by the application of power. In this case the cost of a more predictable landscape would have to be borne by a reduction in the authority of cities, suburbs and perhaps even private property owners. At this prospect some of the more conservative House members were incredulous. It was no less, they predicted, than a precursor of "agrarian reform." Spurred by the tardy, but nevertheless amazingly proficient opposition of the U.S. Chamber of Commerce and a corps of local land based economic interests, they turned the legislative politics of planning into a study in Congressional schizophrenia. In 1974 the House of Representatives refused even to debate the measure and in 1975 the Interior Committee voted against reporting it out! Although this remarkable change can in part, be explained by the partisan wrangling which proceeded President Nixon's abandonment of the presidency, to leave the analysis there would be to ignore the fact that the contradictory handling of land use legislation summarizes a tradition of American political conflict extending back to King George's decision to restrict colonial settlement within the Proclamation Line of 1763. Jefferson's outrage at his King's refusal "to ...encourage migrations hither," was later echoed by westerners opposed to high public land prices in the 1820s, by their grandsons who fought the reservation of public lands in the 1890s, and by blacks who struggled against exclusionary zoning in the 1970s. Each was resisting a governmentally established inequality in the use of land. It is possible to

distinguish three such phases of conflict in the development of American land regulation.

The Evolution of Land Politics

Between 1785 and 1841 the principal land question facing the nation was how to dispose of the public domain. The idea that there was common agreement to make land available to all citizens easily and cheaply is a myth.[7] Until the election of Andrew Jackson in 1828 the nation was led by men, including Jefferson, who were committed to enhancing the Republic's strength as a sea-based commercial power. Respectability in the international mercantile system was the desired end. Without standing in the maritime world of international political economy independence would be a sham. Central to the rise of the American seaward empire was repayment of the national debt, a major portion of which was held in Europe. As James Madison reminded readers of The Federalist, their new domain was "a mine of vast wealth to the United States (which) must...hereafter be able, under proper management, both to effect a gradual discharge of the domestic debt and to furnish, for a certain period, liberal tributes to the federal treasury."[8] Sale of the public land at above market prices was employed to earn the country international respect. Land development was regulated to subsidize mercantile power. But even after the original function was fulfilled pressure was kept up to maintain the controlled disposition of land. Manufacturers saw it as a means of limiting the flow of scarce labor and capital

west, while more prophetic mercantilist leaders such as President John Quincy Adams envisioned land payments as the financial basis for a national system of internal improvements. For these and other reasons, to be explored in Chapters Two and Three, those who wanted or needed easy access to the public lands had to struggle for it politically. Established public policy favored neither the frontier nor frontier style development. Land disposal was intended to serve a mercantile and later an industrial plan. Mobilization of the public domain split the forces working to build industrial capitalism from those desirous of a small farm or quick real estate profits in the West. But there was a key difference between this and later conflicts over government's role in land. The desire for private ownership ignited general interest in the land question. As Henry George wrote, echoing Frederick Jackson Turner, "This public domain - the vast extent of land yet to be reduced to private possession, the enormous common to which the faces of the energetic were always turned has been the great fact that, since the days when the first settlements began to fringe the atlantic Coast, has formed our national character and colored our national thought."[9]

Years after the victory of speculation and laissez-faire over mercantile planning, the conservationist reaction to unmanaged disposal changed that mass excitement into a diligent respect for executive regulation of the public wealth. Slowly, the old riproaring passion to command a piece of the national treasure was defused, rationalized and

institutionalized. Land experts from the higher echelons of science, business and government insisted upon a new hesitancy in access to the federal lands. It should be conserved, they said, as an industrial storehouse for disposition by experts in resource management. The wide open door on the public domain was replaced by a corporate transom. Access to the land was not denied; it was merely placed on a bureaucratic footing. This favored the industrial user equipped to purchase the technical proficiency now indispensable to the high-level negotiation of access. Westerners habituated to local controls and easy taking of resources objected. Ultimately their influence was brought to bear through the intervention of Congress, the point of access for local political power in Washington's big bureaucracies.

The result of this second stage of struggle in the fate of the public lands was twofold. First, it took the public domain out of the realm of national political debate, centering it in the tighter, less contentious arena of the Department of the Interior and congressional Interior committees representing western land based interests. Second, it established a model for the rationalization of private land use in the city. Not long after the initial successes of conservation, the lessons of organized restriction were imported into the city to relieve the problems of an untidy real estate market, the uncontrolled movement of objectionable industry and the appearance of a repulsive immigrant working class. Zoning was urban conservation. It helped limit entry to cherished sites in the

city to those alone who could afford single family homes or who already possessed valued commercial property. The land needs of the less financially well endowed or those profitting from noxious activities, were satisfied in special reservations or industrial zones where community standards could be relaxed in proportion to available wealth and the dismal character of production. Order was brought to the real estate business by guaranteeing the apportionment of land by class and prestige. It did for the trader in land what mercantile regulation and conservation accomplished for those engaged in industrial accumulation: it minimized risk through the power of public law to keep some people out. In this respect zoning, at least for a time, reconciled the competing interests of big and small business in public regulation of land. Land use was now "orderly" at the bottom as well as at the top of the federal system. In these tendencies, described in Chapter Four, are the roots of the contemporary indifference to the fate of land characteristic of the mass of urban non-landowners. The responsibility for land as the underlying material in the social fabric, as a communal resource whose destruction would make life impossible, has been delegated to its private owners, industrial users, and a small army of government officials whose attention has been dominated by business requirements. Haggling among those forces has determined the substance of that responsibility.

Not until the 1960s did environmental interests begin a serious assault on the economic bias of land use control. They

first made headway in the public domain, enlarging the sphere of protection for wilderness areas. At the local level of private land use, some success was also achieved in alliance with homeowners anxious to protect choice locations from invasion by industry and low-income housing. But the "not here" attitude provoked guilt among environmentalists; hence their eagerness to obtain comprehensive land use planning that would weigh minority housing needs along with regional ecological requirements in a fair and comprehensive manner. In this drive they were joined by corporations who found suburban resistance to large scale industrial and residential construction projects an annoying impediment to the smooth flow of production. The power of local governments, reflecting real estate and homeowning interests, was an unpredictable obstacle to corporate planning. Stacked up against the metropolitan, regional and national scale of development, local public autonomy was irrational. Yet in the United States the city remains the primary public agency regulating access to private land. Chapter Five describes the emerging alliance behind Senator Henry Jackson's formulation of a national land policy. It was an effort to integrate the environmental and large scale capitalist interest in land within the local protectorate of small business and homeownership. He wanted simultaneously to protect fragile landscapes, assure provision of major industrial production sites, and sustain the benefits of private landownership and exchange. Land's function as a commodity would be embellished by service toward other public ends, with the appropriate

balance struck by state land regulators guided by national policy. However, corporate capital made a fast getaway from the large-scale construction and housing business at precisely the moment when its support was essential to prying open the local political economy of land. Without its presence, the political power of local business was no longer balanced by a more general economic interest, that is, a surrogate corporate representation of the public interest in energy, housing, transportation and employment. Along with the land business itself, the politics of local land regulation reverted to its traditional form. Aided by the business cycle, the local political economy of land withstood, at least temporarily, the rationalizing tendencies of capital. Chapters Six, Seven and Eight describe the Nixon administration's response to Jackson, the inexorable politics of Senate passage, and the unexpected torrent of opposition which clobbered land use planning in the House.

Land And Social Power

Each of the successive battles over land regulation was, of course, a battle for power. Indeed, to examine the procedures a society adopts to guide the use of its land and the forces able to control those procedures, is to assemble basic clues to the nature and ends of power in society. And such procedures there must always be. Non-market societies have traditionally recognized as a matter of common sense that land is too precious a resource to trust to individual responsibility. Its ultimate significance as an irreplaceable founda-

tion of existence has been matched by a variety of collective controls. Modern capitalist society could hardly escape this responsibility by its theoretical reduction of land to the status of commodity. As Polanyi forecefully demonstrated in The Great Transformation, "while production could theoretically be organized in this way, the commodity fiction disregarded the fact that leaving the fate of soil and people to the market would be tantamount to annihilating them."[10] Not even the quintessential capitalist society, the United States of America, could afford to abandon its soil completely to the marketplace. Here, as in the most primitive community, land has been mobilized in the production process under the auspices of more or less rigorous social control. Either directly through command of public space and resources or indirectly through regulation of the private domain, government has been drawn ineluctably into power struggles over land. The fact that these have been decided less in favor of the land itself than at the behest of powerful social groups is a central point of this study. Yet this should not cloud the fact that such controls did perform an essential social function by restricting the unbridled destruction of the nation's soil. Regulated development of public resources by a few corporations may be unfair but it is preferable to totally unchecked exploitation by all.[11] For these reasons the history of land policy contains a storehouse of business-government interactions in the planning of development. Hence it provides an excellent chance to trace the blending of private power and public authority in

the changing politics of U.S. development.

Analysis of the history of political conflict over land suggests not only changes in the social functions which control served, but more basically, changes in the state's relation to conflicts within an emerging capitalist economy and the ideologies used to explain those relations. This study, therefore, represents an attempt to use the analysis of one key policy area as a path to understand better the changing structural relations of economic and governmental power in the process of U. S. development. Tracing the shifts from mercantilist to laissez faire to technocratic policies for guiding access to land shows how a host of economic powers were brought to bear on public policy. But it also indicates how government itself has shaped the forces of capitalist expansion by attempting to moderate conflicts within business while simultaneously striving to cope with social needs for food, transportation, housing, industrial location, jobs, and many other values. Finally, it portrays how changing patterns of social and economic power influenced changes in American concepts of law and government. New forms of legal power over land required legitimations to explain government action in a sphere traditionally associated with the most fundamental of capitalist property rights: private ownership of land. To examine these ideological and institutional shifts is to gain a deeper appreciation for the fluctuating status of government as it responded to persisting tensions within

the political economy. None of these issues however, can be explored intelligently outside of an explicit framework of analysis. In this study the building blocks, of that framework include the concepts of power, capitalism ,competitive business and federalism.

Power expresses the need every society has to assure order and the performance of essential tasks by fostering a system of controls. Its locus is not in material resources or uniquely favored individuals, but as Robert Bierstadt has written, "in the community itself," in the persisting structure of social relations.[12] It is, as Robert Lynd adds, both a "resource" inasmuch as it enlarges the capacity for social action, and a "problem" when the controls are wielded by a few at the expense of the many, or when the majority suppresses an eccentric few.[13] Unfortunately, human history reveals the problem of elite domination more clearly than it does the potential effectiveness of power as a democratic resource. Nevertheless, in Bierstadt's words, "majorities constitute a residual locus of power."[14] Stated in such general terms, the concept is only suggestive. It must be applied directly to the structure of particular communities and societies and their unique web of controls.

America has always been preoccupied with business. Social dynamism and the measures of reputability and success have come mainly from economic activity. The other spheres of social and public life have had to conform to a businesslike way of doing things. This is not true for all societies at all times, nor

must it continue to hold for America in the future, but it is unmistakeably true for our history up to now.[15] The dominance of the economy in American life is not realized abstractly. Through their command of the industrial system, a relative handful of corporate managers have come to hold a prevailing influence in the life of society. Until the late nineteenth century this influence was shackled by the marketplace, or at least more evenly shared among the class of property owners. Concentration of the means of industrial production in a few corporate hands has largely, though not completely, obviated that check.[16] The automakers for example, give an occasional rebate. In general though, the result has been for social power, reflected through the predominance of the economy, to become increasingly unbalanced in favor of the owners and managers of the top corporations. Whether one chooses to draw the cutoff at the 200th, 500th or even 1000th largest firm would not appreciably change the underlying reality that most Americans are dependent on private corporate policies for their necessary goods and services and the income to purchase them. Public dependence on the industrial system is both the foundation and creature of corporate influence in society.[17]

Dependence and power are never completely one-sided. Masters may become slaves of their slaves. The focus of this study for example is a sphere where corporate dominance has been felt somewhat less than in other branches of the political economy. In the land business, smaller competitive enterprises have largely held sway. But there are non-economic power

sources as well. Outcrops of what might be called pluralist resistance can occupy big corporations with embarrassing, time consuming and expensive political troubles taking a variety of forms including court suits, media exposes, administrative regulations, strikes, consumer boycotts and of course, the passage of restrictive laws.[18] Among the most important themes of this study is the need for a realistic assessment of the oligrachic power implications of America as a capitalist society, but one whose fragmented political order, assortment of non-business interest groups, and politically influential competitive sector can still bend, warp and resist the expansive logic of corporate capitalism. Because the distinctions between mature capitalism and competitive business are so basic to this study, it is essential to explore them with more care.

Capitalism refers to a social organization of the economy in which the pursuit of ever increasing accumulation and production of wealth tends to subordinate the other human activities to its requirements. Its prerequisites have been private ownership and control of the means of production, the appearance of a propertyless working class ready to sell its labor power on the market to those who possess the industrial apparatus, and sufficient arable land to support the high level of agricultural production essential to financing industrialization.[19] For purposes of this study, however, the most important feature of capitalism is its tendency to subject the production process to ever more intensive organization and administration and to extend the principle of economic

rationality over ever wider spheres.[20] It is no accident that the first theorist to analyze the theoretical underpinnings of capitalist production saw its organizing assumption in the expanding division of labor. "It is the great multiplication of the productions of all the different arts," said Adam Smith, "in consequence of the division of labor, which occasions, in a well-governed society, that universal opulence which extends itself to the lowest ranks of the people."[21] Marx too observed, even within what he defined as the general anarchy of capitalist production, a tendency toward "the conscious application of science, instead of rule of thumb."[22] This was reflected directly by the increasing scale of production, or concentration of capital, and indirectly through the gobbling up of small enterprises by bigger ones, the centralization of capital. In these processes Marx saw the technical and social outlines of a rational production system whose fulfillment required only the revolutionary appropriation of the State and industrial apparatus by the working class.[23] For Max Weber, revolution was unnecessary. In its daily workings capitalism already expressed the height of logical, ordered, rational action on a continuously enlarging scale. Businesslike management through large scale organization allowed the firm to produce goods and profits "precisely, unambiguously, continuously, and with as much speed as possible."[24] Stimulating the overall rationalization of society, said Weber, was the advancing bureaucratization of the State, whose main function was to eliminate unpredictable obstacles from the path of the production

system. Thus he detected within the growth of centralized public administration a "legal leveling and destruction of firmly established local structures ruled by notables" which in turn permitted "a wider range of capitalist activity."[25]

Following Weber, and capitalism own powerful survival, most of its analysts have been absorbed by the industrial rationality which spreads forth wherever capitalist operations are implanted. In turn, there has been a notable de-emphasis on the political and economic significance of capitalists as a class. Veblen was a last brilliant exception to the emerging trend. While he anticipated the rule of engineers in an evolving industrial system founded on the "moving equilibrium of interlocking processes," he consistently mocked its selfish manipulation by businessmen ready to "sabotage" production at the drop of a profit.[26]

Since Veblen though, the technical and managerial component of capitalism has nearly monopolized academic interest. Berle and Means, Schumpeter, Burnham and Galbraith have in different formats, shared the common diagnosis of the capitalists' subordination to the expansive, indefatigable rationality of engineers.[27] Berle's Twentieth Century Capitalist Revolution was Burnham's Managerial Revolution. Recently Daniel Bell extended the analysis of technical power into a vision of post industrial rationality, in which there is not only a deeper hold of knowledge on the levers of power, "but a change in the character of knowledge itself."[28] Modern society he suggests, will be increasingly dependent on "the

new centrality of theoretical knowledge, the primacy of theory over empiricism, and the codification of knowledge into abstract systems of symbols that can be translated into many different and varied circumstances."[29] The rational force of the productive process is now abstracted into a symbolic form which can be implemented anywhere men write and think. Productive expansion becomes the expansion of mind which, through the manipulation of images instead of resources, is infinite. Before the trend is realized however, Bell, like Veblen is forced to admit that "Corporate power, clearly, is the predominant power in the society."[30]

Students of international corporate activity view the expansionist logic taking a political turn. Robert Engler has described the multinational "private government" in oil, while Barnett and Mueller see the international corporations in possession of "the organization, technology, money and ideology to make a credible try at managing the world as an integrated unit."[31] If one counts corporate participation in man's venture to the moon Adam Smith's "multiplication of production" has truly become a celestial phenomenon!

For all these writers, modern capitalism is an enormously expansive mode of production whose dynamic principle is to bring everything it touches under rational control as a field of predictable profitmaking. The result, despite the protestations of the Nobel Prize winners Hayek and Friedman,[32] is that capitalism has woven itself into the fabric of politics at all levels, from managing world oil supplies amidst

international conflict to the latest effort at influencing a local zoning official to clear the ground for construction of a new plant. Still, the systematic analysis of the relation between politics and capitalism has only recently begun to receive serious attention. In connection with the U. S. case, historians have produced a wealth of material illustrating the important contribution of public policy and resources to the growth of U.S. business.[33] But efforts to place this material in a theoretical perspective have been fragmentary. Usually they have taken the form of case studies in the dynamics of interest group politics.[34]

An early, comprehensive, but not very enlightening effort was Fainsod, Gordon and Palamountain's Government and the American Economy. They suggested that while in "every generation, diverse economic groups have sought in greater or less degree, to utilize...government" for their own economic ends the more intensive and systematic relations of business and government in the twentieth century, are in "large measure a product of industrialization."[35] This, however, has not produced a major alteration in the original constitutional system based on limited and decentralized powers. Instead these relationships have been eleborated as a "mixed economy" which, though still dominated by private enterprise, enables "Business, labor, agriculture and government (to)...divide and share responsibility for making the important economic choices." The competitive marketplace is supplemented by a pluralistic governmental apparatus within which all cooperare "to achieve

fruitful working relationships among the various economic interests."[36]

Where Fainsod, et al, incorporate the "mixed economy" into the prevailing framework of the governmental process run along traditional lines, other writers have suggested more subtle and basic changes in the structure and operation of the national government. They see an integrated political economy subordinated to the large scale production schemes of modern corporate capitalism. Gabriel Kolko, for example, redefines Weber's concept of "political capitalism" to include not only state activity aimed at smoothing the legal obstacles to corporate enterprise but also efforts to organize the economy as a whole, specific sectors within it, and the "larger social spheres in a manner that will allow corporations to function in a predictable and secure environment permitting reasonable profits over the long run."[37] This has involved new patterns of interaction and decision in government bureaucracies largely sealed off from the currents of mass participation.[38] The constitutional division of powers, C. Wright Mills insisted, is replaced by a horizontal division in which the higher reaches of the national bureaucracy come under the grip of corporate and military needs, leaving Congress and the lower rungs of the federal system to serve middle and small business, agriculture and organized middle class and working class interests.[39] Through direct analysis of the distributive implications of national economic policies Edward Greenberg reaches similar conclusions.[40] For these writers and others such as

Sweezy and Braverman, the relations of business and government have come to be organized in the social service of large capitalist enterprises at the expense of competitive business and political democracy.[41] None of these writers however, believe the federal arrangement of political powers offers meaningful leverage to the dominance of corporate capitalism. Nor do they place stock in the view that managers represent a new class interest in capitalist production. The new, better educated private salesmen, must, if they are to continue in the employ of the corporation "use their power in the interest of maximizing profits."[42]

Perhaps the most sophisticated try at advancing a critical theory of the political structure framing corporate capitalism is James O'Connor's The Fiscal Crisis of The State.[43] For purposes of the present study its main contribution is to re-identify what Weber earlier noted as capitalism's tendency to subordinate local political units within the larger bureaucratic state. However, unlike some orthodox Marxist scholars, such as Paul Baran, who easily dismiss competitive business as "riding obediently on the coattails of the 'economic royalists'" in the big corporations[44], O'Connor sees small business as tending toward subordination by big capital, but still in possession of political power to resist the rationalizing thrust of the integrated capitalist state.[45] Through their representation in the political parties, local and state government and in Congress, competitive forces in agriculture, construction real estate, retailing and other fields are able to impede and

forestall the centralization of public authority to harmonize with the present realities of regional and national political economy. For these interests, federalism provides a defense against Kolko's mature "political capitalism."

The concept of "small business" or "competitive capital" deserves more careful consideration because it is central to the present study. Its intellectual roots go back to the ancient republican celebration of the yeoman farmer, that hard-headed combination of civic, moral and industrial virtue who serves, in writers from Aristotle to Jefferson, as the essential balance between the excesses of the rich and the potentially destructive anxiety of the poor.[46] In the medieval period, many of these virtues were urbanized, taking shape in the craftsmen, the "masterless men," as Veblen called them, "who drew together" in towns "to seek a livelihood by the work of their hands" and without formal dependence on the absentee rights and powers of those who owned the material world in the latter days of feudalism.[47] Marx integrated features of both in his model of "petty industry" or "simple commodity production." Its essence, he said, was private property of the laborer in his means of production "whether agricultural, manufacturing or both." This, he argued, not only supported a core of technical skills upon which capitalist production later builds, but also was the "condition for the...free individuality of the laborer himself." This "petty mode of production", he added, has relatives under a variety of social forms, including slavery and serfdom, but

> ...it flourishes, it lets loose its whole energy, it attains its adequate classical form, only where the laborer is the private owner of his own means of labor set in action by himself: the peasant of the land which he cultivates, the artisan of the tool which he handles as a virtuoso. This mode of production presupposed parcelling of the soil and scattering of the other means of production.[48]

Although Marx hesitates to emphasize the attitude of these "petty producers" toward profitmaking, as regards the American case at least, Veblen was completely unambiguous. Here the early farmers, manufacturers, tradesmen and merchants were skilled not only in labor, but in the practice of skimming the risk off business. For Veblen, the American farmer epitomized the petty entrepreneur. He was the zealous architect of "the American plan," the prime mover behind that "reasoned plan of legalized seizure" wherein the nation's publicly held resources, whose value was stamped by the needs and workmanship of society as a whole, were progressively "taken over into private ownership."[49]

The "spirit of self help and cupidity" which motivated America's petty producers superficially allied them with the big businessmen. But in their need, and in no small measure their eagerness, to beat the risk of speculation and competition they set themselves apart from the orderly, disciplined, and rational sobriety of the corporate manager. In this sense, Veblen's analysis suggests, their social outlook no less than their pool of wealth, separates petty entrepreneurs from the mature businessmen who shun risk. James O'Connor points out that small or "competitive capital" may be objectively distinguished from what he calls the "monopoly" and "state

sectors of the larger political economy by dependence on labor intensive, low efficiency, small scale production operating in local or regional markets, subject to seasonal or other sudden changes in demand.[50] In particular their reliance on low ratios of capital to labor exposes these fields to unmanageable competition or "overcrowding" due to the ease of attracting low-cost labor. A continuous stream of political rewards such as contracts, or a protective legal environment such as that afforded by zoning, can be extremely important to the economic survival of competitive capital. In this respect, Veblen was wrong in underestimating the capacity of small businessmen to take advantage of "collusive mass action" through politics.[51] Consider President Richard Nixon's account of his ex-Vice President's defense:

> What he was talking about was being innocent of bribery. He said that for years contractors who did business with the State of Maryland contributed to expenses that the Governor or the county official ...might have. That was common practice. 52

Sharp practice Veblen would say. Nevertheless it is an example of the kind of decentralized economic insurance local politicians "sell" to small business in exchange for campaign contributions, and other kinds of legal, quasi-legal and illegal political support. In this way federalism props up the competitive sector just the way big contracts, cheap access to public resources, loans, subsidies and legitimacy are transferred from the national government to the corporate sector. Thus several political scientists have shown how, in Grant McConnell's words, federalism "has served to maintain and enhance a variety

of systems of private power in the nation," not all of which, by the way, are either competitive or small.[53] The list would include, beside the real estate industry, medicine, the funeral industry, petroleum, mining, timber, insurance and others. State, county and municipal licensing and regulation can of course be the best protector against "cut-throat" competition.

Conversely, federalism is inconsistent with the expansive sphere of capitalist rationality. As O'Connor puts it, echoing Weber, "the development of capitalism requires the constant widening of administrative units," and the leveling of autonomous local structures.[54] Federalism's orientation is towards a narrowing and localizing of political power. At bottom, a federal system is one in which there is a division of powers between constituent and central units of authority. Modern students of American federalism emphasize that the division is far from clear and distinct. It is, in Grodzin's famous expression, a "marble cake" of overlapping functions and shared powers.[55] As William Riker explains, the guiding principle of federalism rests on the desire of both governments to "rule over the same territory and people."[56] This is confusing for corporate forces which prefer to limit the number of public authorities with whom they must negotiate.[57] But it also provides a multiplicity of local niches in government whose shared controls over key public decisions can bolster the tenuous position of competitive business in an otherwise concentrated political economy.

The effect of replacing local administration of land

development and its accompanying narrow frame of conflict with the broader scope of state pr even national planning is neither inherently good or bad nor neutral either. In E. E. Schattschneider's words,

> Whether a large conflict is better than a small conflict depends on what the conflict is about and what people want to accomplish. A change of scope makes possible a new pattern of competition, a new balance of forces and a new result, but it also makes impossible a lot of other things. 58

One of the things made exceedingly difficult, if not "impossible" by the historic scope of land use politics was representation of the non-business interest in land, that is, the social control of soil and space to achieve a democratically established balance of industry, housing agriculture, wilderness and the other human needs which land serves. Although control of land is the central lever in the planning of community life, in a society still deeply committed to market, or more accurately, corporate choices in the expenditure of national resources, it would be too much to expect comprehensive state land use planning to accomplish more than a representation of non-local, non-business interests in land. Jackson, after all, wanted only to smooth over, not abolish the underlying conflict between centralizing capitalism and the local protectorate of small business. Given our history, it would have been a useful step. Yet the entrenchment of the existing scope of conflict is reinforced by the fact that without political help from corporate capital the bill was decimated by competitive business forces. It was a reminder

that environmental protection locally often depends upon its usefulness in justifying economic and social values. Still, there is much to be learned from examining this bill that did not become a law, especially about the historical roots of contemporary policy options. It remains true that we must study history if only to rid ourselves of its most distasteful products. This suggests a final point concerning the method of analysis employed here.

History and Public Policy Analysis

In trying to understand the politics of land use planning legislation, the effort has been made to go beyond the overworked debate between pluralist and elite theories of American public policy to see if a more realistically balanced analysis could be achieved. The historical method employed here is an illustration of the fact that while legislative decisions are typically made under conditions which the pluralist model describes with great success, their significance can be stated adequately only where the historical and structural framework is made explicit. Of course, most studies of public policy by American political scientists recognize that complex historical, social and political relationships underlie the presentation of major legislative initiatives. Usually these are referred to or sketched in but not explored in detail since this would get in the way of treating the specific proposals at hand and the particular institutional and group forces which placed it on the agenda. This assumes that knowledge of the immediate political environment and the short term legislative process

will itself reveal how these phenomena are linked back to the larger society and its workings, conflicts, needs and direction. But this is not possible without studying the historic evolution of the problem, its relation to the social structure and to the earlier conflicts and forces which established the present conditions, "the factors that made the facts."[59] Mankind, wrote Marx, "always sets itself only such problems as it can solve."[60] This capacity for problem solving is limited not only by the technical means available to society, but by the structure of society itself, by its power arrangements, institutions and ideology as these have developed historically. Unless these factors are taken seriously, the student is not in a position to distinguish the truly unique features or undercurrents of basic social change from the ripples of older persisting tensions and strains. Comparative historical analysis should be included in the arsenal of political science techniques. C. Wright Mills' discussion of the "Uses of History" includes this important notice:

> We need the variety provided by history in order even to ask sociological questions properly, much less to answer them. The answers we would offer are often, if not usually stated in terms of comparisons. Comparisons are required in order to understand what may be the essential conditions of whatever we are trying to understand. [61] (emphasis added)

It is the central point of this study that the "essential conditions" of the politics of land regulation in the United States have been shaped by a recurring pattern of group conflict set squarely against the backdrop of a more enduring structural antagonism. The large scale appropriation of

wealth characteristic of modern capitalism has been opposed by the local protectorate of small business. In Chapters Two and Three the origins of this pattern are presented as a case study in the early debate over a national growth policy. Chapter Four explains the turn of the century bureaucratization of land use politics which established the confusing system of land controls prevailing today and which in turn provides the setting for discussion of national land use policy in the 1960s. In Chapters Five and Six the immediate setting for the legislative debate and the basic proposals themselves are explained. The bill's uneven progress through the Senate and House are portrayed in Chapters Seven and Eight. The Conclusion presents an attempt to restate the basic themes as well as an effort to anticipate directions for democratic planning, those I desire as well as those more likely to be fulfilled.

Notes to Chapter One - Introduction

[1]U.S., Congress, House, Committee on Interior and Insular Affairs, Land Use Planning, Hearings before the Subcommittee on the Environment on H.R. 10294, 93d Cong., 2d sess., 1974, p. 62.

[2]Robert Engler, The Politics of Oil (Chicago: University of Chicago Press, Phoenix Books, 1961), p. 80. The Georgia-Pacific ad appeared in Business Week, 17 March 1975, p. 5. International Paper's ad may be found in Foreign Affairs 54 (October 1975): A-21.

[3]Thorstein Veblen, Absentee Ownership, with an introduction by Robert Lekachman (Boston: Beacon, 1967), p. 143.

[4]The statement was made by Gerhardt Schulle, chief lobbyist for the Texas Association of Realtors. See Rod Davis, "The session's worst lobby," The Texas Observer, 17 June 1977, p. 21.

[5]In an interview upon taking office as Secretary of Interior in the Carter administration, Cecil D. Andrus pointed out the basic stream of public land policy as it developed in the twentieth century: "The policy has been for the grazing interests to have a chunk here, for coal to have another chunk; lumber, mining, all with their own part of the department.... This place was like a centipede with each little pair of legs scuttling off in its own direction. That's going to change now." That remains to be seen. See "Interior Chief is Planning to End Influence of the Special Interests," New York Times, 4 February 1977, p. A8; cf. Engler, The Politics of Oil, passim., and infra., chaps. 4-5. For an uncritical analysis of the subject see Marion Clawson and Burnell Held. The Federal Lands, Their Use and Management (Baltimore: Johns Hopkins University Press, 1957).

[6]"Ryan Homes: Stellar Performer In The Housing Slump," Business Week, 25 August 1975, p. 50. Small and middle farmers are no less committed to local operations and local control. They did not therefore, respond graciously to the proposal of several major financial companies for establishment of "an Agricultural Land Fund under which pension funds and tax-exempt institutions could buy farms." This, the bankers argue, would allow farmers to gain long-term leases to their land without having to worry about being forced off the land by agribusiness or urbanization. Sophisticated financial judgement now warns small business of the need to abandon atavistic notions of ownership in favor of the power to use resources. According to Charles R. Hall, executive Vice President of Continental Illinois National Bank and Trust Company, "If this country is going to try to hold to the earlier mode in which ownership is revered above entrepreneurship, then the family farm as we know it is indeed an endangered species." According to the National

Farmers Organization however, "Extensive absentee ownership of land by corporate landlords would be inherently destructive" of small scale agriculture and rural community. Actually this is less a battle over competing notions of property than over competing interests in controlling the fast inflating exchange value of land as a commodity. Long term leases are assets after all, which upon completion may be "liquified." Thus the interest of banks in preserving "the family farm" did not extend to mentioning a public land fund as a modest alternative to "absentee corporate ownership." See "Fund Investing in Farm Lands Termed An Aid," New York Times 4 February 1977. For a variety of public land reform proposals, including a National Land Reform Act, see Peter Barnes, ed., The People's Land, A Reader on Land Reform in the United States (Erasmus, Pa.: Rodale Press Book Division, 1975), esp. Part VII.

[7]Yet it is an assumption students of conservation are prone to accept. Samuel Hays, who has written perhaps the best political analysis we have of the conservation movement, Conservation and the Gospel of Efficiency (New York: Atheneum, 1969) writes that Congress' intention in writing the original public land laws was "to promote rapid disposal to private individuals rather than to aid in systematic development." (p. 67). Similarly, Frank Graham argues in Man's Dominion, The Story of Conservation in America (New York: M. Evans, 1971), that the "federal government's reaction to finding itself a huge landowner was to try to divest itself of its holdings as quickly as possible." (p. 69). Why then did it choose to sell land in large lots?

[8]Alexander Hamilton, James Madison and John Jay, The Federalist Papers, with an introduction by Clinton Rossiter (New York: New American Library, Mentor Books, 1961), p. 239.

[9]Henry George, Progress and Poverty (New York: Robert Schalkenbach Foundation, 1971), p. 389. Frederick Jackson Turner, The Frontier In American History with a Forward by Ray Allen Billington (New York: Holt, Rinehart & Winston, 1962).

[10]Karl Polanyi, The Great Transformation with an introduction by R. M. MacIver (Boston: Beacon Press, 1957), p. 131.

[11]Ibid., p. 184. Land controls in America were never as effective as they could or should have been. In 1928 for example, Hugh Bennett and W. R. Chapline of the Department of Agriculture reported that no less than "15,000,000 acres" of land had been "utterly destroyed" by prevailing land practices. George McGovern, ed. Agricultural Thought in the Twentieth Century (Indianapolis: Bobbs-Merrill, 1967), p. 153. Also see Raymond F. Dasmann, The Destruction of California (New York: Collier Books, 1966) and K. William Kapp, The Social Costs of Business Enterprise, 2d ed. (New York: Asia Publishing House, 1963), esp. pp. 143-148.

[12]Robert Bierstadt, "An Analysis of Social Power," in Lewis A. Coser and Bernard Rosenberg, Sociological Theory: A Book of Readings, 3d ed. (London: The MacMillan Co., 1969), p. 162.

[13]Robert Lynd, "Power in American Society as Resource and Problem," in Arthur Kornhauser, ed. Problems of Power in American Democracy (Michigan: Wayne State University Press, 1957).

[14]Bierstadt, "An Analysis of Social Power," p. 163.

[15]See Robert Heilbroner, The Limits of American Capitalism (New York: Harper & Row, Torchbooks, 1966).

[16]The best study of prevailing trends is John Blair, Economic Concentration (New York: Harcourt Brace Jovanovich, 1972).

[17]Cf. Harry Braverman, Labor and Monopoly Capital with a Forward by Paul M. Sweezy (New York: Monthly Review Press, 1974), esp. chap. 13.

[18]See for example, "Government Intervention," Business Week, 4 April 1977 and "The Chilling Impact of Litigation," Business Week, 6 June 1977. Both articles register long, detailed complaints about the costs, both in time and money, of public interferences with the business system. Dow Chemical U.S.A. typifies the corporate dissatisfaction with a tide of law aimed not at fueling expansion or even competition, but at a range of "values it had not previously factored into its decisions". Thus Dow estimates that regulation costs it $147 million annually, of which more than one-third it believes "'excessive' by the standards of good business practice." Such practice should presumably not be expected to assure "equal employment opportunities...environmental protection (or) new safety rules for products and working conditions." The quotations are from the April 4, 1977 article, pp. 47-48.

[19]The final element is especially well explained by Harrison Brown in The Challenge of Man's Future (New York: Viking Press, 1954, 1956), esp. pp. 52-53.

[20]See From Max Weber ed. Hans Gerth and C. Wright Mills (New York: Oxford University Press, 1946, 1958) and Karl Mannheim, Man and Society in an Age of Reconstruction (London: Routledge and Kegan Paul, 1940), esp. chaps V-VI.

[21]Adam Smith, An Inquiry into the Wealth of Nations, 2 volumes, with an introduction by M. Blaug (Homewood, Ill: Richard D. Irwin, 1963), 1:9.

[22]Karl Marx, Capital, 3 volumes, trans. Samuel Moore and Edward Aveling, ed. Frederick Engels (New York: International Publishers), 1:767.

[23]See Paul M. Sweezy, The Theory of Capitalist Development (New York: Monthly Review Press, 1942, 1968).

[24]From Max Weber, p. 215.

[25]Ibid., p. 231.

[26]Veblen, Absentee Ownership.

[27]Adolph Berle and Gardner Means, The Modern Corporation and Private Property, rev. ed. (New York: Harcourt Brace and World, 1968); Joseph Schumpeter, Capitalism, Socialism and Democracy, 3d ed. (New York: Harper and Row, Torchbooks, 1950, 1962), esp. chaps. XI-XII; James Burnham, The Managerial Revolution (Bloomington: Indiana University Press, 1962, 1960); John Kenneth Galbraith, The New Industrial State (Boston: Houghton Mifflin Co., Sentry edition, 1967).

[28]Daniel Bell, The Coming of Post-Industrial Society (New York: Basic Books, 1973), pp. 343-344. Also see Adolph Berle, The Twentieth Century Capitalist Revolution (New York: Harcourt, Brace, 1954); and Power Without Property (New York: Harcourt, Brace, 1959).

[29]Bell, Post-Industrial Society, pp. 343-344.

[30]Ibid., p. 270.

[31]Engler, The Politics of Oil; Richard J. Barnett and Ronald E. Muller, Global Reach (New York: Simon & Schuster, 1974).

[32]Milton Friedman, Capitalism and Freedom (Chicago: University of Chicago Press, Phoenix Books, 1962); Friedrich A. Hayek, The Road to Serfdom (Chicago: University of Chicago Press, Phoenix Books, 1944).

[33]Louis Hartz, Economic Policy and Democratic Thought: Pennsylvania, 1776-1860, with a forward by Benjamin F. Wright (Cambridge: Harvard University Press, 1948); Louis Hacker, The Triumph of American Capitalism (New York: Simon and Schuster, 1940); Thomas C. Cochran and William Miller, The Age of Enterprise, rev. ed. (New York: Harper & Row, Torchbooks, 1961); Harold U. Faulkner, The Decline of Laissez-Faire, 1897-1917 (New York: Harper & Row, Torchbooks, 1951).

[34]Examples of the best of this literature are David Truman, The Governmental Process (New York: Knopf, 1951, 1962) and Ray A. Bauer, Ithiel De Sola Pool, Lewis Anthony Dexter, American Business and Public Policy, 2d ed. (Chicago: Aldine-Atherton, 1963, 1972).

[35]Merle Fainsod, Lincoln Gordon and Joseph C. Palamountain, Jr., Government and the American Economy, 3d ed. (New York: W. W. Norton, 1959), pp. 4, 915.

[36]Ibid., p. 924.

[37]Gabriel Kolko, The Triumph of Conservatism (Chicago: Quadrangle Paperbacks, 1967), p. 37.

[38]Hays, Conservation and the Gospel of Efficiency, esp. preface to the Atheneum edition.

[39]C. Wright Mills, The Power Elite (New York: Oxford University Press, Galaxy Books, 1956).

[40]Edward S. Greenberg, Serving The Few (New York: John Wiley and Sons, 1974).

[41]See Sweezy, Theory of Capitalist Development; Braverman, Labor and Monopoly Capital.

[42]C. Wright Mills, White Collar (New York: Oxford University Press, 1951), p. 103.

[43]James O'Connor, The Fiscal Crisis of the State (New York: St. Martin's Press, 1974).

[44]Paul Baran, The Political Economy of Growth (New York: Monthly Review Press, 1957), p. 94.

[45]O'Connor, The Fiscal Crisis of the State, p. 89. He writes, "Because of growing regional and national ecnomic integration, the development of regional economic units with distinct social and economic problems (e.g., transportation, education, land use, health, etc.), and increasing economic concentration and centralization, monopoly capital requires more top down administration and budgetary planning, especially around regional needs. But because of the persistence of small business control of state and local governments, the proliferation of special districts and authorities, and the general fragmentation of local political and budgetary power (together with the regressive character of local tax systems), the struggle for centralized political administration and fiscal planning has been a protracted one).

[46]See chapter 2, note 101 for expressions of this view in American social thought.

[47]Veblen, Absentee Ownership, p. 46. Cf. Lewis Mumford, The City in History (New York: Harcourt Brace and World, Harbinger Books ,1961). Mumford notes that to be a "masterless man" in medieval days was to commit the most fundamental sort of rebellion:

> The unattached individual during the Middle Ages was one condemned to death. To exist one had to belong to an association - a household, manor, monastery or guild. (p. 269.)

[48]Marx, Capital, 1:761.

[49]Veblen, Absentee Ownership, pp. 122-123.

[50]O'Connor, The Fiscal Crisis of the State, p. 13 passim,

[51]Veblen, Absentee Ownership, p. 134.

[52]"Excerpts From Nixon Interview on Agnew, Chile and His Decision to Resign," New York Times, 26 May 1977, p. 40.

[53]Grant McConnell, Private Power and American Democracy (New York: Knopf, Vintage Books, 1967), p. 166; Henry Kariel, The Decline of American Pluralism (Stanford: Stanford University Press, 1961).

[54]O'Connor, The Fiscal Crisis of the State, p. 137.

[55]See Morton Grodzins, The American System, ed. Daniel J. Elazar (Chicago: Rand McNally, 1966); William Riker, Federalism (Boston: Little Brown, 1964).

[56]Riker, Federalism, p. 5.

[57]See infra., Chapter 5, pp. 162-190.

[58]E. E. Schattschneider, The Semi-Sovereign People (New York: Holt, Rinehart & Winston, 1960), pp. 17-18.

[59]Herbert Marcuse, One Dimensional Man (Boston: Beacon Press, 1964), p. 99.

[60]Karl Marx, "The Eighteenth Brumaire of Louis Bonaparte" in Karl Marx and Frederick Engels, Selected Works in One Volume (New York: International Publishers, 1970).

[61]C. Wright Mills, The Sociological Imagination (New York: Oxford University Press, 1959), pp. 146-147.

Part One

"On the one hand, property ought not to be owned in common, as some writers have maintained - though it ought to be used in common and as friends treat their belongings. On the other hand, none of the citizens should go in need of subsistence... We may accordingly suggest that the territory of our state should be divided into two parts, one of which will be public property, while the other will belong to private owners."

Aristotle, The Politics
Book 7, Chapter 10

CHAPTER TWO

THE MERCANTILE ROOTS OF AMERICAN LAND PLANNING

The Political Economy of Mercantilism

The rise of the American political order was profoundly shaped by the colonial experience with British mercantilism.[1] It infused the post-revolutionary perspective towards the international environment, sensitizing American leaders to the aggressive and acquisitive spirit of Europe's great powers. British mercantilism was felt also in the structure of American society and in the condition of her economy. The overemphasis on plantation capitalism in the South and the underdevelopment of industry elsewhere were reminders of a long dependence on British power. The imbalance of American development and the nation's weak international position were major factors behind the drive for creation of a public domain to serve as a source of government revenues and the base for a controlled pattern of settlement. Thus the framework for the country's first land policy was distinctively national. It was conceived as part of a larger process of national unification and political centralization. In this respect the early land policy of the United States revealed the typically mercantilist concern for the strengthening of centralized political power as the main criterion in determining questions of economic development. It is the central argument of this chapter that the requirements of this

mercantilist land policy precluded the liberal distribution of land to the propertyless. Where such citizens could not meet the government's comparatively high price, the standing policy was to keep them out of the public domain. Equal access to benefits of public wealth was denied in the name of accelerating the repayment of the national debt and reinforcing the power of the national government. This chapter will explore the conflicts surrounding the mercantile use of the public domain. It will provide a working definition of mercantilism, a brief review of British land practices in the colonies and finally, a discussion of the conflicts which stemmed from unequal access to the public domain.

Mercantilism is not a systematic theory of political economy. Nor is it a potent ideology woven of easily identifiable symbols and persuasive arguments. It lacks the distinguished parentage of a Karl Marx or an Adam Smith. It is, rather, as Eli F. Hecksher suggests, "an instrumental concept which, if aptly chosen, should enable us to understand a particular historical period more clearly than we otherwise might."[2] Following Hecksher, this study identifies mercantilism with "a phase in the history of economic policy," that is, not with regulation of economic activity per se, but with a specific stage in the historical development of such regulation.[3] The category of mercantilism refers to the national regulation of economic activity in support of the unification and centralization of the state's power over a particular

territory. Flowering in the early modern period under the direction of centralizing monarchs, especially in England and France, mercantilist policies paralleled the royal monopolization of the means of violence, a process which Max Weber defined as the main historic anchor of the modern state. "In the end," wrote Weber, "the modern state controls the total means of political organization, which actually come together under a single head....Everywhere the development of the modern state is initiated through the action of the prince."[4] Thus the early princes of Europe attacked the local structure of medieval politics and economics, aiming in William Cunningham's words, at "the conscious subordination of civic to national development."[5] Municipal taxes, tolls, labor and production regulations, currency, standards for weights and measures, and the standards of justice itself were all projected onto a national basis under the administrative supervision of increasingly centralized bureaucracies.

More was at stake however than the technical rationalization of state power. Particularly in France under the personal reign of Louis XIV mercantilist policies came to symbolize the supremacy of royal authority as the personification of the state itself: "L'etat c'est moi." As Lionel Rothkrug explains in his useful study of opposition to Louis XIV, even so arcane a matter as the collection of national economic data "reflected above all a growing tendency to idealize the state."[6] He quotes the author of one report who prefaced his statistics

with the proclamation:

> Here Sire is all I have to say concerning the census...it alone can disclose what you can and ought to do with this rich and populous kingdom which God has put in your hands as a perfect instrument of power and of glory.[7]

Such idealization of the state did not proceed as far in other settings, but in England, Holland, Spain, Portugal and even the German states there appeared, more or less strongly depending on particular circumstances and conditions, the same drive to spread the authority of the central political apparatus across a politically and economically fragmented landscape, to make "national political institutions...effective in the whole community."[8] This process both required and reinforced the power of centralized states and absolute monarchies. But mercantilism persisted even where monarchy was weak or nonexistent. In England for example, the national system of regulation and protection was not eliminated after the Civil War. It merely assumed the form which William Cunningham labeled "Parliamentary Colbertism," national economic regulation under the mandate of the legislature, not the King.[9] Similar tendencies appeared in the United States in the period between the ratification of the Constitution and the 1840s. Indeed the American Constitution itself epitomized the unifying, nationalizing, and in no small measure, centralizing spirit of mercantilism. And no less a symbol of the national power and wealth than the public domain was created despite the separate claims of the states.

Whether it appeared in royal or parliamentary form, or in some mixture of the two, mercantilist policy was distinguished by its national regulatory focus and its usefulness in enlarging the central government's power. In monarchies this approach was justified by comparing the state to a family. The King was portrayed as a wise and benevolent father who governed in the interest of the family as a whole. From his position at the center of the nation he could balance harmoniously the functions and obligations of the different social orders: merchants, manufacturers, laborers, farmers, and government officials. Competing interests would be adjusted by the King and his ministers according to their substantive view of what was good for the whole. There would be a national administration of social order guided by the needs of the unified state. An early English mercantilist, Gerard de Malynes put it this way:

> ...a certain equality and concord is required in every well governed commonwealth, the prince or governor having the disposing both of the one and the other. Equality concerning the trafficke (sic) and negotiation betwixt his dominions and other countries in the trade of mercandise; and Concord among the members of a commonwealth, when every member thereof doth live contentedly and proportionably in his vocation. 10

The centralizing policies of the emerging Kings required predictable sources of revenue along with unambiguous command of the nation's power. Thus mercantilism was invariably associated with political economy, the ways and means of enhancing the nation's riches. The economic condition of every

class in society became a primary public matter.[11] Pursuit of national power was identified with pursuit of national wealth. But for the mercantilist wealth did not consist of useful goods. These were only means for exchange. Wealth consisted of the power to command profits through exchange, that is, of the power to accumulate ever greater proportions of the world's scarce supply of precious metals and money in return for goods in international trade. Although its foundation was an ever more complex system of production and while many mercantilists did appreciate the importance of labor as the basic source of value in commodities, nevertheless their attention was consistently centered on exchange as the mode of appropriating wealth.[12]

The international expression of national monetary accumulation was competition, hostility and war. If the wealth of the world was limited to what John Locke described as the "gold and silver...already out of the mine, in the hands and possessions of men" then any enlargement of this stock in one nation must come at the expense of others. Thus in Locke's typically mercantilist conception, wealth was rooted not in production, but in the state's political and economic power to appropriate a preponderant share of the world's "gold and silver" to the inherent detriment of foreign governments. In Locke's words:

> Riches do not consist in having more gold and silver but in having more in proportion than the rest of the world...whereby we are enabled to procure to ourselves a greater plenty of the

> conveniences of life than comes within the reach of neighboring kingdoms and states, who, sharing the gold and silver, of the world in less proportion, want the means of plenty and power, and so are poorer.[13]

For a nation to export more than it imported was not significant only as a mark of sharp economic practice. It was decisive in the struggle for international political supremacy. To be in the economic debt of a trading partner, to "want the means of plenty and power, and so (be) poorer" was to become subject to political mastery by a foreign power, to lose national autonomy. This point must be kept in mind as one reads the history of early land policy in the United States. Use of the public domain as a national resource was intended to demonstrate the young government's command of its territory and its power to employ that territory as a means for giving life to its claim as an independent state. It was a mercantilist policy.

Once this central assumption about the political character of economic policy is grasped the panoply of mercantilist regulations is easily understood. The need for a positive balance of trade led to public encouragement of domestic manufactures both as a means of limiting dependence on imports and enlarging the supply of exportable commodities. Tariffs on imports and bounties on exports followed logically. So too did state organization of economic ventures where initial profits were likely to be low such as domestic mining and foreign colonization. Indeed colonization became particularly important as the national standard of living increased and

appetites for more and different kinds of products expanded. The desire to possess basic resources that could not be found at home without having to send money outside the metropolitan net was a major engine of colonialism. But just as administrative centralization meant more than efficiency, colonialism meant more than profits. As Cunningham notes with respect to England, the command of the sea became identified with "the basis for building up a worldwide empire....The English nation has been willing to forgive much to those princes who have contributed to the greatness of England on the sea."[14] National expansion and the domination of colonial possessions across the seas became political symbols of the highest importance in legitimating the centralization of national power. In France this was no less true. Lionel Rothkrug writes,

> The effort to make the crown supreme in society was indistinguishable from an attempt to extend its jurisdiction over other peoples....Foreign policy became a means by which the French people, as distinguished from the state, fulfilled their manifest destiny. Now that the ideal of an indissoluable union between people and state had gained acceptance, diplomatic defeat or victory could be viewed as a matter concerning all subjects without distinction.[15]

It was the inhibiting experience of a colonial arrangement that stimulated the King's subjects in America to feel the desire for national freedom. But it also made them aware that if nationhood were to be realized the unifying influence of mercantilist policy would have to become a part of their own system of public law.

The Royal Inheritance

Britain's mercantilism was based on control of the seas. But within its distant colonies a land policy had to be implemented to facilitate the production of cash crops and the exploitation of natural resources which the mother country needed. Hence despite its seaward view, Britain could not avoid a role in determining the use of land in the colonies. It molded plantation agriculture, limited movement west and provided America with the model for a controlled scheme of land distribution, all in the name of Royal power, and all figuring in the creation of inequality.

Perhaps the deepest inroad of British mercantilism on the American soil was the stimulus it lent to plantation capitalism in the South. A good land for the cultivation of tobacco, rice and indigo, the South fast became a magnet attracting surplus British capital while relieving the mother country of the need to barter in more expensive world markets beyond her domination. The overwhelming proportion of English investment in the New World went into Southern and West Indian agriculture, however, arousing the irritation of Americans eager to join the expanding tide of business.[16] Moreover, the availability of cheap land induced exploitation of relatively more expensive slave labor, encouraging the growth of "that peculiar institution" whose miserable destruction Britain so comfortably avoided.[17]

Mercantilism consistently seemed to favor concentration of land ownership. Royal grants to men like William Penn and Lord Baltimore, and charters to commercial companies such as the Ohio Company in Virginia allowed a tiny percentage of the population to control vast expanses of land and the profits that derived from them.[18]

The headright policy was another factor working towards inequality on the land. Under the headright, an individual could obtain 100 acres for each indentured servant he brought to the colonies and whose residence he could guarantee for three years.[19] It seemed an appropriate method for subsidizing the importation of surplus English labor to a place where it could be more profitably employed. However, through abuse by the ever-enterprising colonists, the headright system became a means for engrossing large tracts. Strictly interpreted, the law permitted only one person to benefit from the grant per indentured servant. In practice though, as many as three claimants often successfully obtained land on the same headright, "the shipmaster who transported him, the planter who settled him, and the man himself at the end of his service." Forgeries were not uncommon. One "careless" gentleman added a zero to his patent and obtained 400 acres instead of 40![20] On the other hand, once the servant completed his obligation, his right was frequently abrogated, compelling him to buy land on long credit or to rent, becoming a tenant on a large estate. In sum, concentration of

landed property appeared as the agricultural parallel to monopolies in trade: both were the expression of mercantilist restriction, regulation and control.[21] Later, when colonial mercantilists aspired to control their own land system, it was this aspect of mercantile land policy the petty producers feared most.

Although British hegemony required control of the colonial land system, the Crown permitted the colonists to determine the specifics for themselves, so long as their policies did not interfere with broader imperial objectives.[22] The Proclamation Line of 1763 and the Orders in Council leading to the Quebec Act of 1774 however, "served notice to Americans that frontier policy was no longer a matter for colonial initiatives but had become an imperial problem of the first order."[23] Certainly the sharp restriction of American expansion heightened the colonial jealousy of British power. But from the Crown's standpoint restriction was unavoidable. Colonial economic growth began to outpace the ability of British regulators to check its implications for the continued strength of the mother country.[24] And it was become increasingly cumbersome for London to police an extended, unstable trade network running into the West. Since English imperialism was sea-based, its managers lacked experience overseeing a broad, unpopulated frontier. And they had all they could handle managing India's vast lands, also acquired in 1763. Still, control of the old American Northwest was crucial as

a wedge against France. But constant bickering between natives and settlers produced a dangerous instability on the frontier which the French might exploit for their own imperial purposes. Because the colonial settlers and speculators were more interested in land than Britain's future, London turned to the Indians as a more reliable security force in the Old Northwest. It was simply easier to keep the Americans out.[25] In all these ways Britain's decision to inhibit colonial expansion expressed its mercantile interest as a world power anxious to consolidate political control of its possessions.

Bitterly as it was resented by the colonies, the Proclamation Line only limited the boundaries of settlement. It said nothing about land arrangements within the legitimate framework. But in 1774, after years of annoying conflict between settlers, land companies and Indians over mutually exclusive land claims, the Privy Council moved to manage the land disposal system directly. Immediate regulation of the colonial land became necessary to protect metropolitan dominance. Of course, this was a direct attack on historic colonial perogatives. Its longer-term historic significance however, is the lesson it taught American mercantilists about the advantages of careful political control of land distribution as a means for advancing the strength of a weak national government. It showed that stopping or at least slowing down the population of the frontier was a reasonable option. Neither the pace, scale nor direction of growth were autonomous

forces beyond conscious direction. Each was subject to planning and management by public authority.

Colonial leaders had little choice but to resist the British land program. It threatened their long held power to appropriate and distribute land according to local needs. But the idea of controlling social development from a general rather than a particularist or regional standpoint was not itself rejected. The colonists hated the new regulation because it symbolized the fact that their prospects were ultimately hostage to the political needs of Britain. It brought home the central principle of colonialism: the strength of the metropolis rested on its power to control, even to pervert, the growth of its possession. Yet not long after the United States was established its public leaders adopted essentially the same posture toward settlement of the West, insisting that it must be brought along in conformity with national, not local or private needs. It is not merely ironic that squatters on federal land accused Congress of replicating many of the tyrannies of King George. Centralized control of the public domain reflected the same spirit of controlled development that animated British policy in the 1760s. Thus the Privy Council's orders previewed the basic features of the land disposal scheme fashioned by Congress between 1784 and 1796. Specifically, the instructions provided that prior surveys be made of all land not previously granted or otherwise disposed of; that the land be divided into lots not less than 100 or more than 1,000 acres; that

a map be prepared and posted, advertising the date of public sale; that four months later an auction be held, and that the price be held to a minimum of six pence an acre.[26] Prior survey, minimum lots, auction sales, and minimum prices were all mercantilist features of later American policy opposed by farmers and small-scale speculators.

In the pre-revolutionary period, the instructions were fought strenuously by the political leadership of the colonies. As Paul Wallace Gates writes, they "hit hard...at cherished policies that local authorities were not prepared to surrender, such as the practice of squatting, the recognition of squatter's and occupant's rights, and the right in New York, of the colonial administration to make grants of whatever size to whomsoever it wished."[27] Here was the basis for Jefferson's complaint that King George had "endeavored to prevent the population of these States" by "refusing to.., encourage migrations hither, and raising the conditions of new appropriations of lands."[28] Certainly imperial land regulation was among the significant factors behind the drive to declare independence of mercantile prohibition.

But the colonial governments themselves were not immune from the use of commercial land practices. The most obvious was sale of public lands to obtain revenue. This was a precursor of post-revolutionary land policy that had many precedents in the colonies. Although before the middle of the 18th century public land was rarely sold, (exceptions could

be found in the proprietary colonies and the Fairfax lands in Virginia) by 1775 most colonies were in the land business. Perhaps Pennsylvania's lucrative operations and the cost of defending the frontier attracted leaders in other places to sales.[29] In any event, the instructions of the Privy Council did not represent a radical break with a prevailing attitude against the government's use of land as a commercial resource. (The Royal prohibition on the use of land as patronage and the requirements of prior survey were innovations however.[30]

A guiding principal of mercantilist policy was that government support for business enterprise should strengthen the state. In the colonies, the frequent policy of granting land to commercial companies illustrates the application of this principle. In return for the right to serve as a land broker, the companies agreed to construct fortifications, make surveys, and organize the process of settlement.[31] The delegation of colonization functions to private companies permitted the government to enlarge the population under its control and extend its power over a wider area. But what distinguishes these grants as illustrations of colonial mercantilism is not simply the delegation of public functions to non-public agents in exchange for land. The land grant in exchange for military service was after all, a basic institution of feudalism.[32] Indeed it allowed for the wide distribution of military power that was a main obstacle to the centralizing kings of early modern Europe. The mercantile land

grant however, was employed to broaden the state's control, reinforcing its monopoly of political organization over an extended area. Its function was the opposite of the feudal grant. Moreover, while the Lord's grant to the vassal was always "temporary," that is, dependent on the successful performance of military service, the eighteenth century colonial grant approximated a private property right insofar as the meeting of its obligations to the government provided the commercial company with the right to dispose of the land freely in the marketplace. It may even be said that the mercantile land company accomplished in addition to its government service, the promotion of private property rights in land and a general enlargement of the sphere within which market relations supplanted those based on tradition. Thus the social and historical significance of the colonial land grants is derived from the role they played in strengthening the political power of government on the frontier while furthering the treatment of land as commodity and therefore, stimulating the growth of capitalist society. Not surprisingly then, grants to commercial companies at greatly reduced prices, like the system of public land sales, reappeared soon after the Revolution, and were an important element in the early land system. The grants reflected the fact that although mercantilism is a state-centered theory, it left plenty of room for private manipulation of public benefits. As Eric Roll points out,

> The waverings of state policy during the long period in which mercantilism held sway cannot be understood without realizing the extent to which the state was a creature of warring commercial interests. 33

A fine illustration of this is the 800,000 acre grant made by Virginia to the Loyal Company to offset the British grant made to the Ohio Company in the same vicinity of the Virginia back-country. Before the Proclamation Line of 1763 halted their efforts, the two companies were rivals for the western lands reaching well into Ohio and beyond. Indeed, they played a key role in fomenting hostilities that culminated in the French and Indian War.[34] Later, just prior to the outbreak of the Revolution, several other companies, led by some of the most notable personages in the country, competed for grants running into the millions of acres. Their complicated manipulations are painstakingly detailed in Thomas Abernethy's Western Lands and the American Revolution.[35] His research profiles not only the use of governmental power for speculative ends, but also a rather common acceptance of that behavior as perfectly legitimate. This is the stuff of a long American tradition. Paul Gates' warning to students of land history is in point here:

> ...historians who have speculated about the reasons why the United States disposed of its landed resources with a lavish hand seem unaware of the fact that during the century and a half preceding 1776, colonial administrators seemed bent on getting land into private ownership as fast as possible. 36

The early mercantile assumptions behind this policy are worth studying briefly.

A central argument of this chapter and the next is that mercantilist interests planned the political use of land in America from well before the Revolution until the 1840s. Now mercantilist policy calls for the use of economic power and resources as weapons of national sovereignty as well as tools of business expansion. The power interests of the state must infuse the formation of national economic strategy. Politics and economy, domestic and international policy, these are inextricably bound together.[37] The assertion of national power is for a mercantilist really the assertion of the national community as an organic whole "guided from the center by leaders with an inclusive outlook."[38] The achievement of political centralization is an important expression of the original association between monarchy and mercantilist policy. It institutionalizes the belief that the good of the society can be realized only through a delicate balancing of diverse social interests and functions in the light of a national outlook. Well-placed and responsible men of power could be trusted to undertake economic activities leading to national greatness. The distinction between public and private, so central to liberal society, was not a pressing one to mercantilist politicians. In Rush Welter's words, "their attention was focused on enterprise as such, on unprecedented undertakings from which public benefits were expected to flow."[39] However, the direction and ultimate control of enterprise must lay with government. As John Jay

put it in a letter to Washington, "The mass of men are neither wise nor good, and the virtue like the other resources of a country, can only be exerted by strong circumstances, ably managed, or a strong government ably administered."[40] The "spirit of enterprise and adventure runs high in our young country", added Jay on another occasion, "and if properly directed by a vigorous and wise government would produce great effects."[41]

The mercantile ethic was clear: government must be an active sponsor of economic development, making public resources readily available on terms conducive to responsible, that is, large-scale commercial exploitation in the national interest. Former Vice-President Rockefeller's recent proposal for a $100 billion development subsidy to the energy companies is not an innovation of contemporary theorizing about the fate of the political economy: it stems from an old tradition with American roots in the great 18th and 19th century land grants. Thus, like Rockefeller, who is known to have had a family connection in oil, earlier American notables such as Robert Morris or Ben Franklin engaged in land speculation that benefitted directly from their membership in public councils. Neither event seems to have shocked a people who, despite their democratic profession, tended to accept the principle that government must take special counsel from men of precisely their position and experience, "the rich, the wise and the well-born."[42] On the other hand,

mercantilism lacked an automatic commitment to development for its own sake. Its political criteria precluded that. It favored growth policies that would simultaneously aid the accumulation of commercial and manufacturing capital while strengthening the power of the government to cope with a hostile foreign environment. The latter always remained a dominant consideration. However, since its theory of the nation's proper direction was largely defined by men of established power, policy tended to run along lines favorable to the preservation and enhancement of privilege. Mercantilism thus contained an inner logic favorable to the concentration, not the wide distribution of economic power. It was not a democratic economic theory. Nor was it hospitable to the rising democracy of political power. Its assumptions were inconsistent with petty commodity production and the expansionism of a yeoman empire. Indeed the mercantile incorporation of land policy was explicitly designed to constrain those forces.

Once they achieved political power, American mercantilists such as James Madison, fully grasped the importance of land and its management to the fulfillment of their dream of national greatness. Unquestionably, the land policy had to reflect the interest of the whole country in a balanced political economy. If the land were to become freely accessible to all comers, the resulting no-holds barred expansion of petty production and speculation would ruin the opportunity to plan

agricultural growth in line with the needs of a capable and strong state based on expanding commerce and industry. Moreover, a cheap or free land policy could only be viewed by mercantilists as a selfish indulgence of the West and a deprivation of the public treasury at a time when it was in hock to European bondholders. Even later though, when the Treasury's condition was healthier, and the international scene much less threatening, the demand for a mercantile ordering of land disposal was not suspended. Even in the midst of the relative prosperity of the 1830s, John Quincy Adams and Henry Clay argued that the distribution of public lands must conform to a general scheme of national development carefully anchoring land to a program of tariffs and internal improvements. In this way alone could an effective balance of industry, commerce and agriculture be established.[43] Their central point was quite simple. Land policy must be placed in the overall context of a plan of national development that specifically defined its political as well as economic purposes. Mercantilists knew after all, that the power of the state was not based on fortune or accident. It depended upon conscious nurturing and planning. The thought of giving away land without consideration of its effect on the ability of the government to regulate settlement or patterns of accumulation elsewhere in the economy was illogical, shortsighted and selfish. Nevertheless, the planned use of land to support the rise of a balanced political economy became a continuing

source of antagonism that boiled for sixty years, from 1780 to 1841.

The pressure of the large debt undertaken to fight the war against British imperialism, and the uncertainty of the world order produced a broad consensus among the American elite that land sales should be used to retire the European holdings and thus eliminate their potential use as an instrument of foreign domination. In 1790 for example, Alexander Hamilton's "Report on Public Credit" put the foreign debt of the government at $11,414,086. However, this was only part of a much more serious balance of payments problem. In that same year total net liabilities of the United States to foreigners came to $61 million.[44] Moreover, in just five years that total deficit increased almost one-third to $79 million. As John C. Miller wrote in his biography of Hamilton, "the success of the Constitution and the very existence of the Republic depended on the skill with which the financial obligations of the government were handled."[45] Economic debt implied political dependence, the absence of true national autonomy. For these reasons a free or even cheap land policy was out of the question for those in a position to decide the issue. The immediate problem was that this strategy assumed what was not yet a fact: national control of the vast, unsettled western territory stretching from Ohio to the Mississippi. A revenue policy could not be implemented until the states yielded their extensive land claims to the

national government. Thus the first battle over the disposition of the frontier for mercantile ends was fought even as the larger battle for independence still raged. One point should be emphasized before looking at this debate.

The American Revolution was, to use the modern phrase, a war of national liberation. But that struggle did not produce a serious challenge to the colonies' internal relations of power and property. Every Englishman could appreciate, if still reject, the Americans' revolutionary demands, for they were made in liberal terms established by Englishmen themselves. The American Revolution was uncritical about property rights. Since land was the central bastion of power and property in America, save for the Tories, social relations on the land went unquestioned. Existing patterns of ownership and use were automatically excluded from political discussion. Of course there were radical tracts calling for the redistribution of land, but these were infrequent. Only lands safely outside the personal property system, lands heretofore claimed by the states (or other nations) could become the object of federal policy. The brash young government was ready to assert an authority over its constituent political units it would never dream of claiming against its citizens.

Before 1780 there was no public domain as such, just a loose amalgam of overlapping state claims to the frontier. Only a deliberate political effort to restructure the system of public ownership could produce it. Victory over Britain

gave the U.S. control of the territory east of the Mississippi, south of the Great Lakes, and north of the 31st parallel, the present northern boundary of Florida. On the basis of their original Royal charters no fewer than seven states made overlapping claims to lands west of the Mississippi.[46] Fueling the controversy over which state owned what was another more radical question. Could any state legitimately claim title to land granted by Royal charter when the Declaration of Independence devolved upon Congress "all the Rights and all the obligations of the Crown...respecting the lands and governments herein before mentioned."? That land for which the common blood and treasure was being spent, must, said the representatives of Maryland come under Congressional jurisdiction. Maryland and her small landless sister states considered the issue grave enough to refuse to ratify the Articles. They insisted that national control of the West was necessary to provide bounty land for their soldiers, otherwise they could be compelled to purchase lands for that purpose from the land claiming states, in effect, becoming their subordinates. The latter would use their claims to attract population and wealth from the small states and use their power to dominate the union in their own, not the common interest. Thus fairness and a respect for the public interest demanded Congressional jurisdiction over the West, including power to fix the boundaries of the old colonies, and authority to conclude all land purchases with the Indians.[47]

The angry response of the land claiming states led by Virginia, was directed at what they perceived as a land grab by big speculation companies. They cautioned that as a key element in her proposal Maryland demanded "all grants and surveys made to or for individuals before the beginning of the War were to be made good." Since this effectively legitimized the old land company claims, the results, as Thomas Abernethy wrote, "would indeed have been very little land left to be used for the common benefit."[48] To prove her point Virginia offered in 1778, "to furnish bounty lands out of its territory, without purchase price, to those of the United States which had no land for that purpose and which had satisfied or would satisfy the Articles of Confederation." That Maryland ignored the proposal suggests that concern for her soldiers was not the main interest of her political leadership.[49]

From this standpoint, the apparent greed of the big states could be seen as a plea to maintain local, decentralized support for small-scale settlement against the threat of large-scale private appropriation. Thus Dumas Malone calls attention to Jefferson's feeling that the "interests of the pioneers could be better safeguarded by States than by Congress which seemed more susceptible to the pressure of speculative land companies."[50] The potential for democratic industry, it appeared, was undermined by central control of land disposal. But the argument of the small states, influenced as

it was by speculation, came to more than a clever ruse of selfish interests. It also symbolized the principle that the national government was "a trustee of society" with respect to the public lands, "holding not only the right of eminent domain but also the right of individual ownership."[51] The West would literally be America's "res publica," her public thing, to be conserved and used in the interest of national and personal improvement, with the balance struck by Congress. More specifically, the Maryland argument indicated that the control and use of land was not merely an agricultural or settlement issue, or even a territorial matter uniquely the province of state and local government. It was really a national question, intimately connected to all the problems of military and financial strength, political integrity and commercial and industrial growth, the issues that were central to "the rising American Empire."[52]

By 1780 the military situation was sufficiently dangerous that Virginia, in the name of national independence, stood ready to compromise on the cession of her land claims. She considered only one demand non-negotiable: recognition of the speculator deals with the Indians must be forbidden. State land cessions must truly be a source of wealth to all the people. Although Virginia was compelled by circumstances to drop even this demand, she still expected Congress to reject the old company claims. Her expectation was met despite active lobbying by representatives of the speculation

outfits.[53] Virginia's cession agreement became the model for other states. Except for land needed to satisfy some old French grants, and that promised as bounties to soldiers, Congress agreed that the cessions be "Considered as a common fund for the use and benefit of such of the United States as have become, or shall become members of the confederation... and shall be faithfully and bona fide disposed of for that purpose, and for no other use or purpose whatsoever.[54] Thus in 1781, with Spain demanding a legitimate national government before she would send the Americas aid, with the British army threatening the South, and with the need for money ever more pressing, the Maryland delegates relented. Rejecting their commitments to the companies, they voted to ratify the Articles in the name of national unity. New York had already chosen to cede her lands in 1780 as a gesture to the small states. Thus the Articles were finally ratified. Between 1781 and 1802 seven states ceded their lands on condition they would become the soil for future states. Now the young Republic could point proudly to a source of national wealth stretching over 237 million acres.[55]

Cession of the western lands generated the problem of their disposition as a genuinely national problem. Of course in an age learning to identify human progress with the maximum opportunity for personal material achievement, with economic growth and the rejection of arbitrary political authority, there was no demand from any quarter for permanent

public ownership of the land. Petty producers and commercial minded Federalists might differ on their concept of the appropriate direction for American capitalism, but they were one in the view that individual freedom was incompatible with policies designed to enlarge public wealth at the expense of personal progress. Thus their differences centered on which segments of society ought to benefit from the establishment of national governmental power.

But on another level this was more than a struggle among interest groups. At stake was the kind of business and social systems the government should foster, the large-scale commerce and industry which required cultivation of a dependent urban labor force or the petty agriculture which was based on a class of roughly equal entrepreneurs. Individual ownership and personal dependency were not consistent; the development of neither was automatic. One of these tendencies would have to be scraped out of the American grain. Americans had to choose. In 1785, the Americans, unlike any people before them, possessed magnificent resources in the public realm and an open forum in which to debate their fate. By posing the land question to itself the young republic gave the lie to later concepts of development as an autonomous, uncontrollable process guided by the impersonal logic of God, nature or the marketplace.

Inevitably though, as Marx said, when men make these historic choices the circumstances under which the decisions

must be taken are not truly "chosen by themselves." Thus the historic context of the early public lands debate weighed against the men of little means. Obviously the state cessions implied that the governments closest to the settlers no longer managed land distribution. Now the agrarian republic could only be built through settler domination of the central government, a far more complex political problem than manipulating a local legislature. Also working against petty industry was the dire condition of the nation's debt. No stable international position was possible until the state and Federal notes were repurchased from their European holders. That meant a sizeable revenue had to be discovered quickly.[56] Given the success of the state land sales, it is not surprising the Federal government eagerly turned to the public lands to repay the debt. Moreover, military pressure was being exerted on the edges of the frontier by the Indians and the British. A firm and costly defensive policy was necessary to counter them. Finally, the hope of would-be farmers and small speculators to gain easy access to the frontier was thwarted by a conservative consensus that the new territories must be brought along slowly. This idea penetrated so deeply that some mercantilists like Jay and the Morrises even admitted the legitimacy of Spanish claims to the West, including navigation rights on the Mississippi. On one level, the Northern merchants wanted to control the Western trade, and only by closing the Mississippito Western produce would the

latter have to find its way "across the mountains to the cities of the seaboard."[57] More basically however, they felt government should first support the rise of business where a capital and labor base already existed. Carefully measured Western development would enable the national government to devote its primary attention to nurturing the advance of commerce in the Northeast. Only with this strong foundation assured, could America successfully pursue an expansive policy of inland development. Otherwise, to open wide the doorway to the West would wastefully disperse scarce labor and capital on unprofitable farming and speculative ventures, and especially, drive up the price of eastern labor.[58]

The most difficult problem confronting the mercantilists was that their policy not only aimed at, but already required, a potent government. Only a strong, well directed political order could block the excited expansion of small businessmen. The political economy of mercantilism had to rely on the doubtful power of its government to define the limits of growth. Not surprisingly, as Williams Appleton Williams has observed,

> (The) recognition of the need to control the existing west while the east gained strength and cohesion - a combination that would then generate further expansion - played an important role in the rapid growth of the movement for a more powerful central government. 59

A combination of events, social forces and ideas pointed to an early marriage of the land and financial systems. The hope of agrarian republicanism seemed to be restricted. The

historic and political configuration of 1785 was bending the use of land into conformity with mercantile interests and definitions. Even Thomas Jefferson, the farmer's most articulate champion reported his "sanguine" expectation "of lessing our debts by this fund."[60]

Land and Revenue

In 1784, the first formal proposal on the public lands was laid before Congress. Drafted by Jefferson himself, it included provisions for prior survey and land sales. The survey was looked upon by settlers as a restriction of their independent style of settlement. And they considered the absence of a limit on purchases a much too liberal invitation to large scale speculation and a surefire way to destroy the possibilities of small agricultural business.[61] The bill died, but was taken up again in 1785. That year debate focused on other issues than the sales policy since practically everyone feared for the financial health of the country. Perhaps the most significant was the question of the mode of settlement government land policy should support. Mercantilists favored adoption of the New England model of township planning organized by wealthy investors. It appealed to their desire for guidance and order in the process of growth. That the New England model provided this is elegantly described by Lewis Mumford,

> ...here in America the more open order of the medieval city was kept in being - indeed, amplified and enriched: a princely spaciousness for

> democratic purposes. This order was based on the fact that the New England town deliberately refused to grow beyond the possibility of socializing its members: it thus brought into existence and in many places kept going for two centuries, a balance between rural and urban occupations, as well as an internal balance of population and usable land. 62

Town planning provided coherence and structure in the building of civilization, and guidance for the process of expansion. It embodied the opportunity to gain political control of growth.

Alternatively, the plentiful supply of land seemed to beg for the application of Adam Smith's principles. In the southern backwoods those principles were applied, and the result was an anarchic form of expansion, causing much worry among northern mercantilists and the southern gentry alike. For indiscriminate location inevitably produced nasty conflicts between squatters, land owners, local governments, and of course, Indians. Most important, it provided few handles for the political regulation of expansion. Indiscriminate location, especially squatting, was seen by the mercantilists as an anti-political infection of the drive to construct a national order from the center. Thus the township, says Benjamin Hibbard, had the support of "the best minds of the country," minds, like Washington's and Jefferson's, well versed in the requirements of public order. It was, for such men, admirably suited to adapting the mercantile theory of growth to a "situation in which land, and hence wealth, was available for the asking."[63]

Settlers had difficulty with this logic. Their pocketbooks confirmed that townships could only be bought by land companies or wealthy individuals. Free-swinging, indiscriminate location was the only mode of settlement offering realistic access to men of small means. Conversely, a Virginia representative, William Grayson, insisted that township planting was the only thing standing in the way of speculation. He predicted, in a letter to Washington, that the availability of townships would spur "the poorer classes" to "unite to purchase" one. But even if land did come into the hands of a speculator, he "would not be able to hold it on account of the high price in the first instance and interest charges, and if, in spite of these, he still should buy one, then the great design of the land office, 'which is revenue,' would be met."[64] Grayson also observed that some of his fellow Congressmen viewed the land issue purely as a matter of finance. For them the best policy was "to get the money without parting with inhabitants to populate the country, and thereby preventing the lands in the original states from depreciating.[65] (emphasis added).

The yeoman image did not grab the imagination of Congress in its first discussion of the land question. Even men sympathetic to the pioneer favored a gradual encroachment upon the West, a slow, regulated movement of the line of civilization, not the rough and ready expansion of the Southwestern frontier. Nor, at least in 1785, was the pioneer interest

strong enough to persuade Congress of the need for a low price, or restrictions upon the size of purchased tracts to guarantee settlement instead of speculation. And even as early as 1785, Grayson could report a concern that western advance would damage eastern land values by drawing off population. If the West was to be the key to American development, as Turner suggests it was, the ideas of the men who made land policy hardly lend evidence of it.

Still, the plan of 1785 included some compromises of the mercantilist vision. First, the rectangular survey was used as a basis for compromise of the settlement question. While it was agreed that survey must precede settlement, the pioneer interest was able to obtain a provision that although one-half of the townships should be sold entire, the remainder could be purchased in sections of 640 acres, the two units to alternate.[66] When the representatives of the pioneers sought to reduce the unit to 320 acres they were defeated. If the land ordinance of 1785 was a compromise, it was one whose terms were set by mercantilist attitudes. Prior survey, a minimum price of one dollar per acre, no credit, and auctions were all provisions opposed by settlers. Most especially they lamented the absence of a limit on the quantity of land that could be bought or one requiring settlement or improvement of purchased land. Want of the last two restrictions is somewhat surprising since many colonies already had local pre-emption laws on the books.[67] But the

representatives of finance squarely opposed any aspect of land policy favorable to men without the capital to buy. Indeed, a Congressional proclamation of 1783 expressly forbade squatting as well as the purchase of Indian lands north of the Ohio River. That the prohibition had little effect is less important than its symbolic indication of official ideas and values.[68]

In the years immediately following 1785 Congress appeared uninterested in the land question. This is not surprising given the mercantile orientation toward the sea. As William Van Alstyne has shown,

> The United States was a commercial and seafaring state, as well as an agrarian state; and its mercantile and seafaring population was busily active in extending and developing long-distance sea routes even while the physical (and I might add political) handicaps to transcontinental migration remained unsolved. 69 (parenthesis added).

A nation whose leadership was intimately concerned with building her naval and maritime strength could hardly be indicted for moving slowly toward a frontier whose wealth was unknown.[70]

As legitimate settlement and illegal squatting penetrated deeper into the West, some of the ruling elements on the coast anticipated an emerging menace to established law and order, to what Roy Robbins calls "the economic and political values upon which the government was founded."[71] Typical of the conservative fear is this note sent to Washington by Richard Henry Lee describing the rationale for the impending ordinance of 1787:

> It seemed necessary for the security of property among uninformed and licentious people as the greater of those who go (west) are, that a strong toned government should exist, and the rights of property be clearly defined. 72 (parenthesis added).

In that same year, Lee's "strong toned government" did in fact seek to define the rights of property clearly when the militia was instructed twice to "search and destroy" squatter settlements. This lesson in force was inadequate. The pioneers returned quickly when the Army left.[73]

Even as Congress tried to consolidate its power over the West, its land policy was failing to meet its most important objective: the early auctions produced little revenue. Between 1785 and 1795, the government received a sum equal to less than one percent of its debt from land sales.[74] The poor revenues were a reflection of several factors. Fear of Indian raids in the West, better terms from speculators, and the competition of state land sales offering more secure territory at lower prices.[75] Robbins, for example, notes that New Yorkers could acquire land on credit for 20¢ to $1.00 per acre. In Massachusetts land could be had for $.50 an acre and similar terms were available in Pennsylvania and Virginia.[76] Then of course, there were the ubiquitous squatters for whom all commercial terms were too harsh.

In response Congress used the stick and carrot. In 1787 it authorized the expropriation of squatters. But at the same time it began what turned out to be a disastrous policy - the extension of public credit to poor land buyers.

At first the terms were rather stiff: one-third down, three months to pay the balance or face forfeiture of the land and down payment. This spurred sales a bit, although still no townships were sold.[77] Finally Congress was convinced that a retreat from the Ordinance of 1785 was necessary. It decided that the need for revenue compelled the acceptance of offers made by several land companies for large tracts at discount rates. For example, Manassah Cutler's group of war veterans, organized as the Ohio Company, obtained a contract for one and a half million acres to commence "an actual, a large and immediate settlement of the most robust and industrious people in America."[78] Since the price could be paid in depreciated continental certificates, the actual price was eight to nine cents per acre! In order to win approval of the scheme Cutler found it necessary to begin another company called the Scioto which he later described as a "private speculation in which many of the principal characters of America are concerned."[79] With the cost once again equalling eight to nine cents an acre, about five million acres were apportioned along the Ohio River east of the Scioto.[80] Finally, inspired by the example of Cutler, John Cleve Symmes of New Jersey sought and received a one million acre grant at a similarly reduced price.[81] Like the earlier land companies, these failed. The Ohio company made only its first payment, the Scioto outfit collapsed, while Symmes was reduced to selling land he did not own after completing only his first payment.

A more careful, systematic consideration of land disposal was urgently needed. In 1790 the Secretary of the Treasury, Alexander Hamilton, was instructed by Congress to prepare a report on the disposition of the public lands.

His analysis, offered in the midst of controversy over his assumption plan, is a remarkably balanced and realistic appraisal of the forces shaping land use in post-Revolutionary America.[82] However it lacked the sense of direction usually associated with mercantilist thinking. While he began with the conventional assumption that land sales as an "operation of finance" must obtain "primary attention" Hamilton did not neglect the clamor of ordinary people for land. His policy centered on the recognition that three sorts of buyers had to be served by government: "moneyed individuals who buy to sell again," associations of persons who intend to organize a community, and of course, individual settlers. Hamilton tried to accommodate them by providing each with a special mode of purchase: minimum lots of 500 acres purchasable with "evidences of indebtedness of the United States" for businessmen, townships of ten miles square on credit for settler groups, and one hundred acre tracts for individuals. Moreover, he proposed to reduce the price of land to between 20¢ and 30¢ per acre to substitute for the auction and high minimum price of 1785. Finally, and very important to settlers, he recommended the creation of two local land offices in the West to ease their way in buying from the national

government. Oddly from the point of view of concern for regulated growth, he omitted discussion of the prior survey. Instead he proposed that survey lines be run at the expense of the purchasers after the sale!

Hamilton's plan was balanced to the point of being contradictory. It tried simultaneously to nourish petty entrepreneurship, town planning and large scale speculation, Thus it reflected, but did not try to recast, the prevailing interests in land policy. It did not try to clarify the system of public values toward which land policy should aim, except to repeat the demands of the three main interest groups. It was, in that sense, a distinctly pluralist, but not mercantilist document. Rather than explore the governmental responsibility to employ a basic national resource in the interest of national strength, Hamilton's scheme was merely an elegant summation of the social antagonisms with respect to land.[83]

Perhaps for those reasons, although more likely because other matters were more pressing, Hamilton's plan gathered dust. Indeed, not until 1796 was Congress ready to review the land question seriously. General Anthony Wayne's resolution of the Indian problem in the Old Northwest, and a bribery attempt on several Congressmen in connection with a land deal renewed interest in the subject. Also, sales were falling off, squatting remained a problem, and the administration of the law was so inconsistent that historian Payson Treat was led to observe that in the debates of 1789 through

1796 there is barely a sign "that there was in existence an ordinance for the sale of the lands of the United States."[84]

Aside from the ongoing consensus that the lands must be sold to produce revenue, all of the old settlement and distribution issues reappeared. Nothing but the revenue principle was settled in 1785. Men of big, small and no capital fought over the conditions of sale. Should the price be high or low? What about credit? Should buyers be compelled to settle and/or improve their land? What size tract was required for efficient sales as well as fairness to poor people? Only one thing was clear. The terms of discussion were established by the mercantile need for cash. Given agreement about that, people were divided on the other issues precisely by their ability to command cash. Whether they liked it or not, and it is clear they did not, the defenders of the frontiersmen had to operate in line with Hamilton's view that land "is itself a stock or capital."[85] The debate over credit and settlement illustrates the point.

Although they could not undo the tie between land and revenue, the yeomanry believed it possible as well as necessary to limit the monopoly of land by requiring settlement as a condition of purchase. Just because money seems to expand is no reason to believe land does, hence they demanded a limit on the former's power to command the market. In this instance, the pioneers had tradition and established practice on their side. Throughout New England and most of the old states settlement requirements were accepted pieces

of land policy.[86]

The adherents of mercantilism fought against tradition. Settlement requirements, they insisted, opened the way to fraud because the government lacked the power to monitor them.[87] Besides, to limit the purchase of land by wealthy men would depress demand and thus the price, leading to lower government revenues. Finally, settlement restrictions would encourage a depopulation of the Atlantic States leading to a rise in the cost of labor and a general depression in land values.[88] The wisest policy would be to limit the quantity of land sold. That would truly drive up prices and fill the government's coffers. Similar arguments were made in opposition to limiting the size of purchasable tracts.[89]

In the midst of the debates, Albert Gallatin, Jefferson's future Secretary of the Treasury and a man known as a friend to settlers, offered a compromise that illustrates how deeply mercantilist attitudes penetrated the ideology of men sympathetic to the yeomanry. Echoing the earlier compromise of 1785, he proposed that the land be sold in two ways. Part should be sold in reduced tracts, the remainer in big units. This would appeal to the settler while leading to extinguishment of the debt in ten years. And Gallatin was sure to add that he firmly supported the plan yielding the greatest return.

To achieve his goal Gallatin suggested what he called the wholesale-retail plan. Like Hamilton's earlier proposal, this one is important both as a mirror of social conflict over land

as well as a disposal mechanism. Like Hamilton, Gallatin aimed to satisfy three social interests. More in tune with frontier interests than Hamilton, he did not include among his categories people seeking organized town planting. The New England model was dead in the open West. Instead, Gallatin was mainly concerned with the needs of men of small property, petty producers able to buy small parcels. It was essential for their survival as a social class that government provide small tracts for sale. Without that provision, the West would become the preserve of speculators, wealthy owners and a landed tenantry. America would grow her own feudal institutions amidst the lost possibilities of liberty. It is crucial to understand that Gallatin had in mind people who did not need free land, but people well enough established to build the fee-simple empire on a cash basis. If America had only this group to contend with land politics would have generated fewer conflicts. But, Gallatin knew, there was also a large number of men who belonged to "the poorer classes". Just as anxious for land as the petty producers, these were individuals entirely without capital and therefore unable to pay the government price. Since the national government was firmly opposed to extending credit, the only hope of the poor, according to Gallatin, was to favor government sales to land companies who, in turn, would subdivide the lots and re-sell them on manageable credit terms.
For Gallatin, a man obviously concerned about the fate of

petty industry on the frontier, the speculation company was the necessary medium for government's contribution of land to the landless. Public wealth and private enterprise would wed for the greater good of all. But notice the irony. Land sales in small lots would effectively serve a simple society of petty producers. In a more complex social order, where poor men lack the necessary capital to enter the cash nexus the solution is not free public land but reliance upon precisely the richest economic group to resell the public land, permitting them to benefit directly from the existence of poverty. Only a community believing that "the rich, the wise and the well born...should make, implement and benefit from the major economic decisions of the society", could accept this solution to the problem of land for the landless.[90]

The final 1796 land bill did not incorporate Gallatin's scheme, but it did reflect the conservative principle upon which he proceeded. It symbolized a hardheaded reliance on land for revenue albeit with concessions to settlers. It kept the rectangular survey, providing that one half the townships be divided into 640 acre sections, the rest to remain undivided, and sold in quarters. To combat speculation the minimum price was raised 100% to $2.00, although credit was liberalized for the poor. One-twentieth of the price was required down, thirty days permitted to pay the first half, and another year to complete payment. The liberalization of credit indicated that the dominance of the mercantile

viewpoint was being upset by the desire of poor settlers to obtain land quickly and cheaply, and without the benefit of private credit.

Millions of dollars were expected to flow from the revised laws, but by 1800 it was obvious that was idle dreaming. The settlers, who appeared to gain so much from the law, repaid the government's solicitude by shrewdly buying instead from the land companies at reduced rates, or, simply squatting on unsurveyed land. Just four years after the last fight over disposal, it was necessary to revise the law.

Delays in the administration of the survey and sales particularly incensed the West. And it was from that quarter that new legislation received its impetus.[91] The newly elected Indiana delegate William Henry Harrison, aided by the sympathetic conservatism of Albert Gallatin, drove hard for a land law less commited to commercial values. Their major object was to halt the concentration of holdings implicit in the revenue policy. Working together they adopted several important innovations for the settler. Extending Hamilton's earlier proposal, Harrison created four land offices in the Northwest Territory so that pioneers could make their transactions nearer the tracts they desired. There was a continuing fight for smaller lots, but a proposal to reduce the minimum to 160 acres was defeated. Gallatin and Harrison were fortunate to maintain the half-section provision of 1796. The greatest inroad on conservative principles was the broad extension of credit to the pioneers. As every settler knew,

the one year's delay granted in 1796 was no credit at all, since in that short time he could not earn sufficient capital to repay. In its place Congress now required one-fourth of the purchase price in 40 days, a second fourth in two years, a third in three years and the final payment in four. Thus by adhering firmly to the revenue principle, Congress' only alternative to pacify the West was the creation of public credit on much easier terms. This vastly expanded the significance of debt to the economy as a whole, and most importantly, transformed the government, itself still in debt to Europe, into the major domestic creditor. Moreover, it not only worsened the fragile financial position of the settler by fueling his debt, but by making no distinction as to who could obtain credit, the plan vastly multiplied the chances for a speculative boom-bust pattern to shape the economy of land, and thus, the whole political economy. Disappointed at extension of the high two dollar minimum, nevertheless Harrison could optimistically report to his Indiana constituents, "the time for making payments has been so extended as to put it into the power of every industrious man to comply with them..."[92] It was not long before Harrison's industrious men found themselves tossed by financial waves whose destructive power they could not overcome.

At first even the revised credit managements did not stimulate interest in the government land sale. Private sellers were still offering better terms, including barter arrangements.[93] And the West was increasingly concerned with

reducing the price or acquiring pre-emption.[94] But gradually the ease of credit and the growing market in old foreign land claims stimulated commercial and speculative interest in real estate.[95] Originally mercantilists hoped that a high minimum price and large minimum tracts would stem the flow of migration, enabling the government's growing strength to keep pace with its need to control the West. As Malcolm J. Rohrbough notes, "Eventually the desire for land broke down the cohesiveness of settlement."[96] And although credit may originally have been intended to ease the hardship of the poor, in practice it only accelerated the tendency to bring under absentee ownership substantially more land than the population had the desire or economic wherewithal to cultivate. The public credit arrangements facilitated the marketability more than the productiveness of the public domain, thereby weaving it into a complex of public and private financial relations and pressures. Thus as farmers found it hard to meet their payments they pressured for relief laws. As these were passed the integrity of mercantile finance was gradually undermined. Money men could obtain but did not need credit; farmers needed it and got it but could not repay it. As early as 1804, Gallatin, now Jefferson's Secretary of the Treasury, criticized the West's earlier support for credit, "proposing in its place reduction of the minimum price from $2.00 to $1.25, and sale in small tracts of 160 acres."[97]

Gallatin's worry that a rising, hostile class of debtors was emerging as a potential threat to the nation's unity and

strength was only mildly infectious, for Congress responded by lowering the minimum price to $1.64 per acre, and the minimum tract to a quarter section, 160 acres. It refused to modify the credit system.[98] When two years later, another Congress was faced with demands for abolition of credit, it admitted that "the evils which were dreaded now begin to unfold themselves, and certainly wear an unpleasant aspect." But the stimulation given to sales was too great to abandon credit.[99] Thus mercantilism was using the anarchy of speculation to buoy itself. By 1812, the House Committee on Public Lands recognized, but was unwilling to do anything about the contradictory land system. It correctly identified the relation of speculation to the onset of business crises:

> ...the present system cannot be continued, and the laws rigidly executed without occasionally producing great injury to the purchasers. Men are seduced by their temptation, which the credit held out to them, to extend their purchase beyond their means of making payment; the unfavorable fluctuations of commerce cannot be foreseen, and the pretty general disposition in men to anticipate the most favorable results from the produce of their labor, are the general causes of the failure of purchasers in making their payments.[100]

But the mercantilist impulse to regulate was not dead. Squatter claims that government should recognize labor as the source of property right were vigorously opposed in Congress. In 1806 the House Public Lands Committee replied to one such memorial in distinctively anti-Lockean terms:

> ...when it is considered that these individuals settled without authority, or any reasonable ground of expectation from the government, it is evident

that any hardships to which they may be exposed are chargeable only to their own direction. 101

Beginning in 1802 anti-intrusion laws were proposed again and again, one finally passing with Jefferson's assent, in 1807. It provided that unlawful settlers or squatters could become tenants at will on public lands until they were able to pay for the land or until someone else purchased it. Meanwhile they were obliged to register their tenancy or face a six month jail term. That it was extremely difficult to administer an anti-frontier law with an army of frontiersmen indicates that the gap which prevailed between public law and social power.[102]

Another example of the influence of mercantilist principles was creation of the three and five percent funds. Congress wanted to spur land sales by excusing buyers on credit from the payment of state taxes on land purchased from Washington. The federal government insisted that the states could not tax these buyers because the patent on the land still belonged to the government. To win their support Congress voted to grant 3% of the net receipts from the sales to the state of Ohio for road building on condition that federal land buyers be free of state real estate taxes for five years. Thus the credit system led, in a roundabout way, to the first federal highway program.[103]

Administration of the land system mirrored the close relation between finance and the public domain. Until 1812 land disposal was directly under the control of the Secretary

of the Treasury. When the sales increased, pressure mounted for more help in the land offices. In 1812 Congress authorized the creation, still within the Treasury Department, of a General Land Office to supervise its land business.[104] There it remained until 1849 when the West's political power was sufficient to warrant a more representative administration of the public lands. Then the General Land Office was moved into the newly established Interior Department.[105] Rohrbough's study of The Land Office Business indicates that one of the hallmarks of the early administration of the public domain was a close association between government administrators and prominent local real estate men. He found that,

> The President and the Secretary of the Treasury sought prominent citizens of the territory for posts in administering the public domain, because a known occupant enhanced the office and reflected favorably on the national government; but these men were almost invariably concerned with speculation in lands. Men appointed from the East to administer the public domain acquired the habit of investment in the public lands soon after crossing the mountains.[106]

In 1812 though, Congress showed signs of weakening faith in this typically mercantilist mode of administration. For the first time it prohibited land officials from direct or indirect participation in the purchase of public lands.[107] Just as belief in the unity of virtue and power in small numbers was losing acceptance, so more generally did the idea that substantive controls on the development process served the national cause. Still the land system remained anchored to the principle of control in the national commercial interest, and the public domain was itself the greatest symbol of its

continuing hold on the political imagination of those who governed America. With Madison they believed the land should remain "Under proper management, both to effect a gradual discharge of the domestic debt and to furnish, for a certain period, liberal tributes to the federal treasury." 108

Notes to Chapter Two

[1]For discussions of the influence of British mercantilism in America see: C.P. Nettles, "British Mercantilism and the Economic Development of the Thirteen Colonies," Journal of Economic History XII (September 1952) and William Appleton Williams, "The Age of Mercantilism: An Interpretation of the American Political Economy, 1753-1828, William and Mary Quarterly (October 1958).

[2]E.F. Hecksher, Mercantilism, 2 vols., 2d rev. ed., ed., E. F. Soderlund, trans. Mendel Shapiro (New York: MacMillan Co., 1955), 1:2. It should be noted, of course, that in a real sense Adam Smith was the father of mercantilism inasmuch as he was the first theorist to identify and categorize "the Commercial or Mercantile System." Smith's treatment, which took up most of Book IV of The Wealth of Nations, represented a summary of what he described as a then "popular notion" that "wealth consists in money, or in gold and silver." Thus Smith was at best, a godfather or name-giver, to a collection of ideas worked out by other writers over the course of the previous two centuries. See Adam Smith, The Wealth of Nations, 2 vols., with an intro. by M. Blaug (Homewood, Ill: Richard D. Irwin, Inc., 1963), 2:2f. In a delightful article aimed at debunking the usefulness of mercantilism as a category of analysis, A.V. Judges suggests that Smith's use of the phrase "mercantile system" may have been derived from his reading of Victor Riquetti, Marquis de Mirabeau, who, in a 1763 work entitled, Philosophie Rural, ridiculed the "systeme mercantile." See A.V. Judges, "The Idea of a Mercantile State," reprinted in D.C. Coleman, ed., Revisions in Mercantilism (London: Methuen, 1969), pp. 33-60. The discussion of de Mirabeau may be found on page 37.

[3]Hecksher, Mercantilism, 1: 2. For a review of different approaches to the subject, see Coleman, Revisions in Mercantilism.

[4]Max Weber, From Max Weber, ed. Hans Gerth and C. Wright Mills (New York: Oxford Univ. Press, 1946, 1958), p. 82.

[5]W. Cunningham, The Growth of English Industry and Commerce, vol. 2: In Modern Times (Cambridge: Cambridge University Press, n.d.; reprint ed., New York: Augustus M. Kelley, 1968), p. 7.

[6]Lionel Rothkrug, Opposition to Louis XIV, The Political and Social Origins of the French Enlightenment (Princeton: Princeton University Press, 1965), p. 108.

[7]Ibid.

[8]Philip W. Buck, The Politics of Mercantilism (New York: Henry Holt and Co., 1942), p. 5. For specific national studies of this process see Hecksher, Mercantilism, passim; Cunningham, Growth of English Industry; Charles Woolsey Cole, Colbert And a Century of French Mercantilism, 2 vols. (New York: Columbia University Press, 1939) and French Mercantilism, 1683-1700 (New York: Columbia University Press, 1943). Also see the bibliography in Coleman, Revisions in Mercantilism, pp. 210-213.

[9]Cunningham, Growth of English Industry, 2:403f.; also see Michael Kammen, Empire and Interest, The American Colonies and the Politics of Mercantilism (Philadelphia: J.B. Lippincott Co., 1970), esp. chaps. 2-5.

[10]Gerard de Malynes, St. George for England, (London: 1601), p. 3 cited by Buck, Politics of Mercantilism, p. 110. In Buck's words "All the mercantilists conceived of an ordered national community, with every person and group performing its function and receiving its due reward in a share of the general welfare." ibid., p. 109.

[11]Cunningham, Growth of English Industry, 2:4.

[12]For a discussion of the mercantilist conception of labor as the source of value in commodities, see Edgar S. Furniss, The Position Of The Laborer In A System of Nationalism, A Study in the Labor Theories of the Later English Mercantilists (New York: Augustus M. Kelley, 1965). Furniss shows how the balance of trade doctrine led mercantilists to an understanding of the need to maximize the productiveness of labor while minimizing its costs. "It seemed apparent to the Mercantilist thinker," he writes, "that the superior value of manufactured goods was due to the labor expended upon them to adapt them to men's needs." (p. 12).

[13]John Locke, "Some Considerations of the Consequences of Lowering the Interest, and Raising the Value of Money," Works, vol.5 (London, 1801), p. 13.

[14]Cunningham, Growth of English Industry, 2:14-15.

[15]Rothkrug, Opposition to Louis XIV, pp. 109-110.

[16]Louis M. Hacker, The Triumph of American Capitalism (New York: Simon & Schuster, 1940), p. 83; Clinton Rossiter, The First American Revolution, revised version of Part I of Seedtime of the Republic (New York: Harcourt, Brace and World, 1953, 1956), pp. 42-44.

[17]Hacker, American Capitalism, p. 125.

[18]The Baltimores, for example, exclusive of their own estate rents and profits from land sales, were deriving 10,000 pounds annually by 1750. Around the same year, the Ohio Company, headquartered in Virginia, obtained Royal Grants of 200,000 and 500,000 acres. By 1776, South Carolina was home to many holdings ranging from 20,000 to 100,000 acres. Ibid., pp. 95, 110. Also see Thomas P. Abernethy, The Western Lands and the American Revolution (New York: D. Appleton Century Co., 1937), p. 87 and Paul Wallace Gates, The History of Public Land Law Development, (Washington: U.S. Government Printing Office, 1968), p. 37. Joseph Dorfman has described the annoyance of Crown officials in Virginia with "the policy of making large land grants to individuals." The Royal agents tried to demonstrate the economic advantages to England of small holdings. Their greater number would multiply economic activities and trade whose benefits would flow eastward across the Atlantic. However, Dorfman adds, "Not least in the minds of these agents was the difficulty of collecting from the great land owners the quit rents due the Crown which might be used to pay their salaries." The Economic Mind in American Civilization, Vols. 1-2: 1606-1865 (New York: A. M. Kelley, 1966-1969), pp. 25, 27-28.

[19]Ibid., p. 15; Gates, Public Land Law Development, pp. 35-36; Hacker, American Capitalism, pp. 180-189.

[20]Gates, Public Land Law Development, pp. 35-36.

[21]It is important to note that the British were unhappy with abuse of the headright, although inept at controlling it. The colony of Virginia tried, in 1705, to limit the headright to one per imported person, denying them to those not seated on the land. The bill also sought to limit to 4,000 acres the amount of land conveyed in any patent. Unfortunately for the principle of equality, the same bill permitted sales of public lands at five shillings per 50 acre tract making it possible for wealthy persons, despite the 4,000 acre restriction, to, in Gates' words "gain legitimately what before had been obtained through subterfuge." As a result some huge estates were created: William Byrd, 179,440 acres, Robert "King" Carter, 300,000 and John Robinson, 100,000, William Beverly, 130,000 and William Spotswood, 186,650, ibid.; Abernethy, Western Lands, p. 2; Hacker, American Capitalism, pp. 108-109.

[22]As Henry Nash Smith points out in Virgin Land (New York: Random House, Vintage Books, 1950), p. 5, "The Imperial development of Britain was moving...toward dominion over the seven seas rather than toward the blank and remote hinterland of North America." Beyond defense, settlement added nothing to British interests. Agricultural produce was "too expensive to be transported from the interior to the seacoast

and such colonies could have no part in the sea-borne commerce upon which the British Empire was based." Roy Robbins, Our Landed Heritage, The Public Domain 1776-1936 (Lincoln, Neb.: University of Nebraska Press, Bison Books, 1942), p. 3.

[23]Ibid.

[24]One example of colonial economic dynamism is the fact that despite British restrictions on the production of iron, it increased dramatically. By 1775, colonial manufacturers produced fully one-seventh of the world's supply of pig and bar iron. Originally intended to service England's steel industry, the American producers expanded well beyond the mother country's needs. Similar tendencies appeared in the timber industry, as the colonists cut and logged well beyond the amounts specificied by England to meet her shipbuilding needs. Richard B. Morris, ed., Encyclopedia of American History: Bicentennial Edition (New York: Harper & Row, 1976), pp. 719-720; 699.

[25]While Western farms did not figure in British Imperial plans, the Northwestern fur trade did. As early as 1721 a report of the Council of Trade and Plantations anticipated that whatever settlement was to proceed "beyond the mountains, or on ye lakes" must be based on "ye advantage to me made by the Indian trade." Smith, Virgin Land, p. 5. The policy of using Indians to enhance British investment in furs and land was solidified by the line of 1763, and followed by many grants of large tracts to merchants, army officers, wealthy land owners, Englishmen all. Opening these areas in Canada and Florida, observes C.P. Nettles, "created speculative opportunities for her own investors while opposing the schemes of colonial promoters to develop the trans-Allegheny West." C.P. Nettles, The Roots of American Civilization (New York: Crofts, 1938), p. 610, cited by Hacker, American Capitalism, p. 164. Also see Robbins, Landed Heritage, pp. 33-34.

[26]Ibid., p. 47.

[27]Ibid.

[28]Thomas Jefferson, The Portable Thomas Jefferson, intro. and ed., Merrill D. Peterson (New York: Viking Press, 1975), pp. 236-237.

[29]Gates, Public Land Law Development, p. 47.

[30]Ibid.

[31]Shaw Livermore, Early American Land Companies (New York: The Commonwealth Fund, 1939), p. 78. Livermore argues that the early land companies were perhaps the first dynamic expression of the "Big Business outlook in economic affairs."

For to "successfully preempt huge areas of virgin territory and control its distribution required combinations of capital and unified control. Individual small scale methods could not cope with the problem." Of course, this assumes that the "problem" is "to preempt huge areas." If the objective were to build a society of small farms the concentration of power and capital in the land company, woven out of its contacts with the political leadership, would have been unnecessary. It is a measure of the prevailing ideology and power that the colonial leadership did assume the need for large-scale enterprise. See Livermore, p. 7.

[32]Ses Marc Bloch, Feudal Society, Vol. 1: The Growth of Ties of Dependence, trans. L.A. Manyon (Chicago: University of Chicago Press, 1961), pp. 163-167.

[33]Roll, Economic Thought, p. 64.

[34]Abernethy, Western Lands, p. 8ff.

[35]Ibid.

[36]Gates, Public Land Law Development, p. 46.

[37]In the words of J.W. Horrocks, mercantilism "has stood for national power as a necessity for defense as well as offense, as something for which the economic interests of the people must be subordinated and which they must be made to subserve." A Short History of Mercantilism (London: Metheun and Co., 1924), p. 4.

[38]William Appleton Williams, The Roots of the Modern American Empire (New York: Random House, 1969), pp. 49, 59.

[39]Rush Welter, The Mind of America, 1820-1860 (New York: Columbia University Press, 1975), p. 106. In the same vein Hamilton once warned that no society could succeed "which did not unite the interest and credit of rich individuals with those of the state." Cited by Arthur Schlesinger, Jr., in The Age of Jackson (Boston: Little, Brown and Co., 1945), pp. 8-10. John Jay put it more simply, "The people who own the country ought to govern it." Cited by Richard Hofstadter, The American Political Tradition (New York: Random House, Vintage Books, 1948), pp. 15-16.

[40]The Correspondence and Public Papers of John Jay, ed. Henry C. Johnson, vol. 3: 1782-1783 (New York: Burt Franklin, 1970), pp. 204-205.

[41]Ibid., p. 154.

[42]Welter, Mind of America, p. 106.

[43]Infra., Chap. 3, p. 125f.

[44]Morris, ed. Encyclopedia of American History, p. 704.

[45]John C. Miller, Alexander Hamilton And The Growth of The New Nation (New York: Harper & Row Torchbooks, 1959), p. 230.

[46]Benjamin Hibbard, A History of the Public Land Policies with a foreword by Paul W. Gates (Madison and Milwaukee, Wisc: University of Wisconsin Press, 1965), p. 8.

[47]Abernethy, Western Lands, p. 172. Also see Merrill Jensen, The Articles of Confederation (Madison, Wisc: University of Wisconsin Press, 1940), p. 201f.

[48]Abernethy, Western Lands, p. 239.

[49]Jensen, Articles, pp. 201, 205.

[50]Cited by Gates, Public Land Law Development, p. 51. Also see Livermore, American Land Companies, p. 110.

[51]Robbins, Landed Heritage, p. 5. Jensen, Articles (pp. 213-214, N. 8) suggests that in their zeal to construct constitutional arguments for Congressional jurisdiction over the land "The origin, or at least the effective support, of the doctrine of the sovereignty of Congress came first from the...land speculators...The connection of Robert Morris and James Nilson with these companies and their latter use of the doctrine in the Convention of 1787, is hardly accidental."

[52]William Van Alstyne, The Rising American Empire (Chicago: Quadrangle Paperbacks, 1965), p. 1. Frederick Jackson Turner, The Frontier in American History, with a Forward by Ray Allen Billington (New York: Holt, Rinehart and Winston, 1962), p. 25, argued that the public domain was a "force of profound importance in the nationalization and development of the government." It would perhaps, have been more correct to say that land was a profoundly important object of nationalizing forces in American society, for it served to collect and focus their energies in the push for national ownership as a base upon which to construct the social institutions they believed should prevail in the United States. Continuing the local control of land would have supported the tenuous small scale life of petty industry and reinforced its strength, meanwhile, stalling the creation of a system of national improvements. Moreover, it would have seriously damaged the power and authority of the nascent American government for whom the land was a vital symbol of its wealth, power and capacity to command the allegiance of its subordinate governments.

[53]Abernethy, Western Lands, pp. 244-245; Gates, Public Land Law Development, p. 52; Jensen, Articles, passim.

[54]Gates, Public Land Law Development, p. 52.

[55]Marion Clawson and Burnell Held, The Federal Lands, Their Use and Management (Baltimore, Johns Hopkins Press, 1957), p. 21. On the final cession agreements see Abernethy, Western Lands; Robbins, Landed Heritage, p. 5; Hibbard, Public Land Policies, p. 9 f.; Gates, Public Land Law Development.

[56]Merrill Jensen, The New Nation, A History of the United States During the Confederation, 1781-1789 (New York: Knopf, 1940), passim; P. J. Treat, The National Land System, 1785-1820 (New York: E. B. Treat & Co., 1910), p. 15; Hibbard, Public Land Policies, pp. 4, 59.

[57]Jensen, Articles, p. 221

[58]Van Alstyne, Rising American Empire, pp. 81-82; Jensen, Articles, p. 221; William Appleton Williams, The Contours of American History (New York: New Viewpoints, A Division of Franklin Watts, Inc., 1973), pp. 125-148. Also see Dorfman, Economic Mind, 1: 241-275, and esp. 1: 247-248, 275.

[59]Williams, Contours, p. 138. Again the point is not that mercantilism opposed growth, but that it opposed the uncontrolled politically dangerous expansion of petty industry and democracy in the West. The mercantilists were taking a long-range view of national development fully consistent with their interests as a dominant class. Thus "the opposition to Western expansion" was not, as Jensen argues in Articles (p. 221), "inconsistent with the larger interests of that class and section." Williams puts the issue more clearly when he writes, "(the) men who comprised the coalition for a strong central government were also motivated by an upper class awareness of a very real crisis in the existing system and were determined to establish a better one within the philosophical assumptions of the era. For them the issue was not mercantilism vs. laissez-faire: it was the failure of mercantilism as applied at the level of thirteen particularistic states. All of them were worried that the West, which they talked about as their colonial area, was on the verge of internal revolt or external conquest." Contours, (p. 147, emphasis added). This is an early expression of the basic conflict between capitalist expansion and the federal protectorate of small business. Thus corporate support for national land use planning legislation, to the degree it existed, was based on a need to modify the existing decisionmaking arrangements controlling land use and "to establish" better ones "within the philosophical assumptions" of corporate rationality.

[60]Cited by Hibbard, Public Land Policies, p. 59. In that year Jefferson also wrote to Jay, indicating his mercantile realization of the link between land, commerce and defense, "I hope our land office will rid us of our debt, and that our first attention then will be the beginning of a naval force of some sort." The Portable Thomas Jefferson, pp. 385-386 .

[61]Gates, Public Land Law Development, p. 63; Hibbard, Public Land Policies, p. 38.

[62]Lewis Mumford, The City in History (New York: Harcourt, Brace & World, Harbinger Books, 1961), pp. 331-332.

[63]Hibbard, Public Land Policies, p. 39; Williams, Contours, p. 125.

[64]Cited by Treat, National Land System, pp. 31-32.

[65]Ibid., pp. 32-33.

[66]Gates, Public Land Law Development, p. 65; Hibbard, Public Land Policies, p. 39.

[67]Gates, Public Land Law Development, p. 66.

[68]Ibid., pp. 62, 67.

[69]Van Alstyne, Rising American Empire, pp. 100,125,170.

[70]Hamilton epitomizes the seaward gaze of the American leadership group. Gerald Stourzh, in a fine study of Hamilton's ideas, Alexander Hamilton and the Idea of Republican Government (Stanford, California: Stanford University Press, 1970), p. 195, writes,

When Hamilton spoke of the Mississippi, he looked toward the sea, toward the Gulf of Mexico, rather than toward the vast lands beyond. One of his most revealing utterances was his reference, in 1790, to the Spanish possessions on 'our right' and the British possessions (Canada) on 'our left'! In other words, Hamilton's inner eye was as a matter of course directed toward Europe. His idea of empire corresponded to Washington's hope that someday this country 'will have some weight in the scales of Empires.' It surely was poles apart from Jefferson's westward-looking 'Empire of Liberty', agrarian, pacifist, isolationist. (paren. added).

[71]Robbins, Landed Heritage, p. 10

[72]Cited in Gates, Public Land Law Development, pp. 72-73.

[73]Hibbard, Public Land Policies, p. 42.

[74]Gates, Public Land Law Development, p. 121.

[75]Hibbard, Public Land Policies, pp. 41-42.

[76]Robbins, Landed Heritage, p. 9.

[77]Treat, National Land System, pp. 44-45.

[78]Hibbard, Public Land Policies, p. 47, N. 54; Robbins, Landed Heritage, pp. 10-11.

[79]Hibbard, Public Land Policies, p. 48, N. 59.

[80]Robbins, Landed Heritage, p. 11

[81]Hibbard, Public Land Policies, p. 51.

[82]U.S., Congress, House, Report of the Secretary of the Treasury: Plan For Disposing of the Public Lands, 1st Cong., 2nd sess., July 22, 1790 in The New American State Papers, The Public Lands, 8 vols. with an introduction by Margaret Beatty Bogue (Wilmington, Delaware:Scholarly Resources, 1973), Vol. 4: Bounty Lands, Revenues, pp. 68-69.

[83]Cf. Williams' account in Contours (p. 141), of Washington's view "that basic natural resources should be controlled and dispensed by the central government rather than by the principle of first come, first served, and the public welfare take the leftovers."

[84]Treat, National Land System, p. 87; Van Alstyne, Rising American Empire, p. 83.

[85]Alexander Hamilton, "Report on Manufactures" reprinted in A Documentary History of American Economic Policy Since 1789, ed. William Letwin (Chicago: Aldine Publishing Co., 1961), pp. 11-12.

[86]Hibbard, Public Land Policies, p. 62.

[87]Ibid., p. 63.

[88]Treat, National Land System, p. 83.

[89]Hibbard, Public Land Policies, pp. 62-63; Robbins, Landed Heritage, p. 15.

[90]Welter, American Mind, p. 106; Hibbard, Public Land Policies, p. 66. Paul Wallace Gates, Public Land Law Development (p. 124) concludes that "Gallatin seemed to be on all sides of the issues revolving around speculators and settlers." Thus "Having taken the position that revenue was the basic need and that capitalists should be encouraged to buy, he then argued that a high price would deter capitalists and would cause the lands to be bought largely, if not solely by settlers."

[91]Robbins, Landed Heritage, p. 18.

[92]Ibid., Gates, Public Land Law Development, p. 30; Hibbard, Public Land Policies, pp. 69-71.

[93]Gates, Public Land Law Development, p. 30.

[94]Ibid., p. 129; Hibbard, Public Land Policies, pp. 74-80.

[95]Robbins, Landed Heritage, pp. 23-24. For an extensive discussion of the foreign land claims disputes, see Gates, Public Land Law Development, chap. 6.

[96]Malcolm J. Rohrbough, The Land Office Business; the settlement and administration of American Public Lands, 1789-1837 (New York: Oxford University Press, 1968), p. 3.

[97]Robbins, Landed Heritage, p. 25.

[98]Ibid., p. 25; Hibbard, Public Land Policies, p. 88.

[99]Ibid..

[100]Cited in ibid.

[101]Cited in Robbins, Landed Heritage, p. 25. For discussion of the squatters' labor theory of property see Chester E. Eisinger, "The Influence of Natural Rights and Physiocratic Doctrines on American Agrarian Thought during the Revolutionary Period," Agricultural History 21 (January 1947): 13-22; "The Freehold Concept in Eighteenth Century American Letters," William and Mary Quarterly, Third Series, Vol. IV (January 1947). Other fine literary discussions of the topic may be found in Leo Marx, The Machine in the Garden (New York: Oxford University Press,Galaxy Books), esp. chap. III; and D. H. Lawrence, Studies in Classic American Literature (New York: The Viking Press, 1971), esp. chaps. I and III. The source of the theory of course, is John Locke's revolutionary chapter "Of Property" in The Second Treatise of Government. The best edition is Two Treatises Of Government with an introduction and notes by Peter Laslett (New York: The New American Library, Mentor Books, 1963).

[102]Robbins, Landed Heritage, pp. 25-26.

[103]Hibbard, Public Land Policies,pp. 84 f.

[104]Rohrbough, Land Office Business, p. 89.

[105]Ibid., passim; Robbins, Landed Heritage, p. 28.

[106]Rohrbough, Land Office Business (pp. 21-22) writes:
The Northwest Territory provided many examples of this phenomenon. The secretary of the territory, Winthrop Sargent was one of the leaders in the organization of the Ohio Company.

The territorial judges were likewise interested in land speculation. John Cleve Symmes was chief of a great land enterprise and a territorial judge. Rufus Putnam was the Ohio Company's representative. He was nominated a territorial judge in 1790 and moved to the even more sensitive post of surveyor general in 1796. Judge George Turner, the third territorial judge, was also involved in land speculation. Most of the surveyors were speculators. Of this group Thomas Worthington, Israel Ludlow and Putnam were notable examples. The close connection between administrators and the land business would continue into the nineteenth century and would often serve to cast doubt on the integrity and impartiality of the administration of the public lands.

[107] Ibid., p. 49.

[108] Hamilton, et al., Federalist, p. 239.

CHAPTER THREE

PUBLIC LAND AND THE STRUGGLE OVER NATIONAL GROWTH

Social Change and the Changing Politics of Land Disposal

In its first phase the mercantile land policy was designed to strengthen the central government of the United States. Public land sales were intended to rescue the financial integrity of the country and put it on a sound basis for international commercial competition. Making land available in large lots to reputable colonizers would also assure the more responsible control of western settlement. But the policy was never meant to serve as a concrete wall barring frontier expansion. It was more like a high channel whose banks were easily forded by squatters and speculators. The established leadership hesitated, indeed was unable to press the drive of small producers back toward the coast. Social and political power relations were much too fluid to allow for more than a loose central guidance of national development. Buttressed by slack in the credit arrangements and the near total absence of a police force to defend the controls, the openness of the political order stimulated small business groups to keep up the pressure for ever greater liberalization of land disposal policy. Thus the frontier was transformed by political as much as economic action. This tandem operation of political and economic forces ignited the self-expanding power of the western marketplace, a power that shattered the remnants of the old

restrictive land policy and forged the triumph of laissez-faire.

But the growth of the settlers' power was not the only force at work undermining mercantilism in the United States. With victory over Britain in 1814 and the inauguration of an "era of good feeling" in the country, the legitimacy and effectiveness of the national government were more assured. The objective of mercantilist policy neared fulfillment. Once introduced into the body of public law however, policies may take on a life of their own. Although framed by one set of interests with particular ends in view, laws may with time come to serve different values and interests. Thus the social function of policy is not fixed but may vary with new circumstances and political forces. This process affected the mercantile land policy. Between 1820 and 1830 the techniques usually associated in mercantilist thought with strengthening of the central government were gradually redefined as instruments for the advancement of capitalist social relations. Of course, high land prices, tarriffs and construction of public works were still justified by traditional mercantilists such as John Quincy Adams, as tools for enhancing national power. But they were also increasingly appropriated by industrial and manufacturing interests as policies for strengthening the system of production as an end in itself. Mercantilist policies began to be promoted for capitalist ends. Centralized control of the distribution of public wealth, especially land, was favored by manufacturers as a way to retard what they

perceived as the waste of scarce labor and capital on inefficient or speculative ventures in petty agriculture. Strict enforcement of such a policy would have sharply restricted the growing authority of local politicians in the West as well as the economic prospects of frontier businessmen. Thus for the first time in this study a tendency can be identified which links the plea for centralized political power with aid for the accumulation of private wealth and industrial capital.

By the 1830s the land question no longer divided powerful men in government from the propertyless citizens who sought access to the public lands. In this period the cleavage became primarily economic, separating wealthy men who envisioned the spreading influence of a mature industrial capitalism from petty producers who pursued their main chance through small scale agriculture, trade and crafts. The cleavage rested on the difference between economic activity based on wage labor and that resting on independent petty industry.

The emphasis in the conflict shifted to questions of economic life, particularly the question of labor. Each of the groups opposing high land costs differed from the factory interest insofar as they rested on a different labor base. The petty producers' push for cheap land brought them the support of southern planters and land speculators. None of these depended on the purchase of wage labor: planters commanded slaves, petty producers desired to work for themselves, and speculation amounted to the almost systematic avoidance of work itself. The factory system, on the other hand,

rested squarely on the availability of wage laborers. In their different modes of appropriating labor power, petty producers, manufacturers, planters and land speculators were at odds over the mode of production which should come to prevail in the United States. As James O'Connor has recently suggested, the unique thing about capitalist development in the United States "was the ability of petty commodity production to keep capital at bay for a relatively long time."[1]

Despite these economic differences, and they are very important to an understanding of the land debate, there was one thing about which most Americans could agree. The age in which the needs of the political order were dominant, the age of mercantilism, was over. The new epoch was defined by the primacy of the individual and the economic. It was reflected in the belief that, as James Willard Hurst writes,

> ...the meaning of life for men rests...in their possessing liberty, which means basically possessing a wide practical range of options as to what they do....The legal order (therefore) should protect and promote the release of individual creative energy. 2

Ultimately this consensus was at least as influential in shaping the direction of U.S. economic and political development as the division between capitalist industry and petty production. The universal drive for profit overcame the special vision of independence which was the moral center of petty industry. It allowed the young captains of industry in the Republican Party to hold out the promise of free land in exchange for western support for other national policies

favorable to a centralized industrial capitalism. The West accepted the deal and America became a truly laissez-faire society.

The purpose of this chapter is to examine these complex and often ambiguous changes in policy and ideology insofar as they were reflected by the conflict over land distribution. Discussion will focus on the expansion of western agriculture, the land disposal policies promoted by westerners, and the increasingly capitalist justification of tight land regulation. In the final section, national opposition to working class demands for basic land reform will be considered as an illustration of the union of U.S. business behind the banner of laissez-faire.

Cultivating The Main Chance

Just as the small farmers predicted, longer credit terms, more land offices, and smaller minimum tracts multiplied land sales. From practically nothing, they jumped to 396,646 acres in 1801 and 340,000 the next year, and stayed at these levels, never falling below 143,000 acres until after the War of 1812.[3] By 1806 government revenues reached $850,106. For the first time mercantilist land policy was producing the financial results intended.[4]

The government had a "land office business" on its hands. The availability of public credit spurred it, but other factors were operating too. One of the most important was the trade in old European land grants which the government pledged

itself to respect. Roy Robbins luridly describes, "lynx - eyed speculators" who "eagerly sought" such claims to ignite "an active commerce...with the docile, unlettered settlers."[5] An array of events and forces stimulated deep interest in the West. The Louisiana Purchase, Burr conspiracy, the Yazoo land frauds, the Lewis and Clark expedition, high profits in the fur trade, all these furnished poor and not so poor Easterners food for dreams. Each helped advertise the dynamic possibilities of development.[6]

Adding to the impetus of growth was the explosion in farm prices after 1815. There was 25¢ and 35¢ cotton, 9¢ sugar, 14¢ tobacco, and $2. wheat. As Gates notes in his history of The Farmer's Age: "Never again were such prices to prevail in the ante-bellum period, except perhaps in 1857, and only twice later was there to be such wild excitement on the part of petty and large capitalists anxious to invest in land."[7] Behind the explosion of prices and values, and working to reinforce the expansion of public credit, was the growth of banking. By 1818 the new Second National Bank of the United States had pumped $8,300,000 of its paper into circulation and had loaned $41,000,000 on real estate and bank stock. Between 1812 and 1817 the amount of currency in circulation more than doubled.[8] Corresponding to the tremendous expansion in the economy was the rise, for the first time in American history, of a small surplus labor supply that added to the westward flow of men and money.[9]

Public policy and private action combined to bring on the first of the great nineteenth century busts. Neither the efforts of the mercantilists to limit expansion or those of the petty producers to build an empire of republican simplicity could defeat the inherent anarchy of capitalist development. Despite their differences each group was committed to the rise of property values and to the expansion of the marketplace. Speculation was inseparably connected to both. The social distinction between the mercantilists and petty producers appears to fade once it is realized how much each wanted to benefit from the businesslike anticipation of the market. The fantastic explosion of credit marked the great cultural appeal of the "main chance." Veblen's description of the American "farmer-pioneer" illustrates the point.

> The land had, as it still has, a prospective value , a 'speculative' value as it is called, and the farmer-pioneer was concerned with seizing upon this prospective value and turning it into net gain by way of absentee ownership, as much as the pioneer-farmer was concerned with turning the fertile soil to present use in the creation of a livelihood for himself and his household from day to day.... Habitually and with singular uniformity the American farmers have aimed to acquire real estate at the same time that they have worked at their trade as husbandmen....They have been cultivators of the main chance as well as of the fertile soil. 10

But the farmers' zeal for speculative profits was matched by that of many wealthy merchants. Although manufacturing was to increase in the 1820s and 1830s, it would remain an expensive and risky enterprise until after the Civil War. Labor was costly and the threat of foreign competition constant. For established merchants, traders, and factory owners, the

infancy of capitalist production made land an attractive field for the investment of surplus capital. Enhancing its attractiveness was the relatively high cost of public land to the poor. This reduced the risk of speculation for those rich enough to engross entire townships since these could be subdivided and sold below government prices to eager settlers. Town jobbing, in which the choicest potential sites near lakes and rivers were appropriated by large-scale entrepreneurs, became a popular activity among men with money to spare.[11] "Speculators and their grandiose plans," writes Richard Bartlett, "lay behind most of America's urban centers" in the old West.[12] Cleveland, Cincinnati, Louisville and Knoxville each began this way, and so did hundreds of other cities and more than a few ghost towns. Thus the link between merchant capital and land speculation appeared side by side with a growing resistance among manufacturers to land policies which seemed to encourage waste of precious capital on frivolous schemes. In Louis Hacker's words:

> ...it may be said that a characteristic of mercantile capitalism was its tendency to speculate. Its necessity to keep its capital fund in a liquid form, its inability to tap the resources of small savers, and its habituation to commerce rather than industrial production naturally turned it to this avenue of activity. 13

Thus, speculators became allies of farmers. Together they sought three reforms: pre-emption, graduation of the land price downward, and cession of the public domain to the states in which it lay. Pre-emption was a claim for time to pay on the theory that work should be counted as part

of the public price. It would permit the individual to enter a small portion of the public domain, cultivate the land until a cash crop was produced, and pay later at the minimum price. Pre-emption appeared to institutionalize the state of nature described in Locke's Second Treatise, but with one obvious difference. Locke wrote of individual appropriators in a natural setting, when "all the world was America" and where property was simply a physical relationship to external nature.[14] But in 1800 America was no longer serviceable as a metaphor for the state of nature. Public law determined the conditions of private appropriation and it did not favor the hopes of all equally. Between a poor man and the land there stood a system of social controls, that is, other more powerful men. The realization of Locke's pre-political nature required the practical support of Locke's post-social state. Thus in 1790 one Pennsylvania preacher called upon government to "support each individual citizen in the right of the soil, and the advantages and profits arising from his labor."[15]

Pre-emption, on the surface at least, did not mean an abandonment of the financial footing for land policy. At this stage, no one dared ask for free land. At some point the settler would have to pay. Actually pre-emption endorsed squatting and the elimination of competition in public sales. Without a police force to assure settlement, it could easily function as a non-interest bearing government loan to individuals bent on land speculation or depredation of non-farm resources such as timber and minerals. Indeed, this is

exactly what happened after passage of the general pre-emption laws of 1841 just as its Congressional opponents predicted.[16] In 1824, for example, the House Public Lands Committee warned of mischief and instability on the frontier as the inevitable by-products of pre-emption. It would induce "persons of an enterprising disposition to anticipate" the public sales "and to settle upon and improve the most valuable tracts, which they would claim at the minimum price." Actual purchasers, excluded from these high quality lands, would themselves be forced "to resort to illegal settlements in the hope of obtaining at a minimum price that which they were prevented from purchasing at fair and open sale."[17]

To the conservative planters and careful merchants who stood with the old mercantile politicians such as John Adams and James Madison, pre-emption was an invitation to anarchy, a policy completely at odds with the presiding vision of regulated, balanced development. Yet despite their opposition, the pressure of squatting, increasing debt, and pioneer threats of "intrigue...rebellion (and) animosities" forced mercantile leaders in Congress to support a series of temporary limited pre-emption laws.[18] By 1816 up to 211,864 acres of public domain were pre-empted under the special laws.

Another idea floated to counter the mercantile policy was graduation of the price of land downward in proportion to the time it remained unsold. Initially proposed in 1824 by Thomas Hart Benton, graduation appealed to medium and large-scale land entrepreneurs, as well as to Southern

planters anxious to gain cheap access to passed over lands, many of which remained of sufficiently high quality to replace the fast depreciating cotton lands of the Old South.[19] Superficially, graduation implied acceptance of the government sale mechanism. It was merely a reform based on sound principles of marketing. As Benton put it, "The United States is a great land seller and she should follow the practice of all other sellers; she should apportion her price to the quality of her land."[20] This was demonstrably less radical than the ungentlemanly avoidance of competition which was the object of pre-emption. In fact however, like pre-emption, graduation was designed to subvert the price system and eliminate the mercantile use of land for growth regulation and revenue. The discount struck directly at the political price arbitrarily set by the mercantilists to serve their ends. Of course, the graduated price was no less political. To ask 50¢ rather than $1.25 per acre was tantamount to changing the definition of the land question from a concern for public revenue to an interest in rapid private entry. It would have speeded up the clock of American development and enhanced its speculative character. Thus graduation was part of the larger battle to alter the balance of social power in America, shifting it downward in the class structure and westward. It would have functioned to decentralize the benefits of the land sale system. By reducing the exchange value of land to the government it would leave the private purchaser to gain the most from its "unearned" increment.

More of the social surplus generated by land speculation would shift into private rather than government hands.

Mercantilist leaders never took the argument for graduation seriously. Not only had the existing price not deterred settlement, but sensing the high appeal of economic rationality, men like Henry Clay urged that lowered public prices would damage existing land values, especially, "the value of the property of the yeomanry" already out in the country.[21] Graduation, he said, only served the interests of those opposed to republican equality, for lowered prices would attract absentee speculation and higher prices in the long run. It would also tend to lower the value of public land grants made to new states for education and public improvements. Finally, in Clay's view, the argument for graduation rested on a flawed analysis of the reasons behind the lack of demand. Lands went unpurchased not because they were of poor quality (if they were rich men would not sponsor legislation to ease their sale) but because of the never ending clamor for land raised by the West itself, a demand that could never meet the supply.[22] Isn't it poor logic, wondered the mercantilists, to demand easy access to the soil only to turn around and defame its quality when more is offered than could be bought? Besides, if the soil is truly inferior, what sensible poor man would risk the little capital he possessed to purchase land when he knows he will have to meet the competition of his richer and better situated neighbors? As a Congressional report of 1848 warned:

> The truth is, it is better, far better, that a poor man should, with fifty dollars, take forty acres of choice land, as he can now do, rather than that any encouragement should be held out to him to take double that amount of poor land, at half the price. [23]

Pre-emption and graduation were policies designed to alter the terms of the public land market in the interest of buyers, the former by eliminating the competition at the auction, the other by lowering the price. Insofar as Congress refused to accept either of these, the West, reinforced by the political leadership of John Calhoun and the South, suggested the option of ceding the public lands to the states in which they lay. Cession had two obvious advantages. It appealed to the West's desire to stack the public land market in its favor, first, by multiplying the number of sellers and second, by bringing the sellers closer to home and therefore to the penalties and rewards of local political influence. Moreover, by strengthening the authority and prestige of the states at the expense of the central government the South's cause was aided.

The idea was first floated in 1826 and reappeared continually in the decades that followed, often dredged up as a way to divide "the elements wishing a change in land policy" by confusing the supporters of pre-emption and graduation with an entirely different line of reform.[24] Benton offered a plan whereby land not sold at the lowest graduated price would be ceded to the states. He saw this as a gift of no value on the part of the Federal government but which could be transformed into one through the mechanism of liberal state disposal to real cultivators.[25] Clearly the latter were

enthusiastic about the Missourian's logic. Although memorials favoring the idea poured in, Congress rejected it. It would tend, reported the House Committee on Public Lands, to create conflicts among the states over the value of the land each would receive as well as stimulate a dangerous competition for buyers. In the process of boosting values, they would inevitably encourage speculation and corruption. Instead, the Committee favored a wide distribution of land revenues as the best way to apportion the benefits of the public domain to the states.[26]

Cession, in fact, was never a primary objective of the individual settler. He was smart enough to realize the new states wanted to control land disposal only to enter the land business themselves. Although cession would have replaced one monopoly seller with several presumably more competitive ones, the nagging problem of money and credit inherent in the commercial system would continue to strain their tight budgets. At this stage in the American land system's develoment, decentralization was for the petty producer only a method for more quickly reaching the objective of private ownership. If he supported cession it was only because he felt more optimistic about controlling local land sales.

Despite, or perhaps because of the speculative character of western land development, its representatives tended to justify these policies in terms of the sober, simple political economy of republican agriculture, while not hesitating to point out its expansive potential. Thus the moral worth of

republicanism, said one Representative, was its tendency to encourage a "self-preserving principle of virtue and independence." And this was linked inseparably to the freehold and its

> ...direct tendency to equalize the condition of the people, by smoothing down those inequalities in society, so baneful to the principles of republican institutions, which are apt to grow up from great wealth and extreme poverty; and in this way to implant into the bosom a proud and independent feeling that raises him at once, from the consciousness of self-abasement to the conviction of his own importance. 27

The freehold was pictured as the most productive unit of agricultural organization, and agricultural production was in turn portrayed as the true basis of wealth. The Senate Public Lands Committee complained of the mercantilists' inability to see this truth:

> The Committee on Manufactures seem to contemplate the federal domain merely as an object of revenue; and to look for that revenue solely from the receivers of the land offices; when the science of political economy has ascertained such a fund to be chiefly, if not exclusively, valuable under the aspect of population and cultivation, and the external extraction of revenue from the people in its customary mode of taxes and imposts. 28

Thus while commerce and sales are "meager and barren" operations adding nothing to the productiveness of society, "the extraction of revenue from cultivation is an annual and perpetual process, increasing in productiveness, though all time, with the increase of population, the amelioration of soils, and scientific improvements in the arts of agriculture." 29

Nor need the old states have feared this "annual and perpetual process" because "the independent capital" of the once poor easterner "contributes more to the wealth and commerce of the state he left than if he had remained there in dependent poverty...(for) the prosperity of the new states reacts through the channels of trade and business, in favor of the old states, and hence the wonderful growth of the whole country."[30] (parenthesis added).

Thus the springboard for American expansion was freehold settlement of the public domain. Here, argued the House Public Lands Committee, was the great and growing marketplace for eastern industry:

> Every settlement upon the public lands under a sale, but adds to the consumption of manufactured articles; thereby extending the market and increasing the demand for the products of mechanical and manufacturing labor. [31]

And here as well, said Robert Walker, is the true foundation of America's international economic power. Mercantilists only damaged their own cause when they failed to see that

> Upon the farming interest are all others dependent for their wealth and prosperity. That interest furnishes us not only with food and raiment at home, but sends abroad that hundreds and millions of exports, which is carrying onward so rapidly the prosperity of the republic. [32]

Mercantilists were hard pressed to believe in the sobriety of western economic practice when the image before their eyes was irresponsible acceptance of credit coupled with wild-eyed speculation. In 1819 for example, the Secretary of the Treasury reported that since 1789 the government had sold $44 million

worth of land but had actually received in payment only half that amount. Just in the years between 1815 and 1819 the sum owed the government multiplied almost sixfold, from $3 million to $17 million.[33] The structure of the land disposal system not only affected patterns of land use, but the stability and character of the entire political economy.

The Changing Uses of Mercantilist Policy

In 1819 the boom exploded. As loans were called due the paper pyramids toppled. By 1820 the debt owed the government came to $21 million. Partly to stall the day of reckoning, partly for fear of the West's growing political strength, Congress had already between 1806 and 1820 passed twelve relief laws extending more time to settlers unable to pay for their lands.[34] As the scope of the economic disaster became obvious a more systematic re-examination of the credit system was essential. Clearly, as the more consistent mercantilists insisted, a controlled political and economic advance could not rest on the shaky base of runaway speculation. Petty producers agreed. That is why, they said, land should be taken out of the financial system altogether and be made purely the object of settlement. In this respect, the debate over land disposal became a debate about how much form and structure could be given to the development process in a capitalist economy. No one wanted business crises. The question came down to which mode of disposal minimized them. Mercantilists insisted that only a system of distribution based on sound

commercial practices could overcome the tendency toward speculation. Petty producers focused on the currency and banking systems as the source of the problem. Either way, it was now clear that land was the center of a much larger economic struggle. Its fate was not only irrevocably tied to the health of the financial system, but as Douglas Dowd adds, "Because the market value of land was, in important part, a function of their earning power, and because that in turn was virtually dependent upon the foreign trade of the United States, tariff policy was a key issue."[35] The salability of land was also directly related to a source of capital to pay for the internal improvements so necessary for the national commerce. Thus banking, tariffs, internal improvements, not to mention slavery, all were influenced by the disposition of the land question. It was directly amidst these issues Dowd observes, that "Land policy - the accessibility, the size, and the price of western lands - persisted as a boiling issue."[36]

In the midst of the depression the Senate Committee on Public Lands, now dominated by the West, issued a serious critique of the prevailing land system. It concluded that granting credit, though inspired by a wish to help the poor, had only served to intensify their distress. Albert Gallatin's assumption that a sufficiently high minimum price would halt speculation and monopoly was invalidated by experience. In practice, it damaged petty industry, preventing the "industrious class, with small means...from becoming purchasers with

a view to settlement and cultivation."[37] A better plan would be to reduce the minimum tract to 80 acres and the minimum price to $1.50. Other Westerners demanded the addition of a pre-emption clause. But this measure was opposed by the East and died in committee.[38]

One year later, in 1820, the fight over credit was renewed. The East was opposed to credit almost exclusively on financial grounds.[39] With the support of the debt-stricken West, the system should have been overturned easily. However, by no means was a majority in the West, or East for that matter opposed to easy money. Actually, many speculators, businessmen and farmers enjoyed playing with the present credit arrangements. When its abolition seemed imminent, they organized to resist the change back to a cash system. As Roy Robbins describes it,

> Western newspapers suddenly grasped the significance of any change in the land system. Every possible atom of praise for the existing system was sought out by Western interests and broadcast to the countryside....The legislatures of Indiana and Louisiana drew up memorials praying that no changes be made in the land laws....Many Eastern business interests, particularly the rising manufacturers and the enterprising builders of canals, turnpikes and railways roundly denounced any alterations of the existing system. 40

Mercantilists, supported by conservative Westerners, apprehensive over the implications of credit, overcame that reaction and abolished the credit system. To obtain Western support however, it was necessary for the East to accept a new minimum price of $1.25 per acre and a reduced tract of 80 acres. This law, called by Benjamin Hibbard, "the most

important piece of land legislation since the Ordinance of 1785" ended the marriage of mercantilism and credit. But it was no boon to the cash poor pioneer. Even an 80 acre tract required the settler to pay $100 after all. On the other hand, the land system was now more likely to generate revenue, even a surplus. In that context, mercantilists fought their last battle for control of the land system, the fight to distribute to all the states the accumulated proceeds of the land sales.

As the economy picked up after 1820 so did the sale of land. Although prices rarely exceeded the minimum by very much, until 1842 the average was $1.28 per acre, the money received contributed over 11% of the federal revenues.[41] The time was approaching rapidly when debt repayment would be concluded and the primary motive behind the revenue oriented land policy would be gone. Was the mercantile use of land no longer necessary? One clue to the answer was a change in the protective tariff's status.

Like high land prices, the protective tariff was at first considered a temporary expedient to boost the power of the infant political economy. By 1819 however, it was generally accepted by American leaders from all sections as a permanently necessary fixture of The American System.[42] Even the aging Jefferson was ready to "place the manufacturer by the side of the agriculturist" rather than see Americans submit to domination by foreign power "or to be clothed in skins, and to live like wild beasts in dens and caverns." [43]

President John Quincy Adams viewed this use of public authority even more positively. By continuing to employ the tariff as a means of securing revenue as well as industrial protection, the public land monies could be freed to finance construction of a national road and transportation network binding the manufacturing and agricultural sectors in an integrated, balanced political economy. In 1825 Adams explained to Congress his conception of the public domain's place in the logic of American growth, a conception solidly rooted in the mercantilist tradition of national unification:

> Under that system, matured as it has been by experience, and adapted to the exigencies of the times, the lands will continue as they have become, an abundant source of revenue; and when the pledge of them to the public creditor shall have been redeemed by the entire discharge of the national debt, the swelling tide of wealth with which they replenish the common Treasury may be made to flow in unfailing streams of improvement from the Atlantic to the Pacific Ocean. [44]

Until the 1820s, repayment of the debt inhibited the mercantile use of land. It was forced to serve a primarily negative role in defending the integrity of the financial system. But for a mercantilist like Adams government must also be used to achieve positive collective goods such as fabrication of a system of public works stretching across the continent and easing the way to America's Pacific trade. [45] The neglect of a legitimate power where it could fulfill a common need was no less wrong than its unlawful exercise against the people's liberty.

> ...moral, political, intellectual improvement are duties assigned by the Author of Our Existence to

> social no less than individual man. For the fulfillment of those duties governments are invested with power, and to the attainment of the end - the progressive improvement of the condition of the governed - the exercise of delegated powers is a duty as sacred and indispensable as the usurpation of powers not granted is criminal and odious. [46]

The new availability of surplus revenue gave President Adams the unique chance to express a positive contribution for land in what the historian Raynor Wellington aptly called, "the national administration of social and economic interests." [47]

Adams' Secretary of the Treasury, Richard Rush, very plainly showed which "social and economic interests" Adams' administration supported. He warned that a liberal land disposal system endangered the future development of capitalism. In a blunt report to Congress in 1827 Rush complained that the existing policy discouraged capital accumulation. He cautioned that unless land disposal were channeled more deliberately the nation's economic growth would suffer.

> The manner in which the remote lands of the United States are selling and settling, whilst it may tend to increase more quickly the aggregate population of the country, and the mere means of subsistence, does not increase capital in the same proportion. It is a proposition too plain to require elucidation, that the creation of capital is retarded, rather than accelerated by the diffusion of a thin population over a great surface of soil. Anything that may tend to hold back this tendency to diffusion from running too far and too long, into an extreme, can scarcely prove otherwise than salutary. [48]

Rush was careful to call attention to the difference between "capital" and the "mere means of subsistence." The former referred to ever expanding wealth, the unlimited

production of more value whereas the latter was merely useful for the performance of definite functions and for the sustenance of individuals. The static legal concept of ownership that was so important to the squatter as a symbol of independence was only a formal condition for the industrial capitalist, a starting point in a dynamic system of economic relationships organized around the more rational production of wealth for its own sake. The awareness of a substantive difference between petty industry and capitalism was never more evident than in Rush's plea "to hold back this tendency to diffusion" in population and "mere means of subsistence."

It was not Rush though, but Senator Henry Clay of Kentucky who applied Adam's plan in a more general scheme to prevent the diffusion from "running too far and too long." A master politician, Clay knew that one way or another the government's land policy had to become more generous, especially to the West. Its rising anger and power made perpetuation of the harsher policy impossible. The point was to ease it, but on terms consistent with capitalist development and national economic unity. To accomplish this Clay pushed the idea of liberalizing not distribution of the land itself, but the revenues derived from land sales. He proposed that each state be allotted a percentage of the total land revenues equal to its representation in the House of Representatives. To the Western states he offered a 12-1/2% bonus. The monies would go to support internal improvements and education.

Clay's idea had the double advantage of enlarging public investment in private opportunity and maintaining political control of land disposal in the central government's hands. Thus distribution was born of the same logic as Rush's Report and the famous, but unsuccessful Foote Resolution of 1829 to limit sale of public lands to those already on the market. Each shared the underlying objective of preserving national control of land disposal to further industrial capitalist development. Clay's approach however, most clearly reflected the growing appeal of reciprocity and log-rolling in the politics of disposal. Still, the distribution plan was promoted not merely as a device to appease Western politicians. Its function was to aid The American System by accommodating land sales into a general framework embracing tariff revenues, internal improvements and the growth of a working class. The effect would be to continue to regulate the expansion of petty industry from the center by carefully channeling and restricting access to land. This point must be underscored. Neither traditional mercantilists like Adams, nor his allies among the manufacturers, wanted to stop westward expansion. Practically everyone, Whig and Democrat alike, agreed that the government's job was "to convert public property into private as expeditiously as was consonant with that property's economic development."[49] In the 1830s no one considered a permanent public domain necessary or desirable. The common sense held that the "res publica" must ultimately yield to the "res privata." The question was no longer, as it was for the Roman Republicans

"which mode of property creates the best citizens," rather it was which citizens will create the most productive mode of property.[50] Put somewhat differently, it came down to an argument over the timing of economic change and expansion. As Karl Polanyi points out, the rate at which change occurs can be as significant in its impact on the lives of people as the direction of change.[51] This is one of those cases. Measured disposal of the public lands was a negative inducement for the eastern poor to stay and labor in the factories. Making land easily available might enliven agrarian republicanism or speculative business but it would have done little to spur capital formation. Mature, capitalist oriented leaders like Rush felt a responsibility to discipline the popular desire to risk everything on a western escapade by a sober education in the ways of industrial work. Such restraint of speculation might in fact have spared the land some abuse, but it also would have changed the outlook of the average man.

Petty producers, speculators, and enterprising industrialists shared a desire to own the land as a source of personal wealth. Land was commonly perceived as a means of production and exchange before the rise of industry. But it was also a symbol of power in the conflict between two economic forces whose attitudes toward development were very different. Petty producers and speculators wanted to take their chance immediately. Enterprise did not mean success but opportunity. To move was the thing. Acquiring land in a constantly self-

generating process of advance was, as Turner suggested, the essence of life on the frontier.[52] But Richard Rush was no frontier capitalist. Nor was Adams. Of course each appreciated the benefits of land ownership. No less though did they appreciate the need to regulate closely its disposition from the center of public authority. Lacking the private power of industrial capital the state functioned for them as a surrogate banker whose sobriety could be forced on the untrammelled appetites of small businessmen and anxious workers. To the leadership of a primitive industrial order straining to minimize the inefficiency of petty economic adventures, reducing the speed with which the West was transformed into a private commodity was indispensable to the later creation of a mature industrial system.

By manipulating the land's exchange value Clay's distribution scheme seemed to accomplish this. Distribution was based on the public translation of land into money. The fruits of the land's exchange value were to be harvested in the West and transported back East for general collection and redistribution to all sections of the country. By translating the value of land into currency Clay felt he could mold the West's desire for internal improvements into harmony with the manufacturers's desire to maintain national control of land disposal.[53] But he held out nothing to those who wanted an easing of access to land itself, or to Southerners who feared the security increased public expenditure would bring the tariff. For as long as government spending was

kept high the tariff could be justified as a source of revenue just as the land policy was, allowing each to escape attack as tools of mercantile power even as they performed their industrial roles. Hence the South and West joined to fight distribution as a strategy of the manufacturers to co-opt the petty producers while maintaining domination over them.

Clay's reputation notwithstanding, many in the old States did not view distribution in the light of compromise. It was for them part of a defensive, public conservation of the national wealth against Western cupidity. The House Public Lands Committee warned in 1829 that the

> ...time has arrived when the community should be awakened to a protection of their rights....If any States have in reality, an unhallowed desire to get, it may be useful to reflect that the other States have the power to keep, and that it is the duty of the Representatives of these to know that if the national property is parted with, it is parted with only for the general advantage. 54

But control of land was by now more than a tool for national protection. It was an integral part of the general structure of public policy favoring industrial capitalism. While manufacturers desired tariffs, plentiful land revenues obscured their necessity. The problem was that both policies were excellent revenue producers. The fact that each could single-handedly fill the Treasury cancelled the need for the other. By the late 1820s tax receipts accumulated so quickly and payments to European bondholders were made so efficiently that some Americans worried that too much American currency was finding its way to England, France and the Netherlands,

instead of Boston, Philadelphia and New York. Thus if tariffs were necessary for the success of industrialization, liberal disposal of the land revenues was their most potent guarantee.

In 1826 the Senate issued a report that focused on the dangerous consequences for the nation's balance of payments if the land revenues continued to be used to pay the debt. To meet this problem, the Senate recommended distributing the land money. Distribution would not only relieve the payments problem but could also be used to finance local education and internal improvements. This in turn would "give new activity to industry and enterprise" without causing disputes over the constitutionality of federal appropriations for internal improvements. 55 Two additional distribution proposals were offered in 1826 by Senators from New York and Louisiana. The former even suggested using land money to subsidize the removal of slaves to Africa. This idea was consistently mentioned in the many distribution bills. 56

Despite the association of distribution with such virtuous causes as education and emancipation, there was a general realization in Congress that the driving force behind it was fear the tariff would be abolished if the land continued to produce sizeable revenues. As George Stephenson aptly sums up the dilemma:

> ...public men were chary of the financial question, as it involved two great interests of the country: the tariff and public lands. To lower the tariff was to insur the enmity of the manufacturing interests of the East; to stop the sale of the public lands was not to be tolerated in the West and to give them away was equally odious to the East and South. 57

Distribution seemed the perfect compromise because it gave something to all sections. However, the logrolling aspect was only superficial. Distribution actually was a "redistributive" policy.[58] The central issue after all, was not how much each group would receive but who would have to bear the costs of American development. Would petty agriculture be compelled to yield before the northeastern shortage of labor and capital or would industrialism have to await the time when America's speculative thirst was slaked? Something of the bitterness of the dispute is captured in the House debates of 1830 where Representatives of petty industry and planter capitalism joined to denounce the implications of Clay's plan. A South Carolina Congressman agonized that the friends of the stockholding interest were joining with "the advocates of high protecting duties and the friends of internal improvements, in order to squander away the public funds for selfish and sinister purposes." Spencer Pettis of Missouri angrily continued, "Has it come to this, Sir? We have had American systems, anti-slavery systems, the Lord knows what; and now we are to have an anti-emigration system to cripple the West. Do you fear the increased and increasing power of the West?" [59] Great insight was hardly required to see the effect of distribution on the tariffs nor the influence of the tariff on the South and West. As Abbott Lawrence frankly replied to Senator Daniel Webster about the 1828 tariff bill: "This bill if adopted as amended will keep the South and West in debt to New England the next

hundred years."[60] Not inappropriately Senator Thomas Hart Benton named Clay's 1832 distribution proposal the "Land-Tariff Bill." But Clay's supporters only reluctantly admitted the marriage of land and protectionism. They were much happier to discuss the benefits the West would gain from distribution, principally aid for internal improvements.

For Clay, federal financing of internal improvements was a policy that helped everyone. Investment in the canals and roads of the country not only added to the commercial infrastructure, but also was a form of pump-priming to forestall "a fall in prices and wages and thus a depression."[61]

But the most important advantage of internal improvements lay in its economic appeal to the West. The increasingly capitalist function of mercantilist policy could never succeed without at least some Western support. But the growing power of the West, a power bred by the uninhibited speculation and settlement of petty producers and small businessmen, suggested not so much a basis for a nationally integrated political economy as for the compromise of competing regional interests. Madison's analysis of factional politics is a surer clue to Clay's bid for Western votes than President Adams' vision of national unity organized from Washington. The very terms of Clay's offer to the West, twelve and one-half percent of the net proceeds of land revenues over and above what it would normally get as a proportion of its representation in the House, suggests pork barrel politics not central planning.[62] To be sure, Clay and his followers

did try, as Theodore Saloutous has explained, to present elaborate justifications for Western support of The American System. Farmers and petty capitalists were promised a thriving home market, technical advances aiding farm productity and the overall stability of a balanced economy.[63] But most concretely they were promised money.

Many in the West, especially the larger scale speculators who were drawn to the Whigs, found the promise appealing.[64] Benton however, led the majority of Western democrats in opposition. They insisted that distribution and internal improvements were separate questions. Nothing, except the mercantile advocacy of a national growth policy compelled their joint consideration. Thus Benton fought for direct land grants to the states which could be sold to pay for improvements. [65] Western development should not, in his view, serve to reinforce the metropolitan superiority of the East. For the Democrats, federal support for Western growth had to benefit agricultural expansion without helping to consolidate wealth in the East or the power of the central government. In this context President Andrew Jackson, despite his Maysville veto, found philosophical room to promote extensive public investment in untamed Florida. [66]

The South was very cautious about federal aid due to its fear of boosting the chances for a high permanent tariff. Until it could be persuaded of the likelihood of a reduced tariff it would not hear of federal aid for internal improvements. When Clay offered the compromise rate of 1833 as a way

to win Southern votes for distribution, the South changed its tune, assured that after 1842 public improvements would be financed exclusively by land sales. Here Clay manipulated beautifully the factionalism inherent in early nineteen century American politics. Although Jackson ultimately vetoed the distribution bill, the Senator illustrated that given the appropriate reward, most political groups would respond in the desired fashion. Thus "the South had reversed its attitude toward the public lands, because it was getting the lower tariff from Clay and not from the new West."[67] Tariffs, internal improvements and land policy were meshed in a complex political symbiosis: each fed off the other. One conservative Senator stated the point very clearly:

> Mr. Clay's bill to distribute the proceeds of the sales of public lands...which passed both houses of Congress at about the same time with the compromise itself was regarded by us as part and parcel of one great revenue and financial system which we desired to establish for the benefit of the whole country.[68]

Internal improvements were Clay's gift to the West. If they helped him to pass distribution the rising group of manufacturers would gain their much hoped for stick to discipline the ranks of a labor force eager to go west. A land policy designed to help the accumulation of industrial capital could not avoid blocking the exit of workers. Retarding the movement of labor and spurring the increase of capital were opposite sides of one process. This point became a cliche of U.S. economic thought almost from the moment of the first colonial settlements. In 17th century Massachusetts, for example, the scarcity of labor persistently worried the leadership of the

Massachusetts Bay Company. Emanuel Downing, a lawyer, merchant and assistant in the Company feared that local labor would never be had at a reasonable price because of the opportunity to obtain land. High wages also seemed to engender sloth and intemperance among workers. A Maryland reporter noted a few decades later, "It is really a misfortune to be vicious when the wages they receive for the labor of one day will support them in intemperance for three days."[69] The relation of land to labor was an important factor too in the controversy with Spain over access to the Mississippi. To the consternation of the West, responsible leaders like Rufus King and Gouverneur Morris did not push for free trade on the Mississippi even as they fought for free trade with Spain. The river traffic would, in their view, stimulate development detrimental to the established commercial interests in the East because the old Atlantic States were "not sufficiently populous and losing our men is losing our greatest source of value."[70]

Again, during debate in 1796 over the proposed settlement requirement, Albert Gallatin answered critics of the provision by proclaiming his hope that the price of Eastern labor would be kept up by the national land policy.[71] This apparent cause and effect relation between the price of land and the cost of labor was a central component of mercantile thinking. Rush's 1827 Report for example, was deeply impressed by the warning of the English mercantile economist E. G. Wakefield that the Jeffersonian vision of equal property would preclude

the expansion of industrial capital.

> If all the members of the society are supposed to possess equal portions of capital...no man would have a motive for accumulating more capital than he could use with his own hands. This is to some extent the case in new American settlements, where a passion for owning land prevents the existence of a class of laborers for hire. 72

To combat this tendency Wakefield suggested that land prices in the colonies be set sufficiently high "as to prevent the laborers from becoming independent land owners until others had followed to take their place."[73] Rush's analysis pointed in exactly the same direction. To "organize the whole labor" of society more efficiently it was necessary to concentrate it. Thus the comparatively low price of land, he observed,

> ...has served, and still serves to draw...the inhabitants of the majority of the States, including among them a portion, not small, of the Western States, into the settlement of fresh lands, lying farther and still farther off. If the population of these...remained fixed in more instances, as it probably would be by extending the motives to manufacturing labor, it is believed, that the nation would gain in two ways: first, by the more rapid accumulation of capital; and next, by the gradual reduction of the excess of its agricultural population over that engaged in other vocations. [74]

Since nowhere does Rush explicitly advocate raising wages to halt emigration, one may reasonably assume that "the motives" he mentions are primarily negative: the"safety valve" should be closed.

These views do not constitute evidence to support the "safety valve" theory of the public land's role in American development. They do however lend support for the hypothesis

that the problem of labor was a key element in the projection of mercantilist land policy as an instrument of capitalist development. In other words, whether or not the public domain offered an alternative mode of life to low paid eastern workers at a time when start-up costs for a farm ranged well over a thousand dollars is not the main issue. The effort to enforce an artifically high price was meant to officially preempt such an alternative. Hence the relation between labor and land figured prominently in what William Appleton Williams described as the "drive toward a powerful central government empowered to coordinate the landed and commercial interests in one system and at the same time expand it in all directions."[75] From the Massachusetts Bay Colony to the struggle over the West, conservatives felt compelled to use government land policy as an instrument of control over labor.[76] That factory owners and land speculators shared a common orientation to profitmaking is less significant therefore, than the fact that their economic interests led in different directions for American development. To see this it is necessary to recall Marx's point that the distinguishing mark of capitalist production is the appearance of a new form of social domination in which the mass of formally free citizens is compelled, by the fact of the tight ownership of the means of production by a small class to sell their labor power to the members of that class. The outwardly free market in human labor is effectively stacked in the favor of those who possess the tools. The essential precondition of this

development is "separation of the mass of people from the soil." Limiting access to the land is not merely supportive of industrial capitalism, it is decisive for its future. This condition was rendered problematic in what Marx called the "free colony" where vast expanses of public land attracted the citizenry to the opportunity of petty industry. Marx's analysis of Wakefield's "problem" is not only a biting attack on the latter's "systematic colonization" scheme, but an effective summary of the logic implicit in Clay's attempt to enclose the public land from immediate settlement by those who lacked the cash to pay.

> How, then to heal the anti-capitalistic cancer of the colonies? If men were willing, at a blow, to turn all the soil from public into private property, they would destroy certainly the root of the evil, but also - the colonies. The trick is how to kill two birds with one stone. Let the government put upon the virgin soil an artificial price, independent of the law of supply and demand, a price that compels the immigrant to work a long time for wages before he can earn enough money to buy land, and turn himself into an independent peasant. The fund resulting from the sale of the land at a price relatively prohibitory for the wage-workers, this fund of money extorted from the wages of labor...the Government is to employ, on the other hand, in proportion as it grows, to import have-nothings from Europe into the colonies, and thus keep the wage-labor market full for the capitalists. Under these circumstances, tout sera pour le mieux dans le meilleur des mondes possibles. 77

Thus whether they planned to or not, critics of the existing land system, men like Thomas Hart Benton and Robert Walker, helped delay the spread of industrial capitalism by battling for and implementing policies which seemed to enlarge the freedom of choice for poorer citizens. Advocates of preemption,

graduation and the other easy land schemes spoke less for capitalism as a rationalizing industrial force than for the chance to gamble.

The effort to mold land disposal into a form consistent with the requirements of capital accumulation was blocked by the strength of two key social groups: the small businessmen and farmers of the West and the plantation powers of the South. U. S. mercantilism was fatally flawed by the wide distribution of political power in the young country. One theoretician of The American System, Willard Phillips, believed that a democratic people could "rouse, concentrate, and direct their moral and physical power" with the same effectiveness and intensity as a monarch. Led by men of "large capital and skill" democracy could fashion unique mercantile power consistent with its best principles.[78] But Phillips vastly underestimated the conscious self-interest of the rising entrepreneurial class of small farmers, speculators, merchants and tradesmen who refused to defer to the guidance and foresight of a distant central government. Reinforced by the animosity of the planter South, the small businessmen destroyed any chance for Clay to perpetuate the political machinery of mercantilism. As James Madison predicted many years before, despite its centralizing and unifying intent the constitutional organization of political power favored local, not national interests:

> A local spirit will infallibly prevail much more in the members of Congress than a national spirit will prevail in the legislatures of the

> particular States....Measures will too often be decided according to their probable effect, not on the national prosperity and happiness but on the prejudices, interests and pursuits of the governments and people of the individual states. 79

The Rush Report, Foote Resolution and Clay's Distribution Plan did more to unify Western opposition to metropolitan control of the land system than to further controlled development. The distribution scheme passed Congress twice, but in each case the power of competing groups was able to nullify its intent. In 1833 President Andrew Jackson, insisting that "the public lands shall cease, as soon as practicable to be source of revenue" vetoed the bill calling it a "direct road to consolidation" of national power.[80] But eight years later the bill passed again, this time in a giant package with pre-emption and grants for internal improvements. However, the need to assuage the Southern Whigs led to inclusion of an amendment barring distribution of public land revenues if the tariff rose above 20%. When the Eastern Whigs tried raising the figure above that level, President Tyler and the Southern elements of the party reacted angrily. As George Stephenson writes,

> The Whig Party went to pieces on the land question. The master-helmsman Henry Clay could not steer the political craft amidst the angry blasts of sectionalism. He encountered serious obstacles in the national bank and the bankruptcy bill but the tremendous currents stirred up by the stormy debates on the land policy combined with the tariff swamped him. [81]

Tyler refused to sign bills raising the tariff and repealing the Southern Whigs' provision. Distribution had succeeded only by deferring to the power of the South and West and died

as a result, even as pre-emption and the internal improvements continued in force. It was suspended August 30, 1842. The realities of factional politics had forced adoption of a restriction so powerful that the content of distribution was exploded. Although other measures to accomplish distribution of the land revenues were proposed, none passed. The "national prosperity and happiness" would henceforth be based on the decisions of locally oriented politicians to use law as a condition of economic freedom.[82] In their response to the urban worker's plea for basic reform in the public land system the victors of 1841 made clear the dominance of the new business ethic: laissez nous faire.

Land Reform and Laissez-Faire

Ever since the debates of 1796 the demand that purchasers of government land settle and cultivate their claim was part of the agrarian push for liberalization of disposal. The small farm as the mainstay of public order was a persistent theme in American mythology. Proposals for pre-emption and graduation invariably contained limits on the quantity of land that could be obtained from the government and requirements that it actually be worked by the buyer. Extensive abuse of these restrictions, as well as the legitimate buying of land by speculators, seemed to render futile the effort to foster the small farm. Paul Wallace Gates has shown, for example, that by 1860 the percentage of laborers among persons engaged in agriculture was already large, amounting to 23% in Iowa, 19%

in Kansas and 20 - 28% in "the states of the Old Northwest" such as Ohio and Michigan.[83] Even before the Civil War then, social relations based on wage labor and large-scale land ownership were being pressed onto the frontier. The government's railroad grants and its historic support for land speculation aided the activities of "capitalist estate builders" thus serving to hasten "the coming of tenancy to the West."[84] Although millions of public acres remained, unless the government commenced to control western development in the interest of small scale agriculture, absentee ownership and tenantry would rapidly dominate American farm life. Too many loopholes were opened, too many acres fraudently entered to leave much hope of rearranging the existing property system of the West. Land reform could only be a matter of introducing new controls on public disposal in order to shape what remained of the government holdings into a private pattern of small farms. Pressured by the worsening condition of urban labor and the changing circumstances of power on the frontier the poor clamored "for a law which would reserve the public domain for actual settlers."[85]

Although farmers had for years battled for easier terms of access to the public lands they never doubted that land was a commodity or that purchasers of public land should be free to sell it when they chose. Farmers in the United States always had a business sense about land. It is not surprising therefore that the main stimulus for land reform, for a change in the system of tenure, sprang from the urban industrial

working class in the east rather than from the rural proletariat.

The experience of bitter competition for the right to labor under hard conditions for low wages supplied the motive power for workers to spur a national movement for land reform. Thus the first and perhaps only serious movement for basic change in the system of land ownership in U. S. history, although aimed at the country, was essentially urban in character and origin. It began in a loose alliance of workers, radicals, and liberal intellectuals organized around a common desire for change in the social function of public land. In place of the mercantile use of land to increase the national strength, or the capitalist use of land as a mode of social control, or speculative profit, they insisted upon a republican land policy oriented to the achievement of a broad distribution of equal property. Land reform had two components. First, it meant a homestead policy: public donation of a limited quantity of land to any person willing to settle and improve it. Second, to insure the maintenance of small holdings, they argued for the inalienability of public grants. The urban land reformers saw the logic of the land business as an inexorable trend toward concentration of property. To endorse a policy of free homesteads without including limits on the exchange of those gifts for cash was to sidestep the ever present damger of a commerce in land: the tendency for real property ownership to flow into the hands of those who commanded the other modes of wealth in society. If the public

domain were to serve as the base for an alternative society to urban industrial capitalism it had to be prohibited from entering the market system. This was a distinctively anti-laissez faire approach. Its ultimate failure is an index of the power of business in mid-nineteenth century America.

A comprehensive account of the array of social forces, political events and historical changes that together resulted in the Homestead Act of 1862 cannot be provided here, but it is possible briefly to indicate how the urban land reform movement differed from earlier efforts to liberalize land policy, and why, as a result, it had to make its peace with the dominant belief in the legitimacy of land as a commodity.[86]

As early as the 1820s workers began to push for an easing of government land policy as a way to escape the crowded cities on the Atlantic coast. The mercantile system of public sales, they said, was irrelevant to their social reality. Lacking ready cash, and deprived of public credit in 1820, they had no route to the West. In October of 1828, the Mechanics Free Press of New York inaugurated a long campaign by workers to gain freer entry to the public domain by challenging the revenue policy. It sent memorials to Congress proposing substitution of free land grants for the sales policy, asking that a certain portion of the unappropriated public domain be set aside for cultivation by settlers.[87] But it was not until 1836 that free land and land reform were nationally promoted as an alternative to the prevailing system. This was mainly the product of the diligence of one man, the

English born agrarian radical, George Henry Evans. Stung by what he perceived to be the unfairness of Henry Clay's distribution proposal, Evans proposed what one student of labor's role in land politics has called "a comprehensive view of the significance of the public domain for labor." [88]

Though he believed the quality of urban industrial life was abysmal, Evans started his analysis by accepting as legitimate the social relations of capitalist production. In fact, he saw the main cause of industrial squalor not in the factory but on the land, in the monopolization of land ownership which closed the safety valve of western migration and thereby reduced the economic power of labor. It was as if Wakefield's warning to the businessman was turned upside down. In Evans' mind, the central problem of capitalist economics was not a guaranteed labor base for accumulation, but sufficient agrarian opportunity for workers to balance the class superiority of factory owners. Unless the latter were compelled to compete for labor the way workers were forced to compete for employment, exploitation and misery were unavoidable. Workers had to have direct access to land or ever more of them would flood the factory employment offices, destroy the value of their only salable commodity, and reduce their lives to bare subsistence, crushed by the iron law of wages. For capitalism to function beneficially for all classes, Evans insisted that society must see to it that substantive economic equality is realized in the marketplace. Drawing his inspiration from Locke's theory of natural right, he argued that

agriculture was the pivotal element determining the quality of the laborer's existence under a capitalist regime.

> If a man has a right on the earth, he has a right to land enough to raise a habitation. If he has a right to live, he has a right to land enough to till for his subsistence....The poor must work or starve in the manufactories as in England, unless they can cultivate the land. [89] (emphasis in original).

For Evans, land could not be treated legitimately as a commodity because it was not a human product. To do so was to risk abuse and destruction of the earth as well as exploitation of the poor by the rich. Only an equitable distribution of landed property was compatible with republican virtue. Petty industry was the good public order's mode of production. And it was the only salvation for the working class in the United States. Philip Foner's summary of Evans' utopia illustrates his connection of republicanism and petty industry:

> Here in the Rural Republican Townships, the mechanic would be a farmer-artisan, working part of the time on the land and part of the time making commodities with his own tools. The shoemaker artisan-farmer would exchange the shoes he made with his tools for a suit of clothing fashioned by the tailor artisan-farmer. They could also sell their products directly to local traders in the village square. 90

Evans did not want to eliminate private property. Rather he hoped to limit capitalist development to its primitive, petty industrial stage of production. By restricting the capitalist's access to workers the system's overall productivity would decline and its power to revolutionize the machinery of production would be stifled. It was up to workers, Evans concluded, to organize politically and per-

suade their representatives to orient land policy in a new direction.

Although George Henry Evans' desire to extract land from the market system did not appeal to a people for whom the real estate business embodied the main chance, the publicity he gave to the idea of free land was more warmly received. With help from Horace Greely and other intellectuals who were dismayed by the effects of the factory system, Evans promoted land reform through newspapers like the Working Man's Advocate and Young America and through his National Reform Association. By 1845 the proposal was the subject of national debate. But without the votes of the West, votes which were by no means assured, reform was doomed.

Westerners were delighted at the prospect of new urban allies in their struggle for liberal disposal of public land. Even the more substantial frontier businessmen who feared the leveling tendencies of petty production could happily anticipate the spur to growth from a new influx of settlers. But small farmers and large property owners were united in their opposition to proposals for the inalienability of land. This was contrary to the commercial function of the existing land system and to the prevailing idea of a good society. Of what benefit was a homestead, they asked, if government denied the right to exploit its exchange value? How could a society committed to the expansion of individual energy return to so feudal an institution? Why this was hardly less than entail! If homestead was to win the support of the one region where

its impact would be most profoundly felt the omission of the anti-commercial regulations was essential.

Even the conservative anti-speculation forces in Congress, the inheritors of the old mercantilist tradition who were most resistant to the graduation scheme, bitterly denounced land reform. For example, a House Public Lands Committee Report published in June 1848 proclaimed, after a long denunciation of graduation, that the argument of the "land reformers" must be denied with equal vehemence. Not only would the radicals halt accumulation of federal revenue, they would devalue the land itself, "as it would have no exchange value." Moreover, it would end the main enticement to progress in agriculture for it was obvious that "no man would ever lay out money in making expensive erections and improvements on land which he could never sell to replace such money when circumstances required."[91] Every reasonable American could see that Adam Smith's scheme of open competition and equal opportunity was the most logical path to industrial and agricultural progress. Thus, the Committee concluded:

> The true and liberal policy of the government is to entertain no projects of agrarianism, real or disguised; to treat all men as of equal right of acquisition and of alienation, to unshackle the titles and conveyance of land from all ancient feudal embarrassment, and trust to the rivalships of intelligence, industry and enterprise, in a fair field of competition; to preserve a distribution of real as well as personal property. 92

Now even the opponents of speculation adopted the view that public policy should favor the "fair field of competition" as the best mechanism for allocating social values.

This illustrates the hold of laissez-faire ideas on the United States during the 1840s. It also shows how flimsy was the commitment to petty industry and substantive equality held by the western settlers. For no matter how much they insisted upon their belief in the ideal of small-scale individual ownership, they refused to recognize a basic fact of life in market society, the distinction, even contradiction, between individual ownership and permanent tenure on the land. As Lewis Mumford explains,

> Ownership, where capital is needed to work the land, and where, in a bad season the farmer or owner comes under the sway of a money-lender, results in excessive insecurity. Even the temporary absence of a mortgage does not throw off this menace; and the increase of tenant farming in the United States, par excellence the home of the independent individual farmer, is a sure sign of social and economic insecurity, leading eventually to unthrifty forms of use. 93

In other words, as long as government favored the unconditional disposal of land it did not, in the long run, matter whether settlement or quantity restrictions were imposed. The forces of the marketplace, and those forces were already highly organized in the mid-nineteenth century land business, would operate to dethrone individual entrepreneurship and generate ever greater concentrations of property. Unless public authority was used to achieve the goal of small scale agriculture by restricting rights of disposal, or perhaps, by retaining ownership in the government and distributing rights of use, the yeoman republic would quickly become meaningless except as a symbol. Since Americans wanted land as much for

its exchange value as for its use such a policy was, if not unthinkable, at least thoroughly disreputable. The popular view held that the legal arrangements surrounding land should conform to what Thorstein Veblen shrewdly called the American plan, "a settled practice of converting all public wealth to private gain on a plan of legalized seizure." Government's responsibility was to subsidize the wholesale extension of private property and the marketplace. The latter two concepts had become synonomous.

The unity of opposition to the more radical parts of the reformers' program suggested how advanced was the ideological marger of petty industry and laissez-faire capitalism. The unity occurred at a material level also. By 1850 the unifying effects of the national construction of internal improvements began to be felt in the connection of the Eastern and Western economies, and especially in the intensifying commercialization of agriculture in the trans-Mississippi West. Increasingly, the farmer discovered that he had become the creature of commercial requirements and dependent upon industrial processes. It did not make him nervous. Farmers were perhaps the first Americans to trade a measure of hard work and personal autonomy for the pleasure of consuming products made by others.[94] To pay for increments of leisure, as well as for his tools and land, the farmer required predictable markets. More than ever he became a businessman in search of markets, particularly foreign markets, for the vast produce of his land. Hence, in addition to the traditional political support farmers lent

to territorial expansion and liberalization of the land laws, there arose a new celebration of foreign trade and a concomitant demand for access to the international marketplace.[95]

For these ideological and structural reasons, in the 1840s and 1850s the old cleavage between mercantilists and petty producers evaporated. Northern factory owners and Western farmers shared a common capitalist outlook. The mercantile policy of building internal improvements for a national commercial system had succeeded. It only remained to convince the South of the benefits of free markets in land and labor. For everyone else the "market" was, in Benjamin Hibbard's words, "the all-essential desideratum."[96]

Common acceptance of the marketplace as the dominant social institution precluded basic land reform, even if it did not preclude a "free lunch" in public land. It is important to recognize that it took the formation of a consensus on the legitimacy of the marketplace before those who owned the factories were ready to support the farmers' claim for free land. Only when a truly national system of commercial, industrial, and agricultural capitalism was established could the businessmen of the Northeast rest assured that the farmer was a fellow salesman who understood the pressures of capitalist life. It was then reasonable to barter support for free land in exchange for agrarian votes in favor of tariffs, freer immigration policies and a central government committed to a bigger marketplace. Free public land was simply another mechanism of businesslike expansion. As one contemporary

observer put it, land reform of the Western variety "is not agrarian...it does not take your property and give it to me... it does not bring down the high, but raises the low." [97]

The Republican Party's growing support among farmers and businessmen between 1856 and 1860 was based ideologically on the willingness to join a faith in equal opportunity with a respect for unequal results. The petty industrial image of virtue and equality rooted in independent labor yielded to the idea of social mobility. This conception expressed not only the cherished independence of the middle class, but the virtue of struggling up from wage-labor dependency. At one stroke the old clash between the businessman's concern for an adequate labor supply and the republican love of equality could be transcended by a process of mobility in which the worker's struggle for independence could be publicly celebrated as a moral necessity while privately exploited as a practical matter of industrial reality. "Our paupers today," proclaimed The New York Times in 1857, "are our yeomen and merchants of tomorrow." [98] Agriculture and commerce were no longer viewed as symbols of different societies as in the days of Jefferson and Hamilton, but were presented as equally likely pursuits for the "paupers" who toiled diligently upward from the bottom to the respectable levels of society. The firm connection which was hitherto believed to exist between freedom and property was gradually supplemented, and to some extent superseded, by the more ephemeral experience of social mobility and by the opportunity to test one's workmanlike

mettle. This ideology performed the function of explaining away enough failures to power industrial growth. Homestead in its Western variant, that is, minus the inalienability clause, suited it perfectly. The hope of mobility made inequality tolerable. In Eric Foner's words,

> The Homestead played a key role in the Republicans' free labor outlook, for in their view the measure was essential to keeping open the geographical and social mobility which was the hallmark of Northern society. 99

By 1860 mercantilism was an anachronism. Before long petty production would be too. Of course, in their basic respect for private property rights Americans had never, as Rush Welter has observed, "been wholly distinct" from one another; "but this was not the important point about them." Rather, it was

> ...that they had abandoned even the theoretical differences between themselves by uniting - however accidentally, however belatedly, on virtually the same definition of the good society. The very possibility of alternative perceptions and of alternative criteria of the good life had all but disappeared, and nearly everyone took the same step forward into the future. 100

Summary and Conclusion

The purpose of this, as well as the previous chapter, has been to analyze the conflicts surrounding disposal of the U.S. public domain as an illustration of the changing functions of land regulation in the politics of American development. Regulation of disposal was viewed alternatively as a method for strengthening the central government, releasing the energies of private entrepreneurs, and aiding the

establishment of a republican society based on agrarian equality. Each policy implied unequal access to power over land. Mercantilists hoped to reserve the land from petty speculators and the poor, Westerners sought to keep the land system out of the hands of manufacturers. And George Henry Evans and his followers struggled to restrict from entry into the public domain the forces of the marketplace, that is, "capitalist estate builders."

These battles depict the role of land regulation in the development of federalism and capitalism in the United States. It was a key instrument for mercantilists in their efforts to empower the national government with the capacity to control and direct national growth. The public domain became a symbol of the central government's command of the national territory as well as a prime source of revenue to finance its administrative expansion. Until 1841 at least, national land policy helped Washington demonstrate leadership of the states in the politics of American development. With the passage of the general pre-emption law however, land policy became primarily a source of entrepreneurial delights: cheap soil and free resources. Even before however, the capitalist uses of land policy were previewed by the attempt of manufacturers to keep land prices high in order to guarantee inexpensive labor, protective tariffs and a system of national internal improvements. In turn, this stimulated workers, small farmers, land speculators, frontier merchants, and Southern planters to resist the growth of industry as they earlier resisted the

growth of the central government. The modern connection between local public officials and the local merchants of private land were forged in these historic battles against political and industrial centralization. The conflict between proponents of national land policy and the champions of real estate and localism runs deep into the American past. These battles continue to define federalism and capitalism as the political and economic boundary lines of U.S. development.

In another sense however, the underlying theme of Part 1 is not the failure or success of any particular program or group. It is the fact that the subject of land excited sixty years of public debate about the character of American development. Public and private forces interacted to shape the economy not behind closed bureaucratic doors under the counsel of experts, but in the Congress. Development was in the public realm of discussion, a subject with which the whole society concerned itself. Here was an embryonic form of continuous planning conducted under formal democratic auspices. This does not mean the various forces were prepared to sacrifice their own interests for a greater common good, or even that all interests were represented faithfully. Urban land reformers, for example, gave the society a chance to choose equality and were ridiculed by petty producers as well as capitalists for their suggestion that all commercial trafficking in land be stopped. It does mean however, that the existence of the public domain as a living opportunity forced the question of

society's direction into the hands of the society as a whole. The decisions which resulted may not have been wise, but they rested on a democratic base.

By 1841 though, the era of open public controversy about the fate of the public domain was over. Pre-emption was the signal victory of the anti-mercantilists. Less than ten years later the first of tens of millions of public acres were donated to the railroads, inaugurating the greatest age of public charity in American history. Its alms were counted not in pennies, but timber, coal, iron, gold and land. And no case-workers knocked on incorporated doors. There was no check on the family income. Just as resources were disposed of so too did society seem to dispose of its interest in the fate of the land and of its public realm. When the outline of a new public concern began to surface in the post-bellum years, it became increasingly clear that its boundaries were established by the results of the great giveaways, as if the older, democratic debates never happened and the new one could only be defined in scientific terms.

Notes to Chapter Three

[1]James O'Connor, Review of The Twisted Dream, by Douglas Dowd, in Monthly Review 26 (March 1975), esp. pp.49-51. For a criticism of O'Connor see the reply of Robert Sherry in Monthly Review 28 (May 1976), pp. 52f.

[2]James Willard Hurst, Law and the Conditions of Freedom in the Nineteenth Century United States (Madison: University of Wisconsin Press, 1956), p. 6.

[3]Paul Wallace Gates, The History of Public Land Law Development (Washington: U.S. Government Printing Office, 1968), p. 132.

[4]Ibid. Early students of land history like Hibbard and Robbins argued that credit worked against the interest of settlers since it caught them in a financial arrangement which they found difficult to control. More recent studies however, indicate that small as well as large buyers benefitted from easy credit. The easier terms brought into the government land market "a new and larger class of purchasers who bought the greater part of the land being sold before 1810." In addition, the mere fact that land seemed continually up for sale does not automatically mean all sellers were speculating. Some, if not many, small producers simply could not keep up with their heavy mortgage payments. Others were probably dissatisfied with their land and sought funds for access to more fertile soil.

[5]Roy Robbins, Our Landed Heritage, The Public Domain 1776-1936 (Lincoln, Neb.: University of Nebraska Press, Bison Books, 1969), pp. 23-24.

[6]Ibid., p. 28.

[7]Paul Wallace Gates, The Farmer's Age, 1815-1860 (New York: Holt, Rinehart & Winston, 1960), p. 57.

[8]Ibid., p. 57f.

[9]Robbins, Landed Heritage, p. 28.

[10]Thorstein Veblen, Absentee Ownership with an introduction by Robert Lekachman (Boston: Beacon Press, 1967), p. 80.

[11]Louis Hacker, The Triumph of American Capitalism (New York: Columbia University Press, 1940, 1947), pp. 210-214. Also see Robbins, Landed Heritage, pp. 62-64; Aaron M. Sakolski, Land Tenure and Taxation in America (New York: Robert Schalkenbach Foundation, 1957), chap. 9; and the same author's The Great American Land Bubble (New York: Harper & Row, 1932);

Richard C. Wade, The Urban Frontier: The Rise of Western Cities, 1790-1830 (Cambridge: Harvard University Press, 1959).

[12]Richard A. Bartlett, The New Country, A Social History of the American Frontier (New York: Oxford University Press, 1974), p. 403.

[13]Hacker, Triumph of American Capitalism, pp. 210-211, emphasizes that "Even after industrial capitalism was beginning to raise its head, financial interests or individuals with surplus funds were more likely to acquire speculative holdings than other forms of equities." (ibid).

[14]John Locke, Two Treatises of Government with introduction and notes by Peter Laslett (New York: New American Library, Mentor Books, 1963), p. 343. For a detailed and profound critique of Locke's theory see Robert Denoon Cumming, Human Nature and History, 2 vols. (Chicago: University of Chicago Press, 1969), 2:113-140. For additional sources on squatter justification of property rights see Chapter Two, note 101.

[15]Cited in Chester E. Eisinger, "The Freehold Concept in Eighteenth Century American Letters," The William and Mary Quarterly Third Series, Vol. IV (January 1957), 47.

[16]Benjamin Hibbard, A History of the Public Land Policies with a Forward by Paul Wallace Gates (Madison and Milwaukee: University of Wisconsin Press, 1965), chap. 9.

[17]U.S., Congress, House, Committee on Public Lands, Report upon the subject of granting a right of pre-emption to settlers on the public lands, H. Rept. 118, 18th Cong., 1st sess., 1824, p. 46 in The New American State Papers, The Public Lands, 8 vols., with an introduction by Margaret Beatty Bogue (Wilmington, Delaware: Scholarly Resources, 1973), Vol. 3: Land Prices and Preemption Rights, p. 46. The Report continued, "...a competition would be excited among a certain description of our population, to locate themselves upon the public lands without much regard to lines or boundaries, and with very little respect for the rights either of the Government or their Indian neighbors....Abuses like these would necessarily attract the attention of the Government, and induce Congress to adopt rigorous measures to repress them....(Thus) a system of indulgences to those who trespass...upon the lands of the United States, after those lands are known to be the property of the Government, would, in the opinion of the committee, be productive of much perplexity to the Government as well as of injury to those concerned in the purchase and settlement of the national domain."

[18]"Memorial For Revision of Public Land Laws," submitted to the U.S. Senate by Henry Kaufman, et al., February 28, 1811, in The New American State Papers, The Public Lands, Vol. 3:20.

[19]George Stephenson, Political History of the Public Lands, 1840-1862 (New York: Russell and Russell, 1971, 1927), p. 123. The line between Southern plantation agriculture and western development was anchored in more than simply the common desire for cheap land held by farmers in both sections. Economist Douglas C. North points out, on the basis of his studies of inter-sectional trade patterns, that western growth between 1820 and 1850 "was primarily a function of expansion into land for cotton production in the South or into land in the western states capable of producing corn, hogs, and wheat (which could provike pork, lard, bacon, corn, cornmeal, flour and whiskey) to provision the South." He concludes that "while the West Indies, South America, and the eastern seaboard states were markets for these staples, the expansion of the cotton South was the most critical determinant of the market for western provisions during the period from 1820 to 1850." This pattern did not change until the 1840s and the coming of major improvements in transportation. As will be argued below, this change, which brought the western farmers into much closer contact with eastern and world markets, was crucial to the West's abandonment of plantation agriculture as a political ally. See Douglas C. North, "International Capital Flows and the Development of the American West" reprinted in Ross M. Robertson and James L. Pate, eds. Readings in United States Economic and Business History (Boston: Houghton Mifflin Co., 1966). An unabbreviated version of the article, under the same title may be found in the Journal of Economic History 16 (December 1956), 493-505.

[20]Hibbard, Public Land Policies, p. 291.

[21]U.S., Congress, Senate, Committee on Public Lands, Report to Accompany S.6, 23d. Cong., 1st sess., May 2, 1834; addendum, "A Report by Mr. Clay, from the Committee on Manufactures," 1832, in The New American State Papers, The Public Lands, Vol. 4: Bounty Lands, Revenues, p. 333.

[22]Ibid., p. 225.

[23]U.S., Congress, House, Committee on Public Lands, Graduation, Reduction and Disposition of the Public Lands, H. Rept. 732, 30th Cong., 1st sess., 1848 in The New American State Papers, The Public Lands, Vol. 3: 456-457.

[24]Gates, Public Land Law Development, p. 186.

[25]Hibbard, Public Land Policies, p. 191.

[26]Ibid., p. 192.

[27]U.S., Congress, House, Committee on Public Lands, Pre-emption to Actual Settlers, H. Rept. 290 to accompany H.R. 294, 24th Cong., 1st sess., 1836 in The New American State Papers, The Public Lands, Vol. 3:93.

[28]U. S., Congress, Senate, Committee on Public Lands Report #145, 22nd Cong., 1st sess., 1832, in The New American State Papers, The Public Lands, Vol. 4: 278.

[29]Ibid., p. 280. Western representatives were no less hard on speculators. Attacking the government sales policy as conducive to holding rather than cultivating land, Senator Robert Walker of Mississippi said such investments, "might as well be sunk in the ocean. Agriculture is not benefitted, for settlement is retarded and not advanced by this system." Nor were commerce and industry. Hence it was in the interest of all branches of the economy "to arrest this investment of millions" in "dead capital." See U. S., Congress, Senate, The Select Committee on the subject of graduating and reducing the price of the public lands to actual settlers, S. Rept. 402 to accompany S. 295, 24th Cong., 1st sess., 1836, in The New American State Papers, The Public Lands, Vol. 3: 252.

[30]Ibid., p. 261.

[31]U.S., Congress, House, Committee on Public Lands, Public Lands, H. Rept. 197 to accompany H.R. 2, 28th Cong., 1st sess., 1844 in The New American State Papers, The Public Lands, Vol. 3: 441.

[32]The Select Committee, S. Rept. 402 to accompany S. 295, p. 256 (see supra, note 24). Also cf. Harrison Brown who argues from a modern ecological perspective "that industrial civilization" would probably not have arisen "had the relation between the number of people and the amount of land not been so favorable....For industrial development to be successful, it is necessary that production be increased at a rate more rapid than the rate of population increase....The United States was in the fortunate position of being able to accumulate capital by producing excess agricultural products and selling them to European nations." The Challenge of Man's Future (New York: The Viking Press, 1954), pp. 52-53.

[33]Robbins, Landed Heritage, p. 32.

[34]Hibbard, Public Land Policies, p. 97.

[35]Douglas Dowd, The Twisted Dream, Capitalist Development in the United States (Cambridge, Mass.: Winthrop Publishers Inc., 1974), p. 152.

[36]Ibid.

[37]Cited in Gates, Public Land Law Development, p. 140.

[38]Hibbard, Public Land Policies, p. 98.

[39]Gates, Public Land Law Development, p.141.

[40]Robbins, Landed Heritage, p. 33.

[41]Hibbard, Public Land Policies, p. 103.

[42]William Appleton Williams, The Contours of American History (New York: New Viewpoints, a Division of Franklin Watts, Inc., 1973), pp. 196-197. See also Joseph Dorfman, The Economic Mind in American Civilization, Vols. 1-2: 1606-1865 (New York: A.M. Kelley, 1966-1969), 1:566.

[43]The Portable Thomas Jefferson, intro. and ed. Merrill D. Peterson (New York: The Viking Press, 1975), p. 549.

[44]John Quincy Adams, "First Annual Message to Congress" reprinted in A Documentary History of American Economic Policy Since 1789, ed. William Letwin (Chicago: Aldine Publishing Co., 1961), p. 68.

[45]Raynor G. Wellington, The Political and Sectional Influence of the Public Lands, 1828-1842 (New York: Burt Franklin, 1914, 1970), p. 8. Also see William Van Alstyne The Rising American Empire (Chicago: Quadrangle Paperbacks, 1965), chap. 6; Henry Nash Smith, Virgin Land (New York: Random House, Vintage Books, 1950), chap. 2; William Appleton Williams, The Roots of the Modern American Empire (New York: Random House, 1969), passim.

[46]Adams, "First Annual Message to Congress," p. 76.

[47]Wellington, Political and Sectional Influence, pp. 3-4.

[48]"Extract from the Report of Mr. Rush, Secretary of the Treasury, December, 1827," Appendix No. 1 to S. Rept. 145 of the Senate Committee on Public Lands (see supra, note 16), pp. 293-294.

[49]Mary E. Young, "Congress Looks West: Liberal Ideology and Public Land Policy in the Nineteenth Century" in The Frontier and American Development: Essays in Honor of Paul Wallace Gates, ed. David M. Ellis, et al. (Ithaca, New York: Cornell University Press, 1969), pp. 105-106. Also in this collection is an excellent essay on Frederick Jackson Turner by Lee Benson, "The Historian as Myth-Maker: Turner and the Closed Frontier."

[50]Karl Marx, Grundrisse, trans. and Forward by Martin Nicolaus (New York: Random House, Vintage Books), p. 487.

[51]Karl Polanyi, The Great Transformation with an introduction by R. M. MacIver (Boston: Beacon Press, 1957), pp. 36-37. The point is worth direct quotation:

Why should the ultimate victory of a trend be taken as a proof of the ineffectiveness of the efforts to slow down its progress? And why should the purpose of these measures not be seen precisely in that which they achieved, i.e., in the slowing down of change? That which is ineffectual in stopping a line of development is not, on that account, altogether ineffectual. The rate of change is often of no less importance than the direction of the change itself; but while the latter frequently does not depend upon our volition, it is the rate at which we allow change to take place which may well depend on us.

[52] Frederick Jackson Turner, The Frontier in American History with a Foreword by Ray Allen Billington (New York: Holt, Rinehart & Winston, 1962).

[53] As early as 1818 Henry Clay urged farmers in an "Address on Internal Improvements," reprinted in A Documentary History, ed. Letwin (p. 64), to recognize the economic benefits of public works investment:

Of all the modes in which a government can employ its revenue, none is more permanently beneficial than that of internal improvement. Fixed to the soil it becomes a durable part of the land itself, diffusing comfort, and activity, and animation, on all sides. The first direct effect is on the agricultural community, into whose pockets comes the difference in the expense of transportation between good and bad ways.

[54] Cited in Wellington, Political and Sectional Influence, pp. 5-6; Gates, Public Land Law Development, p. 8.

[55] Ibid.

[56] Ibid.

[57] Stephenson, Political History, p. 123.

[58] Theodore Lowi, "American Business, Public Policy, Case Studies and Political Theory," World Politics 16 (1964): 675-715; "Distribution, Regulation, Redistribution: The Functions of Government" in Readings in American Political Behavior, 2nd ed., edited by Raymond A. Wolfinger (Engelwood Cliffs, New Jersey: Prentice Hall, Inc., 1973), pp. 245-256. For Lowi a distributive policy is one that implies visible beneficiaries and invisible losers. Thus public land policies were distributive because the recipients were easily identifiable and the public was not. Also, and perhaps more important, the beneficiaries of public land disposal were, for Lowi, so numerous that no group seriously opposed them. Everyone got, or stood to get, something. In his words, "Distributive policies are characterized by the ease with which they can be disaggregated and dispensed unit by unit, each...more or less in isolation from other units or from any general rule." Actually Clay's "distribution"scheme, from which Lowi presumably

draws the name, was viewed precisely as an integral measure of "The American System," vitally connected to "the general rule" of controlled development. Thus it generated a redistributive type of conflict, one involving "social classes" deeply interested in shaping the pattern of development to fit their own conception both of the "use of property" and "property itself." The quotes are from the article in Wolfinger, pp. 245-6.

[59] Robbins, Landed Heritage, pp. 47-48.

[60] Og Collection of Webster MSS. May 7, 1828. Cited in Wellington, Political and Sectional Influence, p. 27, N. 5.

[61] Dorfman, Economic Mind, I:574-575. The fear of depression was widespread, as this Senate Report suggests (see supra, note 24, p. 252): "This spirit of speculation in the public lands is increasing with alarming rapidity. Companies are forming in all directions to monopolize the ownership of the public domain, and thus be enabled to arrest the settlement and regulate the prosperity of the new States and Territories of the Union. [The existing land system] is a bounty offered by government for the annual withdrawal of capital from the useful pursuits of productive industry, for investment in waste lands, producing nothing, and, consequently, adding nothing to the general prosperity of the country. Agriculture, commerce, and manufacturers, are all injuriously affected by this process. For a great period of time the monies thus invested might as well be sunk in the ocean." Also see Gates, Farmer's Age, pp. 81-82.

[62] Gates, Public Land Law Development, p. 12; cf. Theodore Lowi, The End of Liberalism (New York: W.W. Norton & Co., Inc.).

[63] Theodore Saloutous, "The Agricultural Problem and Nineteenth Century Industrialism" Agricultural History 22, (July 1948): 156-174; Dorfman, Economic Mind, 1: 253 f.

[64] Stephenson, Political History, pp. 29-30, 97-98.

[65] Hibbard, Public Land Policies, p. 229. In one tense Senate debate for example, Benton's republican exasperation with mercantile paternalism broke through with special eloquence:

I speak to statesmen and not compting clerks; to Senators not to quaestors of Provinces, to an assembly of legislators, and not to a keeper of the King's forests. I speak to Senators who know this to be a Republic, not a Monarchy; who know that the public lands belong to the People, and not to the federal government. Cited in Wellington, Political and Sectional Influence, p. 6.

[66]Gates, Public Land Law Development, p. 352.

[67]Wellington, Political and Sectional Influence, p. 48.

[68]Speech of J. M. Clayton at Wilmington, Delaware, June 15, 1844, cited in ibid., p. 46.

[69]Dorfman, Economic Mind, 1: 46 passim. As Edgar Furniss has shown, the moralizing attitude toward labor was typical of the late English mercantilists. In the sixteenth and seventeenth centuries, Englishmen viewed unemployment as a function of public responsibility, of the government's failure to provide its citizens with the work, "which it was both in the national interest to bestow and the laborer's right to receive." Thus the institution of the workhouse was developed to augment the labor of the nation, giving potential workers an opportunity to produce goods which could then be sold profitably abroad. The nation would be enriched by programs of public employment. As more persons were driven from the land under the pressure of enclosure the number of unemployed increased steadily. In turn, this pushed up the costs of the poor rates, the welfare taxes paid by middle yeoman farmers, the great landlords and the rising merchant and industrial classes. As the problem of poverty worsened it became popular to blame the poor themselves for their fate. Indolence and sloth, not a failing political economy, was the cause of poverty. In Daniel Defoe's words,

> There is a general taint of slothfulness upon our poor; there's nothing more frequent than for an Englishman to work until he has got his pocket full of money, and then go and be idle, or perhaps drunk, till 'tis all gone (emphasis in original).

The transformation of poverty into a moral question changed the social function of the workhouse. From an institution of profitmaking in the national interest, it was changed into a "College of Labor" where the discipline of hard daily labor could be bred into the children of the poor. As capitalist social relations appeared on the land, in other words, the dominant classes of Britain saw fit to re-educate its laboring class to a new industrial rhythm. A "new man" was created: the free industrial worker. See Furniss, The Position Of The Laborer In A System of Nationalism, A Study in the Labor Theories of the Later English Mercantilists (New York: Augustus M. Kelley, 1965), esp. chap. VI, "The Doctrine of the Utility of Poverty." The quotations above may be found on pp. 87, 100, Also see Polanyi, The Great Transformation, p. 111.

[70]Ibid., p. 117. Conversely, the ready availability of land helped attract labor to America. This was the point of the headright after all. See Chapter Two, p.53.

[71] Payson J. Treat, The National Land System 1785-1820 (New York: E. B. Treat & Co., 1910), pp. 83 passim.

[72] Edward Gibbon Wakefield, England and America, Vol. 11, p. 83, cited by Karl Marx, Capital, Vol. 1.: The Process of Capitalist Production, trans. from 3d German edition by Samuel Moore and Edward Aveling, ed., Frederick Engels (New York: International Publishers, 1967), p. 767.

[73] Ibid.

[74] Rush Report, see supra, note 48; also see Williams, Contours, p. 260; Wellington, Political and Sectional Influence, pp. 5, 27 N. 4.

[75] Williams, Contours, p. 142. For criticism of the safety valve theory see: Clarence H. Danhof, "Farm-Making Costs and the 'Safety Valve', 1850-1860" and Fred A. Shannon, "The Homestead Act and the Labor Surplus", both reprinted in The Public Lands - Studies in the History of the Public Domain, edited by Vernon Carstensen (Madison and Milwaukee, University of Wisconsin Press, 1968), pp. 253-313.

[76] James O'Connor, Review of The Twisted Dream, see supra, note 1.

[77] Marx, Capital, 1:772.

[78] Dorfman, Economic Mind, 1: 589-591.

[79] Alexander Hamilton, James Madison and John Jay, The Federalist Papers, with an introduction by Clinton Rossiter (New York: New American Library, Mentor Books, 1961), p. 296.

[80] Hibbard, Public Land Policies, pp. 589-591.

[81] Stephenson, Political History, pp. 86-87.

[82] For insightful discussion of this new period see Hurst, Law and the Conditions of Freedom; Rush Welter, The Mind of America, 1820-1860 (New York: Columbia University Press, 1975), esp. Part Four, "Free Institutions"; W. A. Williams, The Contours of American History, pp. 284-343.

[83] Paul Wallace Gates, "Frontier Estate Builders and Farm Laborers", reprinted in Walker D. Wyman and Clifton B. Kroeber, eds. The Frontier in Perspective (Madison: University of Wisconsin Press, 1965), pp. 144-145.

[84] Ibid.

[85] Stephenson, Political History, p. 103.

[86] I relied for the following account upon Stephenson, ibid; Wellington, Political Sectional Influence; Robbins, Our Landed Heritage; and especially with respect to labor's role, on Helen Zahler, Eastern Workingmen and National Land Policy (New York: Columbia University Press, 1942). Extremely useful sources for understanding the economic changes in this period are Gates, The Farmers Age and Louis M. Hacker, The Triumph of American Capitalism (New York: Columbia University Press, 1940, 1947).

[87] Wellington, Political and Sectional Influence, p. 108.

[88] Zahler, Eastern Workingmen and National Land Policy, p. 24.

[89] Quoted by Zahler, ibid., p. 45.

[90] Philip S. Foner, History of the Labor Movement in the United States, Vol. 1: From Colonial Times to the Founding of the American Federation of Labor (New York: International Publishers, 1947), p. 185.

[91] House, Committee on Public Lands, Graduation, Reduction, and Disposition of the Public Lands, p. 454. (see supra, note 20).

[92] Ibid.

[93] Lewis Mumford, The Culture of Cities (New York: Harcourt, Brace Jovanovich, Inc., 1970), pp. 327-328

[94] Gates, The Farmer's Age, pp. 415-419.

[95] Ibid., also see Williams, The Rise of the Modern American Empire and Hacker, Triumph of American Capitalism

[96] Hibbard, Public Land Policies, p. 137.

[97] Eric Foner, Free Soil, Free Labor, Free Men: The Ideology of The Republican Party before the Civil War (New York: Oxford University Press, 1970), p. 29.

[98] Cited in ibid., p. 16.

[99] Ibid., p. 28.

[100] Welter, American Mind, p. 141.

CHAPTER IV

CONSERVATION AND ZONING:
LAND USE PLANNING IN THE PRIVATE INTEREST

The Lessons of Scientific Planning

The dismissal of mercantile controls left the public domain open to free and easy exploitation by timber, mining, railroad and speculation interests.[1] Small farmers, through the Pre-emption and Homestead Acts became subordinate members of the larger alliance benefitting from liberal disposal policies. As resource development proceeded along more scientific lines though, a new impulse of reform began to be felt. Knowledge gained through intensive study of nature revealed limits on the production process imposed by physical and environmental conditions. Depletion, destruction and waste of resources were identified and measured by science, although mercantilist critics of easy land policies warned of them years before. If man's dominion over nature was to continue, said the new scientific conservationists, it would have to be planned. For maximum industrial efficiency would not arise by chance alone. Similar warnings were made in connection with urban land development. Closer cooperation among business, science and government was needed to allow for the orderly development of resources. As laissez-faire optimism yielded to a more sober appreciation of the physical constraints on growth, the responsible leaders of society concentrated on formulating workable controls, controls which

met the need for resource protection without sacrificing the basic expansionary drive of the economic system.

Sustained corporate growth was once again viewed as entirely consistent with mechanisms of state management to rationalize industrial profit making. In this social environment, the conservation and urban zoning movements formed the most popular crusade for public planning in U.S. history. But crucial to their acceptability was a basic move away from the older concern for national political greatness. Like their mercantilist predecessors, conservationists talked much about public rights. But the public they had in mind was not a body of citizens, or even a narrow class. It was a legal abstraction. In essence the public interest came to be seen as the government's obligation to organize access to federal wealth, or in the case of zoning, the private domain, along predictable, seemingly scientific lines. Unlike the mercantile planners who sought to justify the sacrifice of immediate access to the public domain by appeals to distinctively political goals such as national financial integrity, the new planners insisted their programs were apolitical, objectively required instruments of efficiency. Conservation was, in their view, unrelated to questions of political equity. New modes of representation were unnecessary for planning was concerned only with smoothing physical processes: mining, cutting, plowing and building. Indeed, the very phrase "land utilization" which came into currency with the popularity of scientific studies of agriculture in the 1870s and 1880s, implied a new

technical distinction between the realms of ownership and production. The old squatters could not accept such a distinction because for them use was the obligation and condition of ownership. Moral right and economic activity were inseparable. But the new experts in land estranged themselves from the economic or legal issue of ownership. Their object was to analyze, measure and compare alternative modes of land development or reservation against the yardstick of the soil's physical composition or against a seemingly objective analysis of its effect on the "health, safety and morals" of the surrounding urban community. From an issue in political economy, land use was transformed into a technical subject for planners and scientists. Its objectification suggested that resolution of land use conflicts should be lifted out of the legislative realm and placed in the more reasonable domain of bureaucratic decision. Thus conservation and zoning were each presented as non-ideological antidotes to uncompromising physical necessity. Yet in causing changes in government organization and decision arrangements both had political consequences. It was impossible to control the use of land without making the rights of access a privilege for some at the expense of others. This chapter will explore the emerging political and ideological framework of land use planning as the drive to bring the land business into harmony with government sponsored science led to decisions unequally dividing the benefits and pains of land use.

Although conservation was propelled to the public stage at the close of the 19th century, it did not represent a completely new outlook. As the Whites have shown, American philosophers and writers in the antebellum period were persistently critical of the city and in turn, engaged by the dreamier possibilities of nature. From Crevecoeur to Poe, the drift of enlightened sentiment and sensibility ran toward the country. But intellectuals tended to understate the role of the frontier's own children in devastating the landscape. In 1832 though, a western artist and student of Indian culture saw the force of the country economy itself as the main agent severing the tie between the Indian and his land. For George Catlin, the canvas was incapable of safeguarding the primitive Indian memory. He urged the government to keep for its citizens, as a center for their esthetic and intellectual exhilaration, a wild preserve or national park "containing man and beast in all the wild and freshness of their nature's bounty."[2] This specially protected public sphere would make room in society for the exercise of private introspection, affording a temporary respite not only from urbanization, but rural capitalism as well. Thoreau's injunction that "Life consists with Wilderness" and Olmstead's effort to create a great public space in New York City were likewise addressed to the need to conserve nature as a moral safety valve from the pressures of industrialism. For these writers, public space could no longer be what it was for the classical Republicans,

the fulfillment of civilization, the rallying point for association in the common life. At best it was a place paid for by the public within which one could avoid the public. Public space symbolized the chance to withdraw from others, especially from economic responsibilities; empty national space within which to dwell on private sensibility and begin the reconstruction of individuality. For Hawthorne, as for so many others, the cure for urban sameness was a nature emptied of social artifice: "Though fond of society I was so constituted as to need these occasional retirements...Unless renewed by a yet further withdrawal towards the inner circle of self-communion, I lost the better part of my individuality."[3] If the critics of the city were right, the inevitable exhaustion of the frontier implied not so much the loss of agrarian equality as the disappearance of the means of genuine privacy. Man as a multidimensional being capable of private as well as public and social life, would be flattened into obedience to the technical disciplines of an expanding economy, his capacity for private liberty wasted.

On a less philosophic plane, it was also observed that industrial efficiency was threatened when workers and owners were deprived of opportunities to escape the city. To recreate the laborer's power to work, as well as his human sensibility, public parks were deemed essential. Wild spaces were not civic luxuries, but functional requisites of a maturing industrial order which command the attention, protection and planning of government.[4]

In the antebellum period conservation was a complex idea woven of spiritual as well as rational threads. On the one hand, conservation of wilderness was necessary for the sake of enjoyment. On the other, enjoyment became identified with the publicly sponsored recreation of the individual's power to work. Hawthorne's desire for the public space of private liberty became Olmstead's utilitarian theory of parks as an esthetic tool of productive efficiency. At this stage in its development the conservation movement saw no contradiction in the two approaches. Thus the creation of the first national park, Yellowstone in 1872, was occasioned as much by scientific warnings about a serious decline in the nation's timber resources as by a general desire to delight in the stillness of the woods.[5] Preservation and conservation, beauty and usefulness were, if not identical, at least consistent. As the goal of wilderness preservation was joined by more industrial objectives, the two themes, and their supporters, became adversaries.[6]

Until the 1870s the main goal of conservation was preservation of wilderness. With the study of the relationships between land, resources and climate, the principle of conservation as a spur to production won greater acceptance. Laissez faire approaches to land disposal and use were seen as wasteful. Resources, it was argued, should be conserved and brought into use only in light of careful scientific analysis of depletion and renewal rates. Management and planning were obligatory. A notable event in advancing the

scientific march of conservation was the publication in 1864 of Man and Nature, or Physical Geography as Modified by Human Action, by George Perkins Marsh. Marsh explained that the interactions characteristic of natural processes were fragile and subject to severe disruption by human activity. Man is the one creature on earth who stubbornly and destructively refuses to accept his environment as given. "Man is everywhere a disturbing agent."[7] Though seemingly progressive, science actually produced as many problems as it solved, especially when driven by a social policy rooted purely in economic interest. To help humanity reestablish its legitimate place in the balance of nature, science would have to extend its knowledge vastly but still remain humble about its power to modify the physical world. A global sense of trusteeship should develop to serve as a moral framework guiding large-scale research and planning in the use of soil, minerals, forests and water. But more immediately, industry, as well as society as a whole, had to learn to live and work within a world of limits. It is time, Marsh wrote,

> ...for some abatement in the restless love of change which characterize us, and makes us almost a nomad rather than a sedentary people. We have now felled forest enough everywhere, in many districts far too much. To restore...an approximately fixed ratio between the two most broadly characteristic distinctions of rural surface - wood land and plough land - would involve a certain persistence of character in all the branches of industry, all the occupations and habits of life, which depend upon or are immediately connected with either.8

"Persistence of character" is usually guaranteed by law. It was not long before men with legal as well as scientific

abilities began to apply Marsh's principles to the development of public policy. The most important was John Wesley Powell, director of the Federal Survey of the Rocky Mountains Region, geology professor, explorer and politician. Based upon his travels in the arid West, Powell submitted to the government in 1878 a detailed report describing the desolate waterless lands he found. But as important as the technical excellence of the study was the publicity and concreteness it gave to the view, stated abstractly by Marsh, that the physical structure of land and climate imposed definite and occasionally, severe restrictions on the ability of people to master the soil. In the distant mountainous West for example, prevailing farm practices were useless. Without irrigation agriculture was impossible. To be made productive this environment needed careful human intervention, including a revision of the public commitment to the small farm mythology. As historian Henry Nash Smith put it, "if a barrier of aridity limited the quantity of available land the myth and the agrarian program intended to realize it would have to undergo drastic revision."[9] Indeed, Powell showed that the dominant land use in the high arid plains would inevitably be grazing which in turn, required vastly enlarging the minimum homestead tract, perhaps up to 2,560 acres or more. Furthermore, it was necessary to expand and reorganize government's capacity to analyze the use and limits of physical resources. Although it implied an increase in their power, officials in the Land Office did not welcome the

news. Their orientation was fixed upon disposal of public lands and cooperation with local political and economic forces in the West. But if Powell had his way, those forces would have to respect a new order of scientific administration. For the first time, the men in charge of land policy were being criticized not because they were unfair or corrupt, but because their methods were irrational in the light of modern knowledge. Powell's challenge rested after all on scientific analysis of the physical relations composing the arid West. But interest was not so easily exorcised from conservation. Powell was charged by many in the West with political ambitions of his own. Others added that his analysis carried far-reaching social implications, including a tendency to favor the rise of an American baronial class benefitting from the physical demand for large-scale concentrated ownership. But Powell was not unmindful of the social consequences of rearranging existing land use patterns. He urged strict government control of the irrigation program for example, arguing that if "private capital were given control of the water, the farmers would be in peonage to the water owners."[10]

At first, Powell's opponents carried the day; his early warnings were successful only in arousing controversy. But the point is that the controversy was cast in new terms, the terms of a politicized science.[11] In blocking implementation of the report's recommendations western interests served notice on the scientific community that the production of technical analysis was itself a political act which could not

escape criticism. The economic and political interests in natural resource use would be heard from. They might even hire their own scientists.[12]

Though Powell failed at first to institutionalize a resource planning capacity in the Federal government, working with sympathetic legislators and the newly appointed Secretary of the Interior, Carl Schurz, he did help create the U.S. Geological Survey in 1879. And when Schurz' first choice to head the Agency failed in his administration of the office, Powell himself obtained the post in 1880. Schurz' activities on behalf of scientific management lent an important bureaucratic access point to forces opposed to the simple giveaway of public wealth. These forces did not have a monopoly on scientific legitimacy however. According to Henry Nash Smith, western interests obtained a scientific spokesman of their own in Ferdinand V. Hayden,"A professional rival of Powell, who was determined to resist reorganization or consolidation of the surveys if possible. And if the change could not be prevented, to dominate the new organization."[13] Schurz dominated Interior and was able to contain Hayden's activities, demonstrating in the process that with the growing technical basis of political argument came the bureaucratization of land use politics and increasing power for well-placed executives. Not that Congress lost interest. Indeed, increasingly the most important land policy questions turned precisely on issues of governmental organization itself. As the conflicts over resource use were bureaucratized, the power of groups to

defend their interests whould henceforth be gauged by their influence over the organization of government controls and the level in the federal system at which they would be administered.

Schurz played an important role in subduing the Interior Department's old allegiance to easy disposal. In 1878 he was successful in obtaining passage of the first law authorizing Federal sale of timber from the public domain, the Timber and Stone Act. Moreover, he revived the agency's Indian policy, even proposing that they be allowed to homestead some of their expropriated lands. But most important, he focused popular attention on the need for a general reform of the entire disposal system.[14]

Slowly, in response to the cajoling of public officials and scientists government began to adjust its operation and structure to fit the new technical outlook on resources. In 1880 the Report of Schurz' Public Land Commission so effectively dramatized the failure of existing policy that even a greater shift in direction became possible.[15] Passage of the General Revision Act of 1891 was the result. This law repealed the old 1841 Pre-emption Act, abolished the existing system of public sale and private entry, and amended the Desert Land and Homestead Acts. But an even bigger impact was felt through a provision Congress let slip by unexamined. Requested by the American Forestry Association, the American Association for the Advancement of Science and the General Land Office, it granted the President authority to withdraw temporarily

forest lands from entry. Although it did not amount to a comprehensive statement of the public domain's role in the future of American development, it did provide the executive branch with the power to plan by withdrawal.

The 1890s generated serious economic crisis and enormous economic concentration. Bigness as a cure for instability and inefficiency was widely celebrated. Applause for efficiency and technology seemed to drown traditional fears of power. Such tendencies were echoed in business attitudes toward government.[16] By 1895, Roy Robbins notes,

> Both the New York Chamber of Commerce and the Board of Trade had passed resolutions urging study of forest conditions in the United States. The Board of Trade resolution suggested that a commission of experts be appointed to study the extent of the forests and their conditions - their relation to the public welfare, the amount of forest lands that should remain open to the public - and more important, to prepare plans for scientific management and to recommend suitable legislation.[17]

As Robert Underwood Johnson wrote in his Century Magazine, "when businessmen got interested in the forests, something was bound to happen."[18] It did. The Secretary of Interior requested a study of the subject by the National Academy of Sciences. It led directly to President Grover A. Cleveland's creation in 1897 of 13 forest reserves including 21 million acres. These lands were now closed to entry or sale except by persons holding previously donated rights. For the first time since 1841 government seemed serious about withholding and managing the public's resources. But important and complex questions remained unexamined. What methods and criteria

did scientific administration offer in place of the use of political power to determine access to the federal lands? How would the permanent administration of land and resources be made accountable to components of the public interest other than those "given" by natural science? Should resource planning eliminate politics? None of the conservation leaders, public officials, scientists nor businessmen provided explicit answers. What solution there was to such problems became obvious only in the concrete decisions and practices of the bureaucracy.

There are at least three aspects of conservation that need to be considered in an appraisal of its methods and social consequences. First, by emphasizing resource use as the central goal of planning the conservationists yanked government thinking away from concern with the historical political issues of land ownership, equality and agrarian democracy. The focus on use helped suit conservation to the needs of scientists and businessmen interested in development of resources but not ownership per se. Second, since the most efficient use was to be determined by scientific investigation there was a great need for enlarging the technical capacity of government. And unless those sophisticated intellectual resources were brought to bear in concrete decisions their collection would itself represent waste. Hence the politics of land use had to be reestablished as a process of expert administration. Authority over the public lands had to shift upwards into the bureaucratic centers of knowledge, away from the legislative arena

where the only expertise was in counting heads. Finally, centralized decisionmaking was made to appear as an inevitable requirement of sustained national growth as if growth were an unambiguous process generating benefits for all on equal terms. The old public consternation about the direction and costs of expansion which was central to the debate between mercantilists and petty producers was absorbed by an apparent consensus on the triumph of concentrated industrial action. Thus the fact that conservation was a technical expression of the interest of large corporate resource users in undisturbed negotiation of access with government experts was left unstated. It did not warrant explicit political justification because it did not seem a debatable matter. Arguments for efficiency did not veil the closer mingling of government and business, they authorized it. These trends will now be examined in greater detail.

Ever since the rupture of mercantilist control in 1841 public land policy was addressed to speeding private ownership. The scientific criticism of prevailing land practices shifted attention away from both the business logic which bred rapid exploitation and from the democratic ownership scheme which was supposed to be its justification. Power and justice were ambiguous political ideas. They seemed out of place in the objective analysis of land use. Public officials were responsible only for the completion of detailed studies of the soil's physical potential. Their data would portray the range of uses tolerable by the land in a particular setting. In

conservation "is" did imply "ought." Thus the analysis and prescription of land use were objectively based and bore no inherent relation to the social realities of the production process or the distribution of ownership rights. As one geologist explained,

> In their fundamental nature, the problems of conservation and the problems of possession are distinct questions, each to be solved in its own way - on its own basis....The conservation of natural resources centers on the scientific and technical; the right of ownership in the political and sociological...(The) ownership or distribution of values...has no logical relation to conservation and may even be incompatible with its highest realization.19

The last point was a swipe at the supposed inefficiency of the small farm. The answer to who should use the land was in the land itself. The bias was nature's.

Conservationists were not without personal biases of their own however. Of these one of the most important was an impatient skepticism about preservation of nature for its own sake. Almost always conservation leaders wrote of "efficient use", that is productive and profitable use. For example, in his first State of the Union address, President Theodore Roosevelt observed:

> The fundamental idea of forestry is the perpetuation of forests by use. Forest production is not an end in itself; it is a means to increase and sustain the resources of our country and the industries which depend on them. The preservation of our forests is an imperative business necessity. We have come to see clearly that whatever destroys the forest, except to make way for agriculture, threatens our well-being.20

Efficient natural resource management by government paralleled efficient management of labor by industry. Each

facilitated the industrial process. Thus retention of land in public ownership served as a lever of economic expansion. It was not to be confused with a budding socialist proclivity. Stronger efforts in public management only meant the extension of private business by other means. It should come as no surprise then that President Roosevelt's conservationist-in-chief, Gifford Pinchot, was no friend of national parks. In Frank Graham's words, Pinchot, "was against the very idea of national parks (he does not even mention them in his autobiography) and he tried to have Yellowstone and the other new parks transferred to the Department of Agriculture along with the forest preserve."[21] Pinchot himself said

> The first great fact about the conservation movement is that it stands for development. These has been a fundamental misconception that conservation means nothing but the husbanding of resources for future generations. There could be no more serious mistake.22

These comments indicate that although it was ideologically different, conservation planning had a social tendency similar to mercantile regulation. Each used management of public land to foster and advance the efficiency and power of capitalist enterprise. Conservation was intended as the sort of public contribution to the accumulation of capital whose imperative Richard Rush would have understood. And as Kolko argues, similar trends were surfacing in other fields of government regulation as well, such as banking and transportation. In each case, private "power was created by decisions made in the political sphere (as) the politically based bureaucracy...

sought to rationalize the large-scale economic organization, to make economic decisions and profits predictable and secure through political means."[23]

But the formula of resource politics until, and in no small measure, even after, the advent of conservation, was Congressional logrolling, a process not well-suited to planning, although it rarely received criticism from business. The penetration of land politics by science implied a change in this decision structure. Officials in the bureaucracy, their legitimacy sanctified by the rite of professional passage, were now deemed the appropriate people to handle land questions in the new way. Indeed, centralization was necessary precisely to "narrow the range of influences" and to "close" the system of decisionmaking in order to maximize the effectiveness of technical analysis.[24] It was in this sense of heightened executive control that conservation was genuinely an application of Taylorism to the politics of land and trees. For just as Frederick Winslow Taylor desired to shut the worker off from direct personal control of the labor process, hoping thereby to concentrate it in the industrial engineer, so Gifford Pinchot wanted central supervision of access to natural resources on the public domain, and disciplined regulation of production once rights were granted.[25] The main tool of control was establishment of an administrative process run by trained land use experts who expected their private counterparts to meet them on their own professional terms. Thus the new form of making public wealth available contained a bias in favor of

those who could afford to hire experts to represent them in the bureaucratic process. Expertise, as any physician will be happy to explain, is a commodity which must be purchased at its market price. Thus it is misleading to say, as a former head of the Bureau of Land Management does, that "In the nature of things the use of the federal land is avilable to some citisens and not to others."[26] What are the social, political and economic conditions and forces which determine "the nature" that selects the official requirements of access? In the field, no less than in the factory, central management was explained as a natural extension of the drive for more efficiency even while it served concretely as a means of social control expanding the freedom of some at the expense of others. Just as Taylor divided the labor process to regulate the activities of workers more closely, conservation limited the access of unorganized, small producers to exploit the public domain to the advantage of advanced corporate users. Engineers advanced the progress of both changes.

The shift upward in authority over public land decisions damaged the competitive chances of smaller, localized producers whose typical access point in resource politics was Congress. The new dogma, explains Samuel Hays, held that "Conflicts between competing resource users...should not be dealt with through the normal processes of politics."[27] Power had to flow upward into the bureaucracy, as President Roosevelt was pleased to explain.

> The steadily increasing drain on these natural resources has promoted to an extraordinary degree the complexity of our industrial and social life. Moreover, this unexampled development has had a determining effect upon the character and opinions of our people. The demand for efficiency in the great task has given us vigor, effectiveness, decision and power, and a capacity for achievement which in its own lines has never yet been matched. (emphasis added). 28

It was one thing to say land use must be determined rationally and efficiently. But what did these concepts mean in practice? If it were true that government should encourage the "highest use" or even "multiple use" of the federal land - how could competing uses and users be compared to determine which was "highest"? What criteria or ends were available to direct efficiency and rationality and howwere their benefits to be apportioned among different members of the public? The most careful and perceptive student of Conservation and the Gospel of Efficiency, Samuel Hays, never clarifies Pinchot's criteria precisely because they were not clear to Pinchot himself. Yet despite this crucial ambiguity about criteria the conservationists never relinquished their faith in expertise. The result was that decisions tended to emerge as products of consultation among agency officials and industry spokesmen, not as exercises in scientific judgement. Behind the dominion of science at the executive level, bargaining went on pretty much as usual. Only with a restricted set of players.

Conservation officials, including Roosevelt, were careful nurturers of political support. To smooth the way of regulation they invited interest group leaders into the administration to discuss the techniques contemplated. Former Congressman

Frank Smith however puts it more bluntly, "Specific arrangements were made to protect existing interests." A variety of studies of the conservation movement indicate that, especially in its earliest and latest stages, public management of private access did achieve wide popularity among businessmen.[29] Irrigationists, farmers, and timbermen advocated conservation because it meant steady access to resources and a continuing stream of technical advice from government. On the range lands, government action helped resolve the bloody struggles of farmers, cattlemen and sheepmen, bringing stability and predictability to an area where business was constantly threatened. Some industries, particularly mining and oil, opposed conservation because of the inability of Congress and the Executive to work out mutually satisfactory leasing plans, but once these were established in 1920, these groups too praised public land management. Finally, the railroad companies, already in possession of millions of publicly donated acres, benefitted in two ways. First, the government withdrawals raised the value of western lands they already owned, and second, they received new grants "in lieu" of land they were promised before, but which was now reserved.

Thus in time, bureaucratic decisionmaking conformed to the realities of economic power. Agencies and interest groups formed cooperative relationships based upon mutually agreed upon means and ends. Timbermen were welcomed by the Forest Service, cattlemen found a home in the Grazing Service, large-scale farmers and water interests befriended the Reclamation

Service and miners found the Bureau of Land Management quite cooperative. In this respect the early conservationist vision of resource planning for the public lands disintegrated into what Lowi calls "interest group liberalism."[30] Bureaucratic officials made decisions favorable to the wishes and interests of well placed legislators and their organized constituents. With the entrenchment of urban industrial society in the East and Midwest, most of America's citizens forgot about the public domain as an opportunity or resource for the whole people. It was a western issue. This was reflected in the memberships of the Congressional Public Lands Committees and today in the Interior Committees. Public domain as public hope faded into a handful of national parks and a complex system of organized private powers and the government servants assigned to facilitate their productive access. Science yielded to bargaining. Objectively determined land use became a myth to justify the segmentation of the public domain as well as the public interest. "In the nature of things" after all, "the use of the federal lands is available to some citizens and not to others."

Conservationists never explained why simply expanding government and business cooperation enhanced the life of the general population. Nor did the official inheritors of the Pinchot tradition lobby for plans relating the various industrial and agricultural uses to one another or to non-industrial ends such as recreation and preservation; nor did they offer a design to join land use programs with the effort to realize social values such as equality or competitiveness.

Instead, conservation served to stimulate the productiveness and profitability of well-organized members of the western land economy. By scientifically and politically reducing the wasteful practices of laissez-faire exploitation it smoothed the rough spots in the production of values from the land. At best, this was narrow planning for profit. Beyond that, the relation of the public domain to the general population went unexamined. Thus social rationality was not equitably advanced by the quasi-planned conversion of public into private wealth.

Small farmers, local government officials and country-town boosters were the main opponents of conservation. They feared that withdrawals of land from entry would end growth of population, markets and economic opportunities in the West. For example, when the federal government acted to stabilize the livestock industry by organizing and protecting grazing privileges local boosters "were annoyed because they hoped to encourage a growing population on that land."[31] Similarly, western farmers rejected the assessment of Washington-based experts that arable land was rapidly disappearing. One critic wrote:

> The classification of the public lands has been urged by eminent authorities, but those who are familiar in a practical way with the remarkable results of the struggle for homes in the West during the past few years are firm in the belief that not for a generation at least can any man dare say this or that piece of land is uninhabitable or impossible of productiveness.32

The withdrawal of lands from sale and entry not only limited expansion, it also diminished the land sale receipts which financed the reclamation program, a service already

coming under the sway of large landowners despite the placement of a 160 acre limitation on farms receiving federally irrigated water.[33] But the most embittering feature of conservation to farmers and miners was the absence of a clear policy defining whether and how the reserved lands should be used. While the executive branch acted quickly to make reservations, Congress, excited by the anti-planning propaganda of the West, moved slowly to create a classification and management system. By the end of the Taft administration millions of acres of valuable forest, agricultural, oil, gas, phosphate and water power lands were removed from entry without any plan for their use. As Roy Robbins explains,

> The West thus figured that the government aimed to hold all remaining resources intact for unborn generations and to leave to private interests - mostly corporations who had already appropriated valuable resources - the problems of caring for the present needs of the country.[34]

This hardly meant though that Westerners wanted federal land use plans. According to Smauel Hays, "Western farmers would not even accept the...proposal that the classification of farm and range land be adjusted periodically. To the West classification approximated withdrawal. In both cases federal administrators rather than Westerners themselves, would decide resource use."[35]

The younger, dynamic and exploitative sectors of the Western economy, including the new mining and water power interests, desired as much economic independence as they could get. Reflecting the early stage of their development, they

behaved much as the small business groups of the 1830s, demanding cession of the federal lands, state instead of federal land controls, the elimination of fees and leasing arrangements, and less national support for corporate enterprise. For these groups, conservation symbolized the old mercantile distribution program dressed up in fancy scientific clothing. One Seattle newspaper editor in 1907 assailed federal non-action with language Senator Thomas Hart Benton could have spoken in 1832:

> The federal government assumes the attitude of the alien landlord, holding perpetually for its own uses millions of acres of land in this state, drawing revenues from them for expenditures elsewhere, and paying no taxes upon its vast holdings.[36]

Decentralization appeared directly related to the possibilities of rising industry while administrative centralization favored organized, large-scale capital. Federalism was the friend of small business. For this reason bureaucratic planning was opposed by the West as something inherently wrong, as an anti-democratic usurpation of the right to benefit from the national wealth. To limit the impending alienation of political and economic power local officials, farmers and businessmen turned to Congress, the stronghold of localism in the national political system.

It was not merely a "misfortune" as Frank Smith believes that the forces behind conservation, which were so effective at the executive level, did not have a "similar influence in shaping the Congress".[37] It was a direct expression of Congress' unique function in American politics. Carefully designed to reflect as well as accentuate the fragmentation of

political power in the United States, it was the natural lightning rod for opposition to executive discretion. Preoccupied with local interests, it was the perfect vehicle for opposing any policy even superficially aimed at comprehensiveness. Congress faithfully recorded the protests of each discrete interest, informally tallying them into a general indictment of executive requests for planning. Yet it was the very opposition to planning which reinforced the policy of non-use which planning was intended to relieve. As Peffer writes,

> From 1910 to 1920 the future of nonuse was imposed on wide areas of the withdrawn lands and the resources for which they were valuable, not by the administrative officers of the government who repeatedly and with strong insistence pointed out the hardships which the lack of such regulation imposed, but by the Congress in its inability to face the issue involved.38

"The issue involved" was which interest groups would benefit from zoning the public domain. In their ability to block classification the Western opposition showed the value of the legislative veto, but in their inability to meet the desires expressed by a succession of Presidents to systematize land policy they only inhibited their own access to wealth. Nor was it only executive stubbornness they were up against. The organization of social, political and economic power had changed dramatically. Personal economic power embodied in private ownership was institutionalized by the corporation; corporations were themselves arranging new relationships with government; and throughout society the spreading power of the "universal market" was creating more and more institutional

dependencies.[39] It is not enough to say therefore, as Elmo Richardson does, that "the failure of the critics' campaign for the alternative policy of state control of resources can be ascribed to their own poor judgement and incompetence."[40] That failure is explained more accurately by a lack of social power to stem the tide of corporate-government interaction over a forty year period, 1880 - 1920. Only by organizing and finding a niche within the growing federal complex would relatively small scale interests survive. Not surprisingly, therefore, the substance of resource politics in the war years and throughout the 1920s was played out in the Congressional arena where the main topic of discussion concerned the comfortable incorporation of large and small previously unregulated interests into the government's management apparatus.[41] By 1920 a leasing system was established for the mineral and oil lands and in 1934 the Taylor Grazing Act embraced the ranchers. Conversely, the emergence of Congress at the center of resource politics inevitably meant a lapse in planning due to its tendency to discourage comprehensiveness in favor of the politically attractive single purpose approach. In Hays' words,

> Through policies devoted to the development of a single resource, Congress found protection against independent executive action, administrative agencies discovered a means to prevent coordication of their work with other bureaus, and local interests created programs of direct benefit to themselves and under their control. 42

Of Pigs and Parlors

Similar processes to those underlying conservation transformed the urban real estate business. But to understand their peculiar development in the private domain, it would be useful to begin by considering the status of mature corporate enterprise at the turn of the century.

The movement to conserve natural resources through public management of private access arose at the same time as the first great surge toward concentration of corporate wealth and power in the United States.[43] The historic parallel is not fortuitous: driving both processes was a conscious effort by corporate and government elites to rearrange important components of the social order and make them work more effectively to produce wealth without simultaneously generating serious political controversy about the latter's unequal distribution. Perhaps the most significant of these rearrangements was expressed negatively in government's refusal to stem the tide of concentration itself - despite the spirit of its own laws. This public policy of inaction legitimated the maturing of modern corporate enterprise.

At bottom, this maturity was marked less by the accumulation of great wealth, than by the power to shift the risk of that accumulation to others. Concentration of economic power, specifically, the tight control of integrated industrial processes in a few private hands, gave corporations the capacity to plan and regulate the uses of labor, resources, production

facilities and marketing to assure targeted rates of return. When necessary to keep profits at respectable levels, production could itself, as Veblen said, be "sabotaged". Thus the financial integrity of the emergent corporation rested on its power to shift the risk of investment to consumers or to a distribution system based on small merchandisers. Prices became instruments of corporate autonomy.

An early expression of this tendency was corporate acceptance of the public domain as a useful feature of the external environment. Direct ownership of land became of diminishing interest to leaders of the dominant economic institutions. Government ownership, including the administration of sophisticated resource control techniques, might serve corporate interests just as well as long as stable and relatively inexpensive patterns of access were established. In this way the public was privileged to carry the risk of owning large blocks of uneconomic property while the benefits of its most productive lands were shipped to the private sector. Public regulation continued to act as a private force of production. This practice suggests a sophisticated appreciation of the limits of the real estate business by corporate leaders. It is difficult after all, to sabotage the "production" of land. Nor is it much easier to reduce its marketability to the routines and formulae introduced so profitably in other branches of industry. Ironically, the ownership of open space affords little room in which to maneuver risk. The best advice one can offer is that land values rise with inflation and nearby

public investment and collapse during depressions. This may not be profound advice, but it is useful to remember when introduced to salesmen announcing the permanent fixture of land values in the heavens. Thus in the early days of the 20th century, real estate was, much as it is today, the refuge of gamblers and speculators, men willing to ride the crest of financial optimism and easy credit into the purchase of inflated land - ever hopeful of discovering "one more idiot" to buy it at an even higher price.[44] It had become, as Charles Abrams has pointed out, a relatively subordinate and risky element in the larger industrial economy.[45]

Compounding the shakiness of urban real estate, local businessmen had to contend with the arrival of masses of un-Americanized workers whose presence underscored the disorderliness, instability and unmanageability of the city. Large-scale immigrant entry into America's industrial cities paralleled the closure of the public domain to the general population, just as the introduction of restrictive zoning within the city paralleled the passage of anti-immigration laws in the 1920s. The labor question weaves its way into the fabric of land use politics at every stage of its development. Thus unmanageable land and labor are at the heart of zoning. It offered the twin advantages of controlling the unruly land market while providing a mechanism to keep labor living near enough to factories to show up on time for work and far enough from "the right part of town" to keep it right. The oceanic mobility of labor was kept within bounds inside the city.

Although reformers had urged land use planning for years as a means of city beautification, the idea had not, by the turn of the century, been taken into the institutional structure of urban government.[46] Unlike conservation of the public lands which tended to reinforce corporate power, public supervision of private real estate chances threatened to interfere with the perogatives of the weakest members of the property owning class. Easy land disposal helped establish what Sam Bass Warner calls, "a vast class of conservative interests across the nation" whose land based power it became the recognized function of local government to protect, not control.[47] Furthermore, the early conservative ethic of property right as a social responsibility was undermined in the frontal assault on mercantile planning. In the effort to protect old, established wealth, conservatives absorbed the squatter's natural right theory. Hence the dominant belief about property became the idea that "it should be held without enforceable obligations or legislative limitations."[48] In this sense, an important latent function of the challenge to mercantile land planning was that it furnished the growing business class with a hearty ideology well suited to free-swinging expansion yet flexible enough to accommodate the ending of competition with the dogma of "the survival of the fittest". Finally, in the absence of a serious radical challenge to property American conservatives were never motivated, as their European counterparts were, to adopt the vocabulary and tools of planning as a method of incorporating working class opposition within the dominant

economic and political arrangements. Their views were not adjusted to modern conditions by the pressure to coopt socialist ideas.[49]

Municipal building regulations were the main governmental response to the "settle and sell" style of the urban frontier. The traditions and precedents of nuisance law upheld under the Police Power, were gradually enlarged to insure minimum health and construction standards. But as Warner adds, "Affirmative municipal action had to stop at the margin of the street."[50] Inside, building owners were free to avoid compliance. Even on the streets though, cities had great difficulty controlling the lengthening of roads for as private owners subdivided land and established private streets, they blocked the installation of public utilities.[51] The law was so weak it barely could be used by one landowner to compel the owners of nearby property to conform to whatever minimal codes existed.[52] Cities were confused agglomerations of conflicting land uses, sources of blight, congestion, unsanitary living and working conditions, and an increasingly uncertain environment for the enjoyment of private property rights. It was not enough to call for planning. Legal mechanisms were necessary to stabilize, sanitize and discipline the rising social costs of uninhibited real estate and industrial competition. Yet as late as 1908, Mel Scott notes, "Most planning reports...contained not the slightest suggestion that lack of regulation of the uses of land causes blight and initiates the process of decline.[53]

The control of land use in the city awaited recognition by land owners that the web of decay and the threatened decline in land values was traceable directly to the activities of members of their own class. As this realization penetrated the thinking of business leaders discussion of planning moved to a more tightfisted concern with disciplined, economical and rational organization of land use.

At the turn of the century more and more cities were drawn to the strategy of formally separating land uses. In 1907 it was recommended by the St. Louis Civic League, and two years later Los Angeles established seven industrial districts and a huge residential area. In 1909 the renowned architect Daniel Burnham, in cooperation with the Merchant's and Commercial Clubs of Chicago, published an elaborate city plan which boldly declared that "It is no attack on private property to argue that society has the inherent right to protect itself (against) gross evils and known perils..."[54] Respectable businessmen and civic leaders were now on the record. Public authority should be employed to control the abuses of careless and selfish property owners. According to this emerging logic, social Darwinism had to be "humanized" so that basic social functions, including the smooth and healthful expansion of the urban economy, could be undertaken with a minimum of waste and danger to the public.[55] The latter's interest, as the national conservationists had shown, rested on efficient social control of technical and economic processes. This did not threaten property, it enhanced it.

Planning for the public good could be achieved merely through technical analysis and some minor adjustments in existing legal powers. Its goal was as useful as it was innocuous: efficiency in the use of land. In the first textbook published on the subject of urban planning, Benjamin Marsh announced that the new technique was "the most efficient method of projecting municipal efficiency", while the Pittsburgh Civic Commission approvingly added that "City planning is municipal conservation".[56] And one planner could find no more approving adjective to describe the method of his discipline than to announce it had been "Taylorized":

> This method of work, systematized, standardized, 'Taylorized' as it is, has most decidedly proved its worth. It appeals strongly to the businessman...and convinces everyone that the experts have real knowledge of which to base their recommendations, and are not presenting mere dreams, pretty but impracticable.[57]

The ideology of efficiency became an umbrella beneath which celebrants of conservation, urban reform and scientific management merged into a powerful force reshaping the physical structure and authority relationships of American society. In the factory, the forests, and increasingly the streets of the city, management techniques were introduced to divide, simplify, and control a variety of social, political and economic relationships. If conservation proved the usefulness of public land regulation to organized business groups, for urban businessmen and reformers it became a yardstick against which to measure the costs of uninhibited real estate development. Blight, congestion and declining profitability

could each be overcome by applying conservationist methods of control. Governmental aid in classifying the real estate market could serve both to protect the "health, safety and morals" of the community and to insure handsome rates of return on investment.

No matter how generally the need for new institutions is perceived, they must be introduced within specific historical settings. Here they are branded by the particular needs of the prevailing social forces. Zoning is no exception to this rule. Resting in the womb of American reform for years, zoning required a particular constellation of interests, power and issues to complete its gestation.

The birthplace of the first American municipal zoning ordinance was New York City.[58] It stemmed from the battle of the Fifth Avenue Merchants Association to block the expansion of textile factories and skyscrapers from its exclusive turf. The factories posed the greatest threat. For years they had moved inexorably up the western slice of lower Manhattan until in 1910 they began to shift eastward toward the hallowed commercial corner of 34th Street and Fifth Avenue. Although substantial data had been accumulated by reformers detailing the human costs of sweatshop labor, and some regulation had been introduced, the thrust of the industry had not been checked. Such issues concerned only workers, a handful of zealous reformers, and the factory owners. But as garment workers spilled out of the lofts during peak noontime shopping hours the clientele of exclusive shops nearby was shocked.

Without question, the practice of conspicuous consumption must be restricted to the sightlines of those alone who are worth impressing. This social principle was soon recorded by the silent cash registers of the Fifth Avenue merchants. Sweatshop labor thus became a land use issue, that is, a matter of real estate values. The economic and political influence of the neighborhood's shop owners was brought rather quickly to bear on the city's elected officials. Privately sponsored propaganda, boycotts and the restriction of bank credit were also used against the industry, and by themselves appeared to do the trick: the textile owners agreed to hold their ground. But the protection of a stable economic environment for the appreciation of real estate values was too important to leave to temporary political intimidation. A more formal structure to rationalize and protect the real estate market remained lacking. As the Association warned in a New York Times advertisement:

> It is impossible to have a city beautiful, comfortable or safe under such conditions. The unnatural congestion sacrifices fine residence blocks for factories, which remain for a time and then move on to devastate or depreciate another section, leaving ugly scars of blocks of empty buildings unused by business and unadapted for residence thus unsettling real estate values.59

In the city no less than on the public domain, the "nature of things" seemed to warrant controls on the use of land, and thereby, on the distribution of the chance to make money off it. A settled, stable and predictable arena for real estate investment was inconsistent with the free marketplace.

Something had to give and The New York City Commission on Building Districts and Restrictions knew which one it would have to be. It said in 1916, immediately before passage of the first city-wide zoning ordinance in the United States,

> New York City has certainly reached a point beyond which continued unplanned growth cannot take place without inviting social and econonic disaster. It is too big a city, the social and economic interests are too great to permit the continuance of the laissez-faire methods of earlier days. There is too much at stake to permit a habit of thought as to private property rights to stand in the way of a plan that is essential to the health, order, and welfare of the entire city and to the conservation of property values.60

Clearly, the exercise of property rights in the competitive marketplace was subordinate to the enjoyment of property values already won. Zoning was designed to institutionalize that inferiority, to legalize resistance against the aggression of new wealth which threatened to subvert the social pretension upon which Fifth Avenue commerce was founded. In the history of the anarchic movement of people and industry across the American landscape, only the 18th century mercantilists had ever so boldly invited government to use its authority in the enforcement of a privately preferred system of land use. But the merchants understood that only law could ratify the privilege of a Fifth Avenue location as a protected oligopoly in the public interest. Besides, unlike the mercantilists, the New Yorkers were running with the tide of social change. Across the nation new suburban communities, upper class city dwellers and downtown retailers were beckoning

government to interpose itself against the market in a manner not unlike the greater corporate "sabotage of production." If private owners lacked power to regulate the profitability of their holdings why shouldn't government lend its weight? Efficiency, stability and profitability, as well as the "health, safety and morals" of the population justified the regulation of private activity by experts in land use planning. Zoning reproduced the dynamics of conservation in the field of urban real estate, just as it would later be reproduced in the form of the exclusive suburb. In each case, groups able to establish legal settings for the conservation of their market advantages had the best of both worlds: private privilege supported by public law. Moreover, like the conservation controls, zoning was stripped of any effective relation to a comprehensive land use plan. There were no publicly formulated values to guide its application. Seymour Toll whose Zoned American is the most careful and detailed consideration of the origins of zoning frankly describes the political reality.

> As long as there was no standard of conduct, the speculative loft builder and the milling garment workers were neither better nor worse than the retail merchant or landowner on Fifth Avenue. In a lawless environment questions of who is good and who is bad are beside the point. All the parties are merely struggling in the same game of surviving by any means. But the association and the forces for which it spoke wanted it both ways. They demanded that government both protect their interests, yet curb equivalent conduct in the garment industry. [61]

Zoning, like conservation was not merely a technical solution to physical problems, but a political solution to an economic problem. The same economic opportunity that one group

exploited to achieve wealth and prestige is, through a new legal mechanism designed to control access to land, denied others. In persuading an audience of real estate men of the virtues of zoning a former dean of M.I.T.'s School of Humanities and Social Sciences could find no higher praise than its power to defend the status quo.

> Zoning can protect you against the small, inefficient entrepreneur. Zoning can protect the big fellow against the marauding of little guys who have nothing at all in mind.62

Because "little guys" have property rights too the advocates of zoning had to be scrupulous about its legal foundation. Public legislation limiting the use of real estate seemed to tread close to subversion of the private right to do with one's property what one wished. Such laws, it was argued, constituted a "taking" of the rights and values inherent in ownership and required compensation by government as specified in the Fifth Amendment. Since no community could afford to pay all the lost values potentially restricted by a zoning ordinance it was important to root the power in a different, less demanding sphere of public authority.

Although a number of zoning cases had been brought before State courts, most of them upholding the new power, until 1926 the Supreme Court remained silent on this latest extension of municipal authority. In that year the Village of Euclid, Ohio appealed a U.S. District Court ruling overturning its zoning law. The Court was willing to listen.

In an extremely influential amicus brief offered at the last minute, Alfred Bettman, one of the fabricators of

the New York law, opposed the demand for compensation by insisting that unlike eminent domain, zoning was not addressed at specific parcels of land. Rather as an exercise of authority under the State's police power, it was intended as a comprehensive land use regulation essential for the maintenance of the health, safety and morals "of the community as a whole." Zoning was consistent with the socially necessary control of private property in general without which orderly social development was impossible. It represented an important extension and clarification of the traditional public power to regulate nuisances, because, insisted Bettman,

> The term (public nuisance) has ceased to have any definite meaning as a measure of legislative power...A lawyer would often hardly hazard a guess as to whether his client's proposed industry will or will not be declared a nuisance....The zone plan, by comprehensively districting the whole territory of the city and giving ample space and appropriate territory for each type of use, is decidedly more just, intelligent, and reasonable than the system, if system it can be called, of spotty ordinances and uncertain litigation about the definition of a nuisance. 63

The precise segregation of land use answered the real estate man's quest for calculability and predictability in the market system. A marginal restriction on the marketplace, zoning greatly enhanced the investor's power to anticipate and manipulate future economic patterns and chances. It reduced the risk of land ownership by assigning particular social functions, some inevitably more prestigious or profitable than others, to specific portions of the urban landscape. For owners who commanded the best of these, zoning

symbolized a public donation of economic power, the "power to withhold from others what they need,"[64] because within the zoned city there was nowhere else to go for a respectable site.

The justices appreciated this line of analysis. Recognizing the intensifying pressures on urban land in the uncomfortable mixture of industry and single-family homes, they agreed with the thesis that private property needed more general restriction for its own security. The only question centered on how to define the nuisance that was the object of the desired power. With their finely honed semantic talents the justices found a way. In a breathtakingly simple definition the Court's opinion anticipated and summarized the whole future of zoning. "A nuisance", it said "may merely be a right thing in the wrong place - like a pig in the parlor instead of the barnyard."[65] Zoning could keep America's urban "pigs", people as well as functions, in their proper pens and safely outside the municipal "parlor". A day after the Court's decision it received many requests for copies including one from an Indianapolis lawyer. That he represented the White People's Protective League is no historic accident.[66] It is an historic clue to the social function of zoning.

Following Bettman, the justices understood that zoning was a novel legal invention, not merely an addition to the collection of local building ordinances. The latter were designed only to curb noxious processes. But zoning was control not only of things bad in themselves, it also aimed at things considered bad only in relation to other things,

pigs and parlors. Thus zoning was meant to protect some good things from the threat of other useful things. Evidently some land uses were made fragile by juxtaposition to others. This is a reasonable argument. But what are the applicable criteria of vulnerability? In what respect can one land use be said to be vulnerable to another? When does a land use become piggish?

The definition of which uses required most protection was left to the local zoners - although the priority list uniformly read single family detached houses, apartments, commerce and industry. Did this mean all residence must be restricted from commercial and industrial zones? No, for zoning classification was cumulative. The industrial section might contain all uses, including homes, while the commercial district could also include residences. Only the residentially zoned area was pure with respect to single family homes. But this meant some people had to live near the "barnyard" uses other people could legitimately exclude. The opinion had the force of saying there was nothing intrinsically wrong about living next to factories if one could not afford otherwise. But if this were true, then zoning must not have been intended to separate people from harmful things so much as some people from other people. The Court did not shrink from this logic. Apartment houses, it observed, may in one setting "be not only entirely unobjectionable, but highly desirable" although in another "come very near to being nuisances", that is, pigs in the parlor again! For example, the Court noted that when

measured against "detached house sections" the "apartment house is a mere parasite, constructed in order to take advantage of open spaces and attractive surroundings created by the residential character of the district". One wonders how "detached house sections" avoid taking advantage of pure open space? On the other hand, since apartment buildings presumably housed working class people, obviously it was not "unobjectionable" to have them near their workplaces, rather than near their bosses. Instead of commanding minimum health and safety standards for the general community, the Court granted local communities the power to enforce standards relative to wealth and class. In practice, its desire to preserve and foster a variety of life styles and land uses had the effect of allowing local elites to draw a map reifying the prevailing structure of social status. As the conspicuous segregation of land use, zoning led to the official mapping of class in the United States.

The weight of the court's opinion emphasized the conservative meaning of zoning as a method for the protection of property and privilege. But if the constitutionality of zoning rested mainly on its protective function what happened to the original relationship with planning? How could an institution designed to secure the status quo be used to shape and guide the future?

Hope rested on the power and will of city planners, not on any inherent connection between zoning and planning. Given the political realities in most American cities, it was not a

strong hope. Mel Scott aptly describes the early city planners' outlook:

> The waste and inefficiency of cities greatly troubled planners, and they prided themselves on reducing it by almost every thing they did, but perhaps most of them regarded utopian thought as a luxury, and bold schemes for the reorganization of urban areas as futile. Did not many businessmen, politicians, and civic leaders still speak of planners as visionaries? Would not proposals expressing or implying deep dissatisfaction with the present order invite further disparagement or even outright attacks? As long as plans promised reasonable progress in adjusting streets to the requirements of the automobile, providing additional parks, and playgrounds, facilitating the shift of industry to outlying locations and protecting residential areas from unwanted traffic and stores and factories, city planners would gradually win a more secure place for themselves in American life. 67

If planners themselves held so obsequious a view of their most powerful legal weapon it should not be surprising to discover that zoning was rapidly appropriated by local boosters as a device for promoting economic growth. By endorsing giant increases in population and employment within appropriately designated zones communities could boast of their generous economic climates. For example, the original New York land use ordinance allowed the city to house a population "as great as the whole United States in 1900" while ultimately permitting no fewer than 300,000,000 employees inside the city limits![68] The twin advantages of attracting economic growth while segregating its most unpalatable consequences accounts for the tremendous popular appeal of zoning to municipalities across the nation. Less than a year after the introduction of New York's zoning law, zoning was adopted by 21 of the largest cities in the country, and by 1919 at least ten states had

authorized all or at least certain classes of their cities to zone.[69] In 1921, zoning was embraced by the new Scretary of Commerce, Herbert Hoover, as a welcome addition to the apparatus of public controls facilitating business as usual. Realizing the potential significance of the new movement, he appointed a special legal advisory committee to study the technique and draft a Model State Enabling Act to stimulate local zoning. The federal government's model law, published in 1924, constituted explicit national endorsement of the trend toward local control and what Hoover called "more orderly and efficient physical development."[70] The federal model complimented the happy local discovery that, in the Secretary's words, "it is practical by city zoning to carry out reasonably neighborly agreements as to the use of land" an invention with "an almost instant appeal to the American people."[71]

It is interesting to speculate whether the growth of America's suburbs would have taken the peculiar form they did in the absence of this national support. Before it spent billions subsidizing builders, bankers, mortgage holders, truckers, auto, oil and rubber companies in the great postwar suburban binge, the federal government made it respectable to exclude, and thus profitable. In this case, public law reacted to, expressed and also accelerated the next great tendency in American development. The "reasonably neighborly agreements" to which the Secretary referred became the institutional anchor for thousands of complex, and often corrupt, local political

economies of land use control embracing lawyers, real estate men, bankers, builders, construction unions and of course, home buyers. Working together in a system of mutual (and often federally subsidized) benefit, these forces fueled the tremendous growth of residential and commercial construction of the 1950s and 1960s while restricting the possibilities of social integration and truly comprehensive planning. Thus perhaps the most prescient point in the Euclid decision is the emphasis it placed on the political freedom of the suburb to set its own course unmindful of regional or metropolitan needs.

> ...the village, though physically a suburb of Cleveland, is politically a separate municipality, with powers of its own to govern itself as it sees fit within the limits of the organic law of its creation and the State and Federal Constitutions.[72]

Planning was not totally neglected by Washington, although its support came by way of an afterthought. Four years after publishing the model zoning law, the Commerce Department released the Standard City Planning Enabling Act. Although it encouraged cities to formulate master plans as guides to their zoning ordinances it also warned that preparation of the latter should not be allowed to get in the way of implementing land use controls to meet pressing needs. Hence it also encouraged cities to get into the bad planning habit of formulating fragmented and special purpose programs.[73] Moreover, by stressing that planning was a technical, apolitical activity the Hoover proposal helped to abstract it from the democratic process, and especially from the needs of those Robert Goodman calls

"the disenfranchised city groups - the tenants, the poor and those without property".[74] Concludes one historian of the planning profession, "By 1936, 1,322 or 85% of the cities had (zoning codes), but less than half were comprehensive, and the cities often used them to perpetuate status quo discrimination and whim."[75]

The Same Old Deal

Nothing in the New Deal's vast proliferation of land related programs altered either the local system of private land use regulation or the bureaucratic fragmentation typical of federal resource policies inherited from conservation.[76] Although it sponsored public housing, subsidized mortgages, helped construct new communities and public works, hired workers to repair damaged forests and soil, and accumulated a wealth of data on urban and rural land use, none of this changed the zoning process or threatened the social forces which lay behind it. Public housing for example, was placed gingerly in local hands. The tremendous expansion of federal subsidy pumped money in, around, over and through the local political economy indeed, amplified and deepened its political character, but without undermining the principle of municipal autonomy in land use. Within the federal government itself however, efforts were undertaken to change the fragmented and uncoordinated pattern of decisionmaking that was the main inheritance of conservation. And although the effort fell short a brief glimpse at the reasons will be rewarded by a better understanding of the present setting.

One start toward planning came in April 1935 when the Central Housing Committee was created to coordinate an assortment of agencies having responsibilities affecting the provision of shelter. Unfortunately, like other coordinating bodies, this one confined itself to research and did not strive to control the implementation of policy.[77] Aside from C.H.A., the principal forum for comprehensive land planning in the New Deal was the National Planning Board (later known as the National Resources Board, the National Resources Committee and the National Resources Planning Board), an agency established by Secretary Ickes within the Public Works Administration under Title II of the National Recovery Act. The NRB was intended to help the Secretary of Interior coordinate the dispersement of public works funding and to assist state and local governments in construction.[78] Thus before they had a chance to develop administrative skills and practical muscle federal planners had heaped upon them the tough responsibility of bringing order to a sphere notorious for logrolling, fragmentation, waste and Congressional supremacy. It was a domain that needed planning most and wanted it least.[79] Furthermore, the siting of planning's main institutional base within the Interior Department could not help but solidify its identification with physical development rather than cultivate an association with broader social and political ends. Presumably this attempt to restrict the scope of planning would reassure conservatives. As the authors of an old text on government-business relations described it:

> The planning concept as applied to natural resource conservation should not be confused with general economic planning as practiced by totalitarian regimes. It is concerned with the physical framework within which the economy operates rather than with day to day operations. 80

Although planning would not be "totalitarian" in style, Ickes was sure it would be permanent in tenure, "(W)e hope that long after the necessity for stimulating industry or creating new buying power by a comprehensive system of public works shall be a thing of the past, national planning will go on as a permanent institution."[81] The fact remained however, that the Agency's focus and political base were tenuous and extremely vulnerable to attack. Nevertheless, at first the Board felt its capacity to aid policy formulation should be enlarged to embrace a wider swath of responsibilities. "In fact", said Charles Eliot its executive director, "it is difficult to think of any domestic interest or activity in which the National Government is concerned which might not first be submitted to the careful scrutiny of the National Planning Board."[82] The optimism, if not the reasonableness, of that viewpoint was soon disproved. This happened when the old Nebraska reformer Senator Frank Norris, eager to expand T.V.A.-type planning to all resource development and just as anxious to tame the Army Corps of Engineers, tried to tap the powers of the new planning agency. In 1934 he sponsored a resolution authorizing a Presidential report on "a comprehensive plan for the improvement and development of the Rivers of the United States..."[83] After getting a lackluster response from

the cabinet level committee he assigned to the task, President Roosevelt drafted an executive order extracting the planning agency from Interior, placing it and the responsibility for the plan in the White House. An angry Secretary Ickes led a cabinet uprising which persuaded the President to modify his position. In turn a new National Resources Board was established whose composition was dominated by the Cabinet.[84]

The Board's initial report "A Plan for Planning" issued in December, 1934, advised that national planning would be successful only if it followed the apolitical mode Hoover suggested back in 1924. Thus, planners should serve as advisors but stand "apart from political and administrative power and responsibility".[85] Planning, in other words, should serve as window dressing to embellish the specific decisions made by the various resource bureaucracies. Barely a year after its creation the institutionalized planning capacity of the New Deal was disintegrating.

A series of legislative proposals were advanced to strengthen the government's ability to plan resource development comprehensively, but each failed. In 1935 the planning agency was renamed the National Resources Committee, and several years later it became the National Resources Planning Board. Despite the label changes, and the publication of several quality reports on social trends, the N.R.P.B. was forced, by the pressure of resource interest groups and competing public bureaucracies such as the Corps, to stand "apart from political and

administrative power." Yet the agency was not completely without significance. Symbolically it marked the first peacetime expression of national planning as a governmental responsibility.[86] Planning gained another ounce of respectability. No less important, the N.R.P.B. stimulated planning among the States. This began with encouragement from regional PWA advisors. Governors were promised federal assistance if they appointed unpaid boards to develop planned public works programs. By the end of 1935 45 boards were established, and a year later every state except Delaware had one working with the PWA. "In accordance with its suggestions", Mel Scott writes, "most of the state boards initially prepared long-range programs of public works, conducted statewide land use studies, and investigated ways to integrate transportation systems or at least attempted to 'tool up' for such activities".[87] Although many administrative conflicts arose between planners and line agency officials, especially in housing, states were, for the first time, considering the longer range implications of public investment. However, since most planners believed, as one put it, that "broad social and economic planning is highly important to...but...not necessarily a part of the physical planning process" this did not mean the States produced enlightened efforts, only that efforts began to be made.[88] Nor did they get very far. By 1938 the N.R.C. was forced to admit that most of the boards were either not functioning or so loosely tied to the state government as to be irrelevant.[89] By the beginning of World War II most were out of existence.

Conclusion

The regulations introduced by the conservation and zoning movements were meant to rationalize the accumulation of economic values from land by restricting access to responsible private users. Preventing waste, inefficiency and misuse on the land was thought fully compatible with the retention of private land operations. Development of land controls in the United States had reached the advanced stage of protecting the opportunity to make a profit while presuming to guard the land against destruction. The governmental performance of these functions was proclaimed to be internally consistent and harmonious. This was evident in the broad support of business, science and the planning profession for increases in governmental responsibility for land use.

It was of the utmost importance from the standpoint of gaining such support that these regulations not be part of a systematic, comprehensive or broadly democratic land policy. Conservation and zoning operated through specialized or localized administrative politics. The legislative delegation of power to bureaucratic officials allowed decisions to be based on the relatively limited programmatic grounds offered by groups directly interested in the outcome. Agencies such as the Forest and Park Services implemented highly specialized views of land use while local zoning boards served as institutional forums for the real estate industry. More general social interests, such as the need to plan the consequences of

specialized decisions for their impact on non-land owners in the wider region, State or nation, were not taken into account. These methods are examples of the perverted democracy of self-regulation, not the more troublesome but fair process based on struggles to achieve a reconciliation of competing interests in reach of a more general, public interest. By legitimating them the Federal government not only reinforced but helped create the existing imbalances of power in the political economies of land throughout the United States. Delegation permitted Washington to appear responsible by stimulating knowledgeable people to exercise coercive powers in a seemingly reasonable, democratic, non-coercive way. It seemed in fact, that especially when it came to matters of local and private land use, the Federal authority played no role at all. Yet in practice, the legitimation of decision-making systems designed to control access to the land was inevitably an exercise of power over people.

Notes to Chapter Four

[1]For discussions of the era of free disposal see Frederick Cleveland and Fred Powell, Railroad Promotion and Capitalization in the United States (New York: Longmans Green & Co., 1909), esp. pp. 101-148; Carter Goodrich, Government Promotion of American Canals and Railroads, 1800-1890 (New York: Columbia University Press, 1960); Lewis Haney, A Congressional History of Railways in the United States to 1850, 2 vols. (Madison, Wisc: Bulletin of the University of Wisconsin, No. 211, 1908); Benjamin Hibbard, A History of the Public Land Policies (Madison and Milwaukee: University of Wisconsin Press, 1965), esp. chaps. VIII-IX, XII, XXVIII; Roy Robbins, Our Landed Heritage, The Public Domain 1776-1936 (Lincoln, Neb: University of Nebraska Press, Bison Books, 1962), parts II and III; Thorstein Veblen, Absentee Ownership with an introduction by Robert Lekachman (Boston: Beacon Press, 1967), esp. chap. VII.

[2]George Catlin, "An Artist Proposes a National Park" in Roderick Nash, ed., The American Environment: Readings in the History of Conservation, (Reading, Mass: Addison-Wesley, 1968), p. 9.

[3]Cited in Morton and Lucretia White, The Intellectual Versus The City, (New York: The New American Library, Mentor Books, 1962), p. 52.

[4]Mel Scott, American City Planning (Berkeley: University of California Press, 1971) pp. 11 f.

[5]Robbins, Landed Heritage, p. 302.

[6]The difference between conservation as a vehicle of industrial planning and preservation as a mode of human sensibility was not to be clarified for another thirty years when it was epitomized in the break between the moral leaders of the two movements, Gifford Pinchot and John Muir. For an interesting and well written, if not scholarly account from the preservationist viewpoint, see: Frank Graham, Jr., Man's Dominion, The Story of Conservation in America (New York: M. Evans & Co., 1971), pp. 98 f.

[7]George Perkins Marsh, "Man's Responsibility for the Land" in Nash, ed., The American Environment, pp. 17-18.

[8]Ibid.

[9]Henry Nash Smith, Virgin Land (New York: Random House, Vintage Books, 1950), p. 228.

[10]Ibid., p. 60.

[11]Frank E. Smith, The Politics of Conservation (New York: Harper & Row, Colophon Books, 1971), p. 61. Ultimately, as Smith notes, Powell's concept of expert resource management became the "basic philosophy of progressive federal conservation policy for the next two generations."

[12]Henry Nash Smith, Virgin Land, pp. 230 f.

[13]Ibid.

[14]Smith, Politics of Conservation, p. 57.

[15]Robbins, Landed Heritage, p. 302.

[16]On the relationships between economic concentration and public policy see: Gabriel Kolko, The Triumph of Conservatism (Chicago: Quadrangle Paperbacks, 1967); Harold V. Faulkner, The Decline of Laissez-Faire 1897-1971 (New York: Harper & Row, Harper Torchbooks, 1951); James Weinstein, The Corporate Ideal in the Liberal State, 1900-1918 (Boston: Beacon Press, 1968). For an excellent discussion of the contemporary relation from an articulate free market standpoint see: John Blair, Economic Concentration (New York: Harcourt Brace Jovanovich, Inc., 1972).

[17]Robbins, Landed Heritage, p. 311.

[18]Ibid.

[19]Thomas C. Chamberlin, American Forests (October 1910), 16, 10 as cited by Samuel P. Hays, Conservation And The Gospel of Efficiency (New York: Atheneum, 1969), pp. 262-263. Hays' book is the single best work on the structural implications of the conservation movement and I am heavily indebted to it in this analysis.

[20]Quoted in Graham, Man's Dominion, p. 205.

[21]Ibid., pp. 108-109.

[22]Cited in American Environment, ed. Nash, p. 49.

[23]Kolko, Triumph of Conservatism, p. 297.

[24]Hays, Gospel of Efficiency, "preface to the Atheneum edition".

[25]For a powerful account of the implications of Taylorism for concentrated corporate control of the labor process see Harry Braverman, Labor and Monopoly Capital, Forward by Paul M. Sweezy (New York: Monthly Review Press, 1974); cf. Hays, Gospel of Efficiency.

[26]Marion Clawson and Burnell Held, The Federal Lands, Their Use and Management (Baltimore: Johns Hopkins Press, 1957), p. 10.

[27]Hays, Gospel of Efficiency, p. 3.

[28]Gifford Pinchot, "The Birth of 'Conservation'" in Nash, ed., The American Environment, p. 49.

[29]See Hays, Gospel of Efficiency; E. Louise Peffer, The Closing of the Public Domain (Stanford: Stanford University Press, 1951); Elmo Richardson, The Politics of Conservation, Crusades and Controversies 1897-1913 (Berkeley: University of California Publications in History, vol. 70, 1962); Robbins, Landed Heritage; Smith, Politics of Conservation. Polanyi argues that in Europe the uncontrolled mobilization of land in the marketplace was hedged in by the desire and power of feudal land-based interests, including their allies in the peasantry, to preserve their own position within the emerging marketplace society. In The Great Transformation (Boston: Beacon Press, 1957), he writes that "Reaction was the beneficiary of a socially useful function which it happened to perform." In the United States however, Polanyi does not see a similar conservative move in defense of land. Rather the New Deal conservation programs such as T.V.A. are cited as evidence that "The same needs of society which benefited democracy in the New World strengthened the influence of the aristocracy in the Old." (p. 185). Before the New Deal however, the basic conservation theory of resource planning and management was established by industrializing forces for business and science. Conservation was part of the larger trend toward businesslike control of man and nature. In America there was lacking a feudal tradition and structure opposed to mobilization of land along commercial lines, hence, it was more likely that measures to cope with the fallacy of land as commodity should be sponsored by the corporate system itself.

[30]See Theodore Lowi, The End of Liberalism (New York: W. W. Norton, 1969), esp. chap. 3.

[31]Hays, Gospel of Efficiency, p. 53.

[32]J. D. Whelpley, "The Nation as a Landowner," Harper's Weekly, Nov. 30, 1901, p. 1204 cited by Peffer, Closing of the Public Domain, p. 48.

[33]Ibid., pp. 56-58. The tendency of large land owners to appropriate most of the benefits of the reclamation program has not subsided. At recent Congressional hearings in California, small farmers and those interested in purchasing small farms on land made arable by irrigation in the Westlands Project near Fresno, complained that corporate farmers have refused to sell their landholdings to conform to the 1903 statute.

In the ten years between the time they first received federally subsidized water and the date they are required to sell, large land holders such as Standard Oil of California, Getty Oil and Southern Pacific Railroad pay $7.50 an acre foot of water while nearby farmers have had to spend $23.50 an acre foot for non-subsidized state water and city residents have paid up to $61 an acre foot! Said one program manager "In return for this huge subsidy, we're supposed to be getting small farms....But, you don't see the land dotted with a lot of small farms. Instead we're ending up with paper farmers - absentee owners, dummy investment corporations and large concerns who farm large tracts of leased land." New York Times, February 25, 1976; Also see National Farmers Union's Washington Newsletter, February 27, 1976 and "The Power of a Tenacious Man," The Nation, October 12, 1974 for a portrait of Dr. Paul Schuster Taylor, an economist at the University of California, who has for years fought publicly the corporate manipulation of the reclamation program. In a similar vein is a pamphlet by Peter Barnes, The Sharing of Land and Resources in America (Washington: The New Republic, Inc. 1974).

[34]Robbins, Landed Heritage, p. 372.

[35]Hays, Gospel of Efficiency, p. 251.

[36]Robbins, Landed Heritage, p. 350.

[37]Smith, Politics of Conservation, p. 91.

[38]Peffer, Closing of the Public Domain, p. 118.

[39]See Braverman, Labor and Monopoly Capital, chap. 13.

[40]Richardson, The Politics of Conservation, p. 120.

[41]Peffer, Closing of the Public Domain, pp. 120-130, passim.

[42]Hays, Gospel of Efficiency, p. 275.

[43]In this section I have drawn heavily from Veblen, Absentee Ownership; and Blair, Economic Concentration.

[44]See "The New American Land Rush", Time October 1, 1973, p. 85.

[45]Charles Abrams, Revolution In Land (New York: Harper & Bros., 1939). This is an unjustly neglected book. Although written in the midst of the Depression and focused on the New Deal land programs, it speaks eloquently about the contemporary land question.

[46]The best general history of urban planning is Mel Scott, American City Planning. For a brief introduction to the logic of American land use control however, see John Delafons, Land Use Controls (Cambridge; The M.I.T. Press, 1969).

[47]Sam Bass Warner, The Urban Wilderness (New York: Harper & Row, 1972), p. 20.

[48]Rush Welter, The Mind of America, 1820-1860 (New York: Columbia University Press, 1975), p. 111.

[49]See Leonardo Benevolo, The Origins of Modern Town Planning trans. Judith Landry (Cambridge: The M.I.T. Press, 1971). Benevolo is critical of the socialist willingness to allow urban planning to become a means of conservative power in post-1848 Europe. Unlike American planning which was always an elite concern, in Europe its origins lay in utopian socialism and working class agitation. Marxist interest in a general revolution subordinated the question of urban planning until after the takeover of political power. Thus, in Benevolo's words,

Town planning (was)...cut adrift from political discussion... to become increasingly a purely technical matter at the service of the established powers. This did not mean, however, that it became politically neutral; on the contrary, it fell within the sphere of influence of the new conservative ideology which was evolving during these years, of Bonapartism in France, of the reforming Tory groups in England and of Bismarckian imperialism in Germany...the political paternalism of the new Right. (p. xiii). (parentheses added).

[50]Warner, Urban Wilderness, p. 26.

[51]Scott, American City Planning, p. 3.

[52]Warner, Urban Wilderness, p. 27.

[53]Scott, American City Planning, p. 75.

[54]Ibid., pp. 78, 108.

[55]See Seymour Toll, Zoned American (New York: Grossman Publishers, 1969), pp. 10-18.

[56]Scott, American City Planning, p. 124.

[57]Quoted in Ibid., p. 122.

[58]The best discussion is Toll, Zoned American.

[59]Quoted in Ibid., p. 176.

[60]Quoted in Delafons, Land Use Controls, pp. 22-23.

[61]Toll, Zoned American,p. 162.

[62]Quoted in Robert Goodman, After The Planners (New York: Simon and Schuster, Touchstone Books, 1971), p. 147.

[63]Quoted in Richard Babcock, The Zoning Game (Madison: University of Wisconsin Press, 1966), p. 4.

[64]John R. Commons, Legal Foundations of Capitalism (Madison: University of Wisconsin Press, 1968), p. 52.

[65]Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 47 S. Ct. 114, 71 L. ED. 303 (1926). The case is reprinted, along with a wealth of other indispensable material on land use planning in Charles M. Harr, Land Use Planning, A Casebook on the Use, Misuse and Re-use of Urban Land, 3rd ed. (Boston: Little, Brown and Company, 1976), pp. 194-204.

[66]Toll, Zoned American, p. 242.

[67]Scott, American City Planning, pp. 251-252.

[68]Ibid., p. 160.

[69]Ibid., p. 193.

[70]United States Department of Commerce, A Standard City Planning Enabling Act with an introduction by the Secretary of Commerce Herbert Hoover (Washington: U.S. Government Printing Office, 1928), p. III.

[71]Scott, American City Planning, p. 194.

[72]Euclid v. Ambler in Harr, Land Use Planning, p. 201.

[73]Scott, American City Planning, p. 244.

[74]Goodman, After the Planners, p. 155.

[75]John L. Hancock, "Planners in the Changing American City 1900-1940," Journal of the American Institute of Planners 33 (September 1967): 298.

[76]By far the most comprehensive and incisive analysis is provided by Abrams, Revolution in Land, passim. But also see Sidney Baldwin, Poverty and Politics: The Rise and Decline of the Farm Security Administration (Chapel Hill, N.C.: University of North Carolina Press, 1971): Otis L. Graham, Jr., Toward a Planned Society (New York: Oxford University Press, 1976), esp. pp. 35-45.

[77]Abrams, Revolution in Land, p. 237.

[78]Scott, American City Planning, p. 301. Merle Fainsod, Lincoln Gordon and Joseph Palamountain, Jr., Government and the American Economy, 3rd ed. (New York: W. W. Norton & Co., 1959), pp. 732-733.

[79]Graham, Toward A Planned Society, p. 55.

[80]Fainsod, et. al, Government and the American Economy, p. 732.

[81]Mel Scott, American City Planning, p. 302; Graham, Toward A Planned Society, p. 55.

[82]Scott, American City Planning, p. 301.

[83]Smith, Politics of Conservation, p. 269.

[84]Ibid., p. 268; Graham, Toward A Planned Society, pp. 52-53.

[85]Ibid., p. 53.

[86]For material on the planning experience gained by top business and government leaders during World War I see: ibid., pp. 1-13; Grant McConnell, Private Power and American Democracy (New York: Random House, Vintage Books, 1966). chap. 8.

[87]Scott, American City Planning, p. 305.

[88]Ibid., pp. 348, 310. For an insight into the politics of national investment played out at the local level see Robert Caro's discussion of the master builder Robert Moses' manipulation of federal planning requirements in New York City. Moses' exclusive interest was construction. Sociology did not enter into planning. In Caro's words,

...the federal government was paying for the bulk of those public works, and the federal government was much more interested in speed, in getting something to show for its expenditure, than in the considerations that would at least partially motivate a mayor - priorities, location and design for example.... Because the Mayor needed plans and needed them fast, he had no choice but to give priority not to those projects which were most urgently needed, but to those projects for which plans were available - and to a considerable extent not he but Robert Moses had the 'large, stable planning force' of engineers trained to design urban public works on the new, huge scale made necessary by the growth of the city and made financially feasible by the new federal involvement...

See Caro, The Power Broker, Robert Moses and The Fall of New York (New York: Random House, Vintage Books, 1975), p. 464.

[89]Scott, American City Planning, p. 357.

PART TWO

"In America a man's home is his castle but his town is fair game for anyone."

An Old Man from Wyoming
quoted in "Through All
Time, Part 2: Pleasure
Domes and Money Mills,"
KLRN, San Antonio, Texas,
April 15, 1977

CHAPTER FIVE

THE CONTEMPORARY POLITICS OF LAND USE PLANNING

Introduction

The present framework of America's land use controls was established by the conservation and zoning movements before the Great Depression of 1929. Nothing in the New Deal's plethora of land programs altered it. Owners whose capital and credit ran dry were propped up by Federal aids, but surplus and restored lands were not made available to non-propertied individuals. One partial exception to the rule was the inducement given to middle class home ownership, when government urged large numbers of people in Charles Abrams' words, "to go into debt at the right time."[1] Otherwise the pre-Depression structure of local regulation remained the most important and direct political influence over land during the years of suburban expansion. While federal policy deeply influenced the startling growth of suburbia in the post-war years, this occurred indirectly through highway, mortgage and local planning assistance programs. The latter, a late extension of Hoover's early celebration of zoning back in the 1920s, were a contribution whose significance is usually understated. Yet by buttressing the existing body of zoning ordinances the new plans solidified the framework of municipal land regulation. Since these assured the essential limitation of risk necessary for sound investment they served as an indispensable political base

for the suburban marketplace in land, housing, retailing and industry. By ensuring the reputability of suburban buyers, zoning and related methods attracted the requisite investment capital as well as the essential federal guarantees. Thus suburban exclusiveness, as well as the protected single family residential zone inside the city formed the social groundwork supporting rising sales in an assortment of home consumption industries. Builders, real estate men, the auto complex, banks, insurance and finance companies each benefitted handsomely from the tight local hold over land, especially suburban land.

In the late 1960s though, this consensus on the virtue of suburbia began to unravel. Not only planners and sociologists, but builders and developers complained about the appearance of narrow-minded, snobbish obstructions to new projects. "Unable to sell the product to which he had become accustomed" because local zoning commissions would not allow it, the builder, writes Richard Babcock, "...found himself grasping for new ideas in the housing field and in the same bed with some strange avant-garde characters."[2]

Almost at the same time environmentalists pointed out the effects of sprawl on the fragile balances of local and regional eco-systems. It wasted land and energy, multiplied pollution, contributed to destruction of soil and forest leading to flooding and erosion, and by driving up the value of farm land made it increasingly difficult for farmers to keep the land under the plow rather than the bulldozer.

For sharply contrasting reasons therefore, markedly different interest groups came to agree about the disadvantage of continuing the local oligopoly of land use control. In turn, a new consensus formed about the principle that local governments should yield at least part of their traditional authority over the development process to metropolitan, regional or statewide authorities. The inability or unwillingness of municipal governments to embrace broader than local interests in the decision process generated ever more serious costs: rising land prices, environmental decay and inhibitions on the integration of housing and the construction of key regional facilities such as energy plants. Central to the fate of the new consensus however, was an inherent and seemingly irreconcilable paradox. Change in the jurisdiction over land was sought simultaneously by those demanding more open growth opportunities and conservationists interested in restricting development to environmentally tolerable forms. Increasing legitimacy for the concept of State abridgement of local power mirrored basic disagreement over who should receive the benefits of change. In this chapter the confluence of these opposing social forces will be examined. This is a preface to understanding their struggle in Congress and the inability of the latter to arrange a mutually acceptable compromise.

The Political Economy of Exclusion

After World War II the federal government invited millions of middle-class Americans to leave the city, only to replace

them with millions of dollars in urban renewal funds pumped into revival of downtown business, a revival made necessary largely by the original invitation to leave. Meanwhile, between the borders of suburbia and the streetlines of downtown wealth and power the stock of urban housing deteriorated and diminished, along with the quality of public services in general. The old correspondence of municipal taxing power and private wealth, if it ever existed, disappeared.

In the mid-fifties Galbraith lamented that in The Affluent Society, "The line which divides our area of wealth from our area of poverty is roughly that which divides privately produced and marketed goods and services from publicly rendered services."[3] Compounding the separation of private wealth from public poverty was the growing segmentation in the quality of public service itself. Not all publicly rendered services were inexorably worsening. Division of the metropolitan landscape into a multiplicity of political jurisdictions allowed concentration of taxable wealth outside the centers of municipal need. Many tiny principalities of privilege could afford high quality public services, from education to parks. This is a familiar, but still important story.

Less obvious is the fact that its logic was foretold in the old system of municipal land use control. The suburb projected on a metropolitan level the single-family zone resting on a new technical base. Their ends were identical: to close off the domain of wealth from those whose work assures it. Propelled by cheap energy and affordable automotive technology,

the same economic and social forces which led to residential zoning combined to transform it into a species of government with the right to determine the use of local land and taxes. The suburb was implicit in zoning: its rationale was the separation of unequals. Inequality was protected and glamorized through the legal guarantee of fixed distances in the residence patterns of social classes and races.

Federal policy helped create a metropolitan area which functioned as a sprawling public goods market where education, peace and environment could be sold to the highest bidder. Individuals competed for the right to pay high taxes in return for privileged use of quality services. Low bidders meanwhile, could hire the free, albeit squalid services of old cities. In effect, the same market principle which justified inequality in the consumption of private goods (and Galbraith's division of private wealth from public penury) was extended to the public sphere because the comprehensive, inclusive formal equality of the city was inconsistent with the secure enjoyment of socially unequal private benefits. The divided metropolis was a territorially potent antidote for the threat to city budgets inherent in equal voting rights for the working class and racial minorities. Just as the price system apportioned consumers from Lord and Taylor to the corner Army & Navy stores - depending on income and more basically, access to the production system itself, so did the metropolitan public services market apportion citizen consumers from Scarsdale to East New York. In Norton Long's words,

> Clearly a public goods market such as the metropolitan area rations its goods in the same way as the private sector, namely by price. The very municipal homogenitization (sic) that is one of its claims to efficiency spells segregation by income...the metropolitan area has become a rich smorgasbord of land uses to meet the tastes and purses of a highly varied public.4

Fragmentation of metropolitan authority is the governmental reflection of an unequal social structure. Public markets guaranteed the secure, unbothered enjoyment of the benefits of private ones.

Riots were a sign that the inner-city population was not satisfied with urban renewal as a remedy for the public market. Tearing down houses for highways and sports arenas hardly foretold a change in the existing distribution of public wealth. Their shock waves were channelled in part, into proposals for bridging the suburban-city gap by building low-income housing outside the city. Although not a single suburban shopping center was looted or burned, the explosion was felt almost as directly. Not ghetto merchants, but local zoning powers came under assault.

Increasing awareness of the use of land regulation to control people animated discussion of the possibility, even the necessity of removing the legal insulation around suburbia. Production of wealth generated social costs and liabilities respectable people tried to defer and push aside. Hence zoning. Violence in the cities revealed that the protection from production was itself generating consequences worse than production! By the end of the 1960s warnings such as the following came from a stream of Presidential study groups:

> Unless local units are large enough to function well, it is almost certain that demands for better services will cause power over local affairs to be shifted to higher levels.5

Pressure From The Top

On the one hand, the federal government became increasingly wed to the idea of comprehensive planning in the late 1960s. Part of this interest included serious consideration and criticism of the effects of local land use decisions. On the other hand, such decisions were also challenged by builders, especially large-scale developers of multi-unit, multi-area projects. Operating simultaneously, although without coordination obviously, black rebellion and corporate interests in expansion helped turn Washington's attention toward rationalizing the locally based political economy of land use in favor of accommodating big, multi-unit projects for housing minorities and low-income workers.

These forces were central to the raising of land use planning as an issue of national significance. But just as important, the emergence of planning out of the web of forces interested in promoting growth laid the basis for opposition to the environmental definition of planning as a means of limiting growth.

Arguments for changing land use decisionmaking into a metropolitan or statewide responsibility did not spring up suddenly from fear of urban violence. They are part of an older tradition in twentieth century reform. As early as the

Hoover administration business leaders and academics warned of the dangers inherent in allowing land development to be the preserve of local government alone. Like the early mercantilists they advocated a general public responsibility to guide development along lines charted in advance, lines that should parallel the values of elite groups who understand and pursue the betterment of the whole. In 1929 Frederick Delano, the future President's uncle, led a study of national growth trends sponsored by an assortment of progressive civic and planning organizations. Their report entitled, "What About the Year 2000?", revealed apprehension among representatives of the upper class and seasoned academic judgement about the probable intensification of social conflict over land. It predicted this would compel

> ...the Nation to ultimately abandon piecemeal planning in favor of comprehensive land-planning, that is, there will be a conscious effort to establish control, through planning in advance, of the use of public and private land and its resources in the interests of the country, state or region as a whole.[6]

Again in 1937, another forward looking national body, the National Resources Committee, worried that "the scale of the interior planning of our cities" has not been changed to conform with the new mobility."[7]

Despite these warnings, the great burst of Federal support for planning after World War II did not include requirements that towns consider the regional, or metropolitan consequences of their projects. Nor was there much in the way of regulation

to assure that localities stick to plans formulated to meet even narrowly defined local guidelines. Thus studies of local planning have shown either its irrelevance, or capture by alliances of local officials and business interests. In the suburbs it was used to invent more effective means of exclusion, while in the city planning helped fuse entrenched interests anxious for a revival of local real estate, construction and trade. Planning was absorbed by boosterism. Robert Dahl's description of New Haven's planners is typical of the literature.

> ...the men who were most influential in redevelopment constantly struggled to shape their proposals to fall within what they conceived to be the limits imposed by the attitudes and interests of various elements in the community. They took the major outlines of the socioeconomic structure as given...[8]

Planning was employed to reinforce the social structure, not to change it. In the increasingly stagnant economy of the fifties however, more than local planning was necessary to stimulate growth.

The inability of relatively small scale planning and building to meet the needs of downtown interests led Presidents Kennedy and Johnson to push harder for metropolitan or areawide planning of federally aided local development. They followed sound business judgement. According to the wisdom of real estate analysis, development of declining areas is profitable only where the scale of projected new growth is large. Prospective entrants into the urban land trade are warned by one text that investment should not be undertaken unless the

value of the existing structures approaches zero. Only then will the wise speculator demolish the buildings to make way "for a higher and better use". Most important, "the recovery must be on a broad scale. Piecemeal building of an obsolete section involves too great a risk to invite the type of investment needed for a successful facelifting operation."[9] Felix Rohatyn's recent suggestion that the South Bronx be flattened to make way for industrial parks illustrates the continuing popularity of the theory among responsible members of the community.

President John F. Kennedy's 1961 Housing Message embraced the logic of large-scale development. Urban progress, he said, results from broad economic and social regeneration, not piecemeal programs. Far more than housing was at stake. Planners had to recognize and support the city's new function as a communications and service center for corporate operations carried on increasingly in the suburban hinterland. Implicitly accepting the inevitability of the suburban-city gap, he criticized the existing policies for being too limited in conception and vision.

> Urban renewal programs to date have been too narrow to cope effectively with the basic problems facing older cities. We must do more than concern ourselves with bad housing - we must reshape our cities <u>into effective service centers for expanding metropolitan areas</u>. Urban renewal efforts must be substantially redirected from slum clearance and slum prevention into positive programs for economic and social regeneration. (emphasis added). 10

Given the existing relations among jobs, investment, housing,

communication, transportation and government policy, the scope of planning had to be enlarged to embrace the systematic character of development. Otherwise valuable resources were wasted. As an example Kennedy pointed to the dissipation of a non-farm residential real estate investment of $500 billion through under-utilization of still habitable structures in the city and overuse of land in the increasingly crowded urban fringe. Efficient use of real estate called not merely for physical planning of public infrastructure, but

> ...the establishment of an effective and comprehensive planning process in each metropolitan area embracing all major activities, both public and private, which shape the community.11

Stripped of rhetoric, planning was viewed as a technical contribution to the more productive use of capital, just as it was by Adams and Rush in the 1830s. By enlarging the public planning system, by overcoming local obstacles to the expansion of new technical and social forces, the central government could increase the benefits of growth to be divided among the population (on an unequal basis consistent with the prevailing social order). Mercantilist principles were reasserted in the name of allowing the expanding forces of production maximum autonomy in the presumed interest of the whole.

The President restated this theme in his 1962 message to Congress requesting an Urban Affairs Department. "There must be expansion", he said, "but orderly and planned expansion, not explosion and sprawl."[12] Although the new agency

was rejected, Congress granted additional planning funds for housing, transit, area redevelopment and health facilities. In the last two years of his administration Kennedy pushed for areawide planning of transportation but failed.

After the assassination it was left to President Lyndon B. Johnson to take the "great leap forward" into reviving the old N.P.B. ideal of requiring planning as a condition of aid to states and cities. With the passage in 1966 of the Demonstration Cities and Metropolitan Development Act all local proposals for federal highway, airport, hospital, library and water grants were made subject to review by areawide planning agencies. This came on top of earlier planning requirements for housing, urban development and sewer grants. Metropolitan agencies could now start judging local development of public works on a sound basis. But in practice there was no more authority behind the areawide responsibility than there was in the local programs of the fifties or state planning of the thirties. Planners served without power, just as President Roosevelt's cabinet urged. Nothing in the law specified when, how, or by whom localities could be compelled to adopt areawide definitions. Nor did President Johnson believe they should. "The Federal Government", he said, "cannot, and should not require the communities which make up a metropolitan area to cooperate against their will in the solution of their problems."[13] Inevitably planning itself came to represent a waste of resources. Between 1954 and 1972 $182 million was spent on metropolitan, regional and interstate

planning, yet not a dollar was spent to assure implementation of a single plan.[14]

Meanwhile, the destructive forces unleashed by private and regional growth policies exploded in urban violence. Despite Johnson's hopes for change the War on Poverty only seemed to generate deeper discontent. In its midst, blacks warred on their own neighborhoods. As violence raised the level of fear in society, one of its more subtle and potentially significant effects was a revision in thought among top level government analysts of the city. Hesitantly they spoke not so much of areawide planning, but of specific techniques, framed by plans, to break down the division of city and suburb by moving blacks into the strongholds of the white middle class. A confrontation with the suburb loomed as the issue of the seventies, for unless its power over land use could be abridged, low income housing would be refused. The need to place local land use control on the national agenda began to be mentioned again and again in the last years of the Johnson Presidency.

Its first appearance was low key and subtle. In the midst of a discussion of "Resources For Planning" in the 1965 Housing Message, President Johnson called for a commission to study the influence of local building and zoning regulations on land and housing costs and development patterns. "We must begin," he said, "to develop better and more realistic standards for suburban development."[15] An expression of Presidential interest in a matter so intimately

the province of local political officials and private land owners is not an unimportant event. Quietly, Johnson initiated the process of legitimizing a potentially basic change in the structure of the local political economy of land use. For the first time since the Ambler decision in 1926 zoning appeared on a Federal agenda.

Johnson's reference to "more realistic standards" was ambiguous enough to seem harmless. But turbulence in the cities, magnified by intellectual criticism of urban renewal added to exposure of the suburb as a place where, in Mumford's words, "Domesticity could flourish, forgetful of the exploitation upon which so much of it was based."[16]

In a widely-read essay published immediately after the President's message Herbert Gans made the unheralded examination of suburban zoning look a bit more subversive to those who benefitted from its operation. After summarizing the universal criticism of urban renewal Gans urged that the program be transformed into an urban re-housing program whose centerpiece should be "building low- and moderate-cost housing on vacant land in cities, suburbs, and new towns beyond the suburbs..."[17] Although Gans' not so modest proposal did not go uncriticized by liberals, the subject of controlling private land use in the suburbs was apparently in the public domain.

A more authoritative, though no less positive affirmation of the need for suburban integration was the 1968 Report of the National Advisory Commission on Civil Disorders, the

major non-violent governmental response to the riots. The Commission insisted that slums were the inevitably dismal side of suburban exclusiveness, that the latter played directly into the hands of slumlords. "By restricting the area open to a growing population, housing discrimination makes it profitable for landlords to break up ghetto apartments for denser occupancy, hastening housing deterioration."[18] Land use restriction became officially identified with racial discrimination and economic exploitation. It was criticized as a bulwark of the "two societies, one black, one white, separate and unequal." Similarly, federal housing programs operating within the confines of the ghetto were charged with tacitly supporting its maintenance and expansion. Thus not only should the supply of low-income housing be expanded "on a massive basis", but "areas outside of ghetto neighborhoods should be opened up to occupancy by racial minorities."[19] Indeed the Commission explicitly warned that such expanded housing programs must have their "main thrust...outside the central city."[20]

Only a few months earlier, in December of 1967, the willingness of top administration leaders to speak out on the Federal responsibility over national growth patterns was made unmistakeable when the Secretary of Agriculture (whose constituency is not usually thought to embrace planners) attacked the decline of rural America as a direct result of uncontrolled urban growth. He even went on to organize a conference with the imposing title of "National Growth and Its

Distribution: A Symposium on Communities of Tomorrow", to which he addressed the question whether the time was not ripe to consider the impact of federal policies on rural depopulation. Urban expansion after all drove farm property values and taxes sky high leaving farmers little choice but to sell and run. While Freeman primarily was interested in the agricultural costs of unplanned growth his statement fueled the growing interest in devising a national urban policy with teeth.[21]

Just a few months later the Advisory Commission on Intergovernmental Relations enlarged on Freeman's concern in a report on "Urban and Rural America: Policies for Future Growth." More clearly and directly than any previous statement, this study dramatized the need for a thoroughgoing change in the system of public control over private land. Emphasizing the encouragement of large-scale development, including federally subsidized New Towns, as the best means to plan growth and enlarge housing opportunities for the poor, it noted that the existing framework of overlapping and inconsistent land control systems had to be replaced by state land and growth plans. But the new arrangements had to include new power relationships among the levels of government or the plans would be ineffective. Local efforts had to be measured against state criteria. The ACIR declared

> For the state urbanization plan to become fully effective, a link must be established with multicounty and metropolitan plans and with those local plans and development measures having an impact outside the borders of the local government. There are a number of approaches possible for implementing State policies....The most direct approach is to require conformance with the State urbanization plan.

> For local governments, this requirement should apply not only to plans but also to land-use development control and regulation ordinances and to specific projects which have an impact beyond the borders of the local government. 22 (emphasis added).

Just three years after Lyndon Johnson's insistence that the federal government was unable to force metropolitan planning on localities an agency of the federal government responsive to local interests advocated urban plan implementation via state control of municipal growth, including state regulation of the implications of local ordinances and specific projects. The legitimacy of the proposal was evident. Pressure was building from the streets, from Washington. Local control of land use would no longer silently shape regional destiny. Its influence in society was now subject to criticism and could ultimately be made subject to administrative and political control by the states.

Capping the drive toward making land use a national issue was the Report of the National Commission on Urban Problems (the Douglas Commission), the group originally assigned by President Johnson in 1965 to examine the role of land use control in development. By the time of its report, in 1968, the Commission had delved extensively into the urban housing problem, and concluded along with the studies preceding it, that housing was a problem requiring regional action. Thus its chapter entitled, "Toward a More Orderly Urban Development" emerged as a strong attack on local land use regulation and a call for a shift in land use control powers to governmental units adequate in size and scope to consider fully the needs

of all groups in the metropolitan region.

The Report made two principal arguments, each of which found its way into the philosophy of later Congressional proposals. First, it argued that broad governmental units are more likely to make fair decisions. "Although size is no guarantee of competence, it can at least create an opportunity for competence that does not otherwise exist."[23] Plans for improving the patterns of growth should be based on a general shift upward in public authority over private land. Such changes would allow minority interests and builders access to housing and construction opportunities heretofore closed by large minimum lot size requirements, restrictions on multiple unit development, limits on the number of bedrooms and so forth.

To guarantee the consideration of a broad range of interests and values in regional, metropolitan and county decisions, as well as at the local level, it argued that states should create planning agencies directly responsible to the governor. These would provide research and technical capabilities in land use planning and make the results available to local governments; prepare state and regional land use plans and policies; and most important, supervise and adjudicate state and local agency conflicts over decisions affecting land use.[24] To insure the legitimacy of the new arrangements the Commission called for explicit changes in the states' delegation of land control powers to local governments. By directly modifying the legal responsibilities and

powers of local governments less room would remain for time-consuming disputes over state domination. Hence it urged legislatures in each state to amend their zoning enabling act to include as an objective the "provision of adequate sites for housing persons of all income levels and to require that governments exercising the zoning power prepare plans showing how the community proposes to carry out such objectives."[25] In effect, the Commission proposed the abolition of the suburban community's domination of land use. By enforcing an integrated housing requirement on all zoning agencies, the peculiar purpose of the suburb - to restrict and segregate housing opportunities by class, is denied root and branch. The Commission threatened to upset historic patterns of social, class and ethnic segregation in the United States. Such basic institutional and social changes however, do not happen purely on the basis of persuasion after reasoned analysis.

This Commission and the ones before it, were institutional responses to political violence and the deeper social forces which provided the conditions for its unleashing. Their ideas were aimed, in part at least, at modifying and cooling an incendiary situation. Their mere expression changed nothing - except perhaps the perceptions of interested groups. Private land owners and real estate entrepreneurs for instance, could identify an impending threat and begin to organize against it. Poor blacks might see a sign of hope, or another recitation of their misery likely

to culminate in nothing. Builders and developers could seize on the obvious connection between their interest in subsidized profits and the poor's interest in housing. It is probably true that to a greater or lesser extent, all three happened. But from the standpoint of understanding the development of the land use issue the last result was particularly important.

Historically, the federal housing programs were designed to increase markets for private builders. In the 1940s and 1950s cheap suburban land garnished with federal mortgage incentives, attracted middle class home building outside the city. But by the late 1950s construction was down. The building industry appeared to reach a point of diminishing returns in the single-family home business. During the Eisenhower years housing starts declined an average of two percent annually.[26] And by 1960 new non-farm private housing starts slumped 18 percent below 1959 levels, the lowest point in a decade. Among construction workers, unemployment increased 25 percent.[27] More ominous was the multiplier effect of depression in the building industry. While it is not true that stagnation in home building can single-handedly wrench the entire economy, slowdowns in construction activity are felt quickly in other sectors such as timber and appliances,[28] making a general decline more likely.[29] Thus in 1961 President Kennedy worried that traditional methods for reviving construction were no longer adequate. Having successfully met the pent-up demand of returning veterans, builders would have to discover, or perhaps with federal aid, create untapped

markets. The President suggested that with proper government encouragement low-income buyers would become a major opportunity for the industry. "Credit devices", he said

> ...must now be used selectively to encourage industry to build and finance more housing in the lower price ranges to meet the unfilled demands of moderate income families. It is these families who offer the largest and most immediate potential housing market, along with those of still lower incomes who must rely on low-rent public housing.30

Guiding the housing industry into the low-income market would not be accomplished as easily as the earlier inducement of a suburban middle class. Helping the poor and low-income buyers was not simply a question of stimulating the consumer to go into debt. The metropolitan political landscape of the 1960s was vastly more complicated than that confronted by Roosevelt and Truman. Moreover, the economic problem was now overlaid by an explosive racial dimension. Implicitly recognizing the inevitable antagonism of the suburb, Kennedy warned that "Bold programs in individual jurisdictions are no longer enough. Increasingly, community development must be a cooperative venture toward the common goals of the metropolitan region as a whole."[31]

Without metropolitan governments to formulate regional goals one wonders what Kennedy had in mind beyond rhetoric. Clearly the housing industry was being redirected. But short of an assault on suburban restriction, federal dollars would hit a hard legal wall.

The problem of exclusion aside, Kennedy's proposal required a building industry equipped to provide large-scale,

multi-unit developments. Yet in the United States builders have remained among the least organized and most competitive entrepreneurs. Construction has not featured the concentration of economic power typical of major heavy industry. Efforts by small builders to gain predictability and control have centered mainly on influencing local political decisions about zoning or the placement of infrastructure. It is no accident after all, that as one Florida lawyer puts it "Zoning is the single biggest corrupter of the nation's local governments."[32] Local land use controls function much as target pricing and oligopoly do for big business. Organization and regulation, even when administered corruptly, provide a setting in which rational investments may be undertaken with minimum risk. Controlling the political marketplace in land use eliminates the worst results of the economic one.

Despite its reputed competitiveness, as early as 1939 the four percent of all contractors whose output equalled or surpassed $100,000 annually accounted for a half of all construction, while 27 percent of the work was completed by the .5 percent who did $500,000 or more in business.[33] Concentration of production, and presumably, the capacity to provide large-scale developments were not entirely absent in this industry. Until the early 1960s this tendency was slow and coexisted peacefully with the local control of land use. By the end of the decade, however, basic changes occurred in the land development business. Many firms increased substantially in size and output and emerged as favored targets of

conglomerates such as Boise-Cascade, ITT and CBS. Leo Grebler notes 47 cases where "generally large or rapidly growing firms" were merged with conglomerates, many of whom hoped to inaugurate "multi-area activities."[34] Moreover, many large corporations internally generated real estate and development subdivisions. Westinghouse, General Electric, Kaiser, Gulf Oil and ALCOA among others, reached into the land business to invest surplus capital. As one ITT executive explained, "You can no longer accuse this of being a Mama and Papa industry. You will have the best of American industry attacking the problems, and the dynamics of the business...will change."[35] The ACIR explains why so many "large corporations with available cash" turned to land development by focusing on the aluminum industry as a case study:

> ...in the aluminum industry, a situation prevails which is characterized by over-capacity and a limited number of major processors. Profits cannot be plowed back into new capacity and anti-trust considerations inhibit mergers or further investments in the aluminum industry. Vertical integration then has strong appeal. Hopefully, a market can be created for aluminum products in homebuilding and other urban development, thereby helping to combat over-capacity in the industry while at the same time avoiding combinations that would create anti-trust problems.[36]

Land was a popular field in the late sixties boom, as it usually is in periods when large quantities of surplus, speculative capital are available, such as in the booms of the nineteenth century described earlier in this study. Unlike the earlier booms however, this one was dominated not by small time, fly-by-night operators, but by respected firms used to controlling their environments. Eager to promote

large-scale development and "new towns" on the urban fringe, these firms could well run aground against the resistance of tiny municipal governments buttressed by local real estate men. Thus big construction outfits and their parent companies had a stake in broadening the scope of land use controls which establish the opportunity and conditions of their work.[37] And the seriousness of the stake becomes more evident when it is realized that major firms generally built multi-unit projects so often the subject of suburban exclusion. Grebler's study of concentration in the construction industry indicates that producers of 1,000 units or more accounted for 27 percent of all multi-unit projects (see Table 1).

Table 1

ESTIMATED SHARE OF MULTI-UNIT MARKET BY LARGE BUILDERS

Private Completions	Percent of Total Multi-Family Units
Builders with 1,000 - 1,999	8.4
Builders with 2,000 - 2,999	5.8
Builders with 3,000 - 3,999	3.6
Builders with 5,000 or more	9.6

SOURCE: Leo Grebler, Large Scale Housing and Real Estate Firms, Analysis of a New Business Enterprise (New York: Praeger, 1973): 25, table 2.4.

The growth of large scale multi-unit development placed new corporate pressure on the established pattern of local control. Many suburban communities were doubly afraid of new neighbors and the added costs of financing public services for

major projects. Fiscal zoning to restrict such ventures became a byword of local planning commissions. This appeared to directly restrict the options of the emerging giants of land development. As Grebler writes,

> Because of the scale of their projects and of the needed commitments by local governments, as well as the greater complexity of environmental issues often associated with large projects, the firms considered here are likely to experience an especially severe impact.38

Or as Richard Babcock put it, "There are powerful and conservative commercial forces that would welcome an erosion of local land use control."[39] By 1973 for example, the National Association of Home Builders accumulated a $200,000 fund just to combat local growth restrictions in the courts.[40] In two major housing markets, Florida and California, an association spokesman estimated a one-third drop-off in the number of housing starts due to municipal regulations.[41] And one New Jersey firm reported huge profits earned solely from packaging sites for major developers. As Business Week described it,

> As zoning restrictions, sewer and water hookups, and environmental concerns all become tighter, it is taking longer and longer to make raw land ready for building. Builders now run into delays of one to three years and often find they must hire highly paid experts to persuade officials to grant the necessary permits. The situation seems made to order for the company that can find land, steer it through the official thickets and deliver it in a ready to use state.42

Development in the hinterland of America began to resemble doing business with the Indian bureaucracy. A more comprehensive system of land control would clearly lessen the cost of building.

Another factor leading to corporate interest in a wider scope for land use control was the growing contradiction between industrial locations and the residential patterns of labor. If, as John Kain has argued, "The location, or spacial distribution, of employment is the most important determinant of urban form or structure"[43] then social forces inhibiting the movement of workers to available jobs create a dysfunctional, irrational land use pattern from the standpoint of the efficient use of labor power. Government studies show quite dramatically that industrial locations in the 1950s and 1960s did flow to the fringes of the city. A Labor Department report indicates half or more of all new industrial and mercantile buildings constructed in the decade from 1954 to 1965 were outside central cities.[44] Table 2 indicates the substantial suburban advantage in jobs accumulated over the postwar period.

Table 2

DISTRIBUTION OF NEW EMPLOYMENT - CITY vs. SUBURB (1951-1965)

	Number of New Jobs		
	City	Suburbs	Metropolitan Area
Baltimore	1,450	86,086	87,536
New York	127,753	387,873	512 .626
Philadelphia	- 49,561	215,296	165,835
St. Louis	- 61,800	141,911	80,111
San Francisco	9,346	185,742	195,089

SOURCE: Report of the National Commission on Urban Problems to the Congress and to the President of the United States, Building The American City (Washington: U.S. Government Printing Office, 1968): 48, table 18.

Nor has this trend subsided in more recent years. According to the Domestic Council, "Employment grew in the suburbs by 3.2 percent between 1973 and 1975 while declining in the central cities by 3.7 percent".[45] Few of these new opportunities are accessible to central city workers. For example, the Douglas Commission stated that "In St. Louis, it would take three to four hours per day, at a cost of about $6.50 per week, for a worker to get from the ghetto area to the McDonnell Douglas Aircraft Corporation and back."[46] Not surprisingly, executives were disturbed about municipal obstruction to labor mobility. Business Week reported that a "critical problem" for corporations is that "Many moved into exclusive communities which welcomed the plants as taxpayers but did nothing to modify barriers to housing. So workers stayed in the cities and turnover accelerated because of the lack of fast, cheap public transportation."[47] McDonnell Douglas went so far as to help finance a law suit brought by a church sponsored non-profit developer against the town of Blackjack, Missouri for refusing the permit construction of federally subsidized housing near its plants.[48] In the words of Sol Linowitz, former chairman of Xerox corporation, "Morally and economically the effort to match workers and jobs makes as good sense for business as it does for society."[49]

The outworn mercantile fear that capital would be unable to keep up with the too rapid dispersal of labor was replaced by a new anxiety that twentieth century public impediments to labor mobility were too effective. Now wider units of public

authority were necessary to free labor just as the national land policy was used to restrict it more than a century before. Once again capitalism was running into trouble with federalism over the relationship between the control of land and the control of labor.

Objectively, the growth of the construction industry into an increasingly large-scale multi-area business and the irrationality of metropolitan labor markets seemed to lay the groundwork for corporate support of a centralized political challenge to the suburb's monopoly of land use authority. As James O'Connor notes, capitalist development "requires the constant widening of administrative units...Integrated regional economies will develop integrated expenditures and taxing policies and powers."[50] Corporate executives have other interests besides those of their organization however. They live in the same suburbs whose restrictions block the efficient use of labor. In their roles as taxpayers, family men and consumers of the suburban environment, interests arise which conflict with the needs of their business. One activist planner complains that "we should find very strong support in the business community for what we do....We have not found that support."[51]

As one gets closer to the political process, conflicts that appear from a distance to be etched sharply become more vague. Apparently obvious class interests dissolve into the more ambiguous, multi-sided wants of particular interest groups. Indeed, when the time comes to chart the intricacies

of the legislative process, even more arbitrary factors come into play, such as accident, personality, pique or coincidence. Historic trends, such as the rationalization of administrative units to accommodate industrial capitalist processes, are moved slightly to the left or right, by shifting balances of forces. Thus C. Wright Mills cautioned students of power to be aware of the slippage into pluralist analysis when approaching concrete legislative and electoral decisions.[52] It is a necessary slippage, for political forces work on many levels. Social power after all stems from deep seated and enduring social relationships. When those basic relations are seen as legitimate, conflict is likely to center on differences over the uses of power rather than the shape of the social structure itself. These battles occur within accepted institutional settings, such as a legislature, court or labor-management negotiations. The more serious ones often focus on precisely the institutional arrangements within which the effects of basic inequalities can be remedied short of changing the social structure. One form this takes is struggle over the level or arena of decision as groups compete for influence over the redistribution of authority with respect to critical values such as land. Here group conflict may come remarkably close to Madison's classic model of factionalism. As he observed, not only do the propertied and impoverished battle over the possession of wealth, but the propertied class is itself fragmented and subdivided into "A landed interest, a manufacturing interest, a mercantile interest, a

moneyed interest, with many lesser interests...."[53] To the degree workers have been historically estranged from land, this study has almost completely concentrated on just such intra-class conflicts. Thus, at close range for a relatively short period, group, rather than class analysis can be extremely useful in illustrating the ebb and flow of political struggle. This is the case in understanding the emerging conflict over land use policy. Corporate interests in changing the land control system to accommodate labor mobility were juxtaposed with middle and upper class residential interests in breaking the flow of labor and minorities into privileged preserves. Capitalist production requirements were met by the drive for conspicuous consumption of suburban space. An editorial in Business Week entitled, "Builders vs. the Suburbs" portrays the juxtaposition and contradiction of economic and environmental interests operating simultaneously:

> If the builders can knock down arbitrary restrictions designed to reserve blue sky and green trees for the exclusive use of a wealthy elite, they will be doing a public service. But if, in doing so, they spread the blight of ticky-tacky housing to still wider areas they will be adding more eyesores to the already badly scarred suburban landscape. Exasperated citizens cannot be blamed for wanting to stop the kind of fast-buck building that has jammed housing on to unsuitable sites, overloaded the roads and sewers, and thrown up high rise apartments that shut off light and air from neighbors.[54]

Few environmentalists would dispute the above assessment. Metropolitan growth placed enormous pressure on prime commercial, residential and industrial real estate. Seventy percent of the population lived on ten percent of the land. Such

massive concentration of people pulled together by regional employment markets and kept socially separated by the metropolitan public goods market inevitably led to overuse, misuse and abuse of the land, as well as to the systematic production of pollution.

The Environmental Aspect

In the mid-sixties environmentalists pressured Congress for an array of regulations against pollution of the air and water and several key measures were passed. But it soon became apparent that pollution control must ultimately become land use control, since, as Elizabeth Haskell states,

> Air and water pollution, solid waste mismanagement and noise are determined largely by land use patterns. The location of industrial, commercial, transportation, recreational, and residential facilities affects the kinds and amounts of wastes generated, where they are discharged, and the concentration of these substances in the environment.[55]

Suburban expansion damaged the surface of the earth as deeply as it did the air and water. High land prices, attendant upon the desire for privacy and exclusion, forced builders of homes and factories to skip the most favored domains and press further out into the fringe. The great suburban dispersal wasted land, energy and time. Up to 420,000 acres per year were absorbed by the process, including irreplaceable farm lands and open spaces.[56] Quickly constructed and inadequately planned commercial and residential strips destroyed tree and plant cover triggering soil runoff and floods. Flood plain construction had similar

results. Since trees are essential for the photosynthesis cycle and absorption of air pollution their unplanned elimination threatened man's continuing ability to eat and breathe. All elements of the population suffered from the effects. But with the organized segregation of social groups on the land, they were most profoundly felt by those having to live in closest proximity to industrial and transportation facilities. Zoning and suburbanism insured that, as England and Bluestone put it, "most pollution costs are 'class costs' imposed on the poor and other working people."[57] But these elements of the population did not lead the way in attacking the existing systems of growth. As the Business Week editorial suggests, the outrage at environmental degradation was felt most keenly by those who had some environment to lose.

Conservation of the land had roots in the same tradition of reform that proposed regional planning. Both were favored by middle and upper class intellectuals who tended to accept the basic logic of economic expansion. Conservationists however had an option unavailable to the urban planners. They could strive to influence the government to protect the public lands without directly challenging private property rights. For conservationists of the land, the scope of conflict centered first on the public domain.

Back at the turn of the century Gifford Pinchot argued that trees and land required the same rationalist management techniques Frederick Winslow Taylor applied to workers.[58] In the process he alienated those conservationists such as

John Muir, who were most interested in preserving, not administering mature. Pinchot, they felt, was more interested in means than ends. His management ideology led to more intensive, if controlled domination of nature rather than closer affinity with it. Preservationists, as they came to be called, feared institutionalized conservation, especially after they lost the famous battle over the Hetch-Hetchy Valley near San Francisco.[59] But they did not disappear and where possible they too used government. The National Park and Soil Conservation Services are examples of their political efforts. And Franklin Roosevelt's withdrawal of millions of acres of public domain renewed faith in preservation. But it was not until the years of quiet affluence in the 1950s that preservationists discovered an historical situation in which their ideas were met with broad public approval. In the struggle to save Echo Park in Colorado, a battle remarkably like that in Hetch-Hetchy, they proved how potent a public issue wilderness preservation could be. By rallying support behind an effort to save the Colorado River, the Sierra Club became a vanguard party of the environmental movement, a home for middle class revulsion at an environment middle class tastes produced.[60]

The Echo Park battle made preservationists optimistic about the rewards of sustained political action. They used that success to launch a new, bolder campaign for a general wilderness preservation policy designed to reserve from development permanently and unconditionally millions of

acres of public domain. This proposal threatened resource interests habituated to easy access to the public lands. According to Congressman Wayne Aspinall, a chief Congressional spokesman for mining companies, the fight over Echo Park and the Wilderness policy conflict to which it gave rise were extremely influential in turning his personal attention to the need for an "overall policy...with respect to the public lands."[61] By 1960 Aspinall was committed to moving public land policy toward a more explicit commitment to the productive use of the public domain. Several developments troubled him, but perhaps of greatest importance was destabilization of the Western mining industry's access to the federal lands.

The basic law determining rights to appropriate the public lands for mining was passed in 1872. It established a price of $2.50 per acre for placer mining and $5.00 per acre for load mining. Those prices were never revised. Under their aegis, for 100 years, lands valuable for other purposes were entered and claimed at the ridiculously low 1872 price. According to the Forest Service, only 15 percent of all mining claims going to patent, and a much smaller fraction of those not patented, were used for mining operations. Such claims were actually intended to provide cheap access to grazing, timber and resort lands.[62] Despite the abuses, mining groups were successful at stopping every effort to change the law until 1955. In that year the old law was revised to prohibit future claimants from using unpatented claims for any purpose other than mining. No restriction

was placed on the use of the land after sale however.[63]

Historically, only executive action restrained abuse of the 1872 law. The Taylor Grazing Act of 1934 gave the Secretary of the Interior authority to classify public lands and withhold entry under existing disposition laws until it was completed. Although mineral lands were exempt from the act's coverage, secretaries of the Interior from the New Deal on withdrew them as well. According to Aspinall's House Interior Committee, "millions of acres of public lands" were reserved from use "without express authority."[64] Pressure for a wilderness system threatened further to restrict private development. But certainly said Aspinall, "mineral exploration and production should not cease altogether."[65]

These conditions, he felt, dictated the need for a general study of the public land system and the hundreds of overlapping and inconsistent laws which guided it. Although President Kennedy sympathized, he did not make it a top priority. Congress, he suggested, should take it upon itself to make policy for guiding oversight of federal agencies engaged in land management. Nevertheless, the Department of Interior pressed for legislation specifically authorizing the Bureau of Land Management to administer 470 million acres of land which, to that point, lacked any definitive policy to shape their use. Amidst this maze of legislation and confusion, and spurred by Aspinall, President Johnson recommended in 1964, authorization of a Public Land Law Review Commission to make a comprehensive study of the public domain and the conflicts over its use.

Although in 1965 the Environmental movement lacked the public identification and support it achieved in the late 1960s, inside Congress it was already well organized and capable of influencing policy. The Wilderness Act, for example, passed in 1964, immediately placing 9.1 million acres of federal lands beyond the pale of industry. Although the bill's opponents were able to add two key amendments, (one continuing mining leases until 1983 and the other giving Congress the authority to determine whether any additional lands should be placed in this category), the preservationists managed to constrain the narrowly economic use of the public domain. In the same year Congress added a further commitment to conservation by establishing the Land and Water Conservation Fund to help governments at all levels acquire land for parks and recreation. In 1965 President Johnson made natural beauty an explicit goal of public policy by pushing through the Highway Beautification Act. Within a short time legislation was passed to control air and water pollution and to aid comprehensive planning of regional water basins. The latter was especially important because it marked the precedent for federal sponsorship of regional planning for the use of a basic natural resource outside the public domain. Although the bill was limited by a statement indicating it did not have the effect of changing any sub-national jurisdictions over water use, it nevertheless established the legitimacy for extending the principle to guidance of land planning. Thus the PLLRC Report, published in 1970 recommended,

> Comprehensive land use planning should be encouraged through regional commissions along the lines of the river basin commissions created under the Water Resources Planning Act of 1965; such commissions should come into existence only with the consent of the states involved, with regional coordination being intiated when possible within the context of existing state and local political boundaries.[66]

The PLLRC Report, One Third of the Nation's Land was crucial in associating the debate over a change in land use planning powers with environmental politics. The Commision's analysis operated on the basis of two assumptions angrily resisted by environmentalists. First, for the purpose of review, it "considered all resources and uses of the public lands to be commodities."[67] Hence, although environmental consequences were to be considered in future planning on the public domain, the basic framework of the Report was taken from the marketplace, not the laboratory. Second, the Commission did not assume the continuing ownership of land by the federal government. It approached with an open mind the question "whether lands that are chiefly valuable for a particular purpose would be retained and managed in Federal ownership or disposed of either to another public body or into private ownership."[68] The old 19th century alternatives of disposal of the public domain or cession to the states were suddenly reactivated. Then, proceeding from the logic of these assumptions, the Commission recommended a basic modification of the multiple-use doctrine which provided that, where possible, public lands should serve a variety of uses and functions simultaneously. It suggested a standard of dominant use be applied to highly

productive lands capable of supporting timber and grazing operations. With respect to high quality farm land, it urged sale to private interests at market prices without recommending a limit on the amount that could be purchased, or that the buyer be required to live on the land. The logic of the 1785 land laws was surfacing again. Not surprisingly, environmental groups assailed these proposals as a new program of land giveaways which only paid lip service to sparing the environment from abuse.[69]

Contrary to Grant McConnell's thesis that "Conservation, and conservation of wilderness and scenic values especially, have depended on creation of larger constituencies,"[70] the larger jurisdiction of the federal government hardly assured consideration of diffuse interests and values. Friends of ecological protection realized that national support of their goals was far from automatic. Indeed, in several ways, the exploding popularity of environmentalism produced new problems for conservationists. First there was, by 1969, concern about the potential for political cooptation of the issue by a President eager to displace public interest from the Viet Nam War. Second, support for ecology was dangerously skewed in class terms. Affluent whites approved of regulation which conserved the suburban garden or shifted expenditures on recreation and parks to areas easily reached by private automobiles. But these were not issues felt deeply by members of the working class, white or black, despite the fact that zoning regulations and working conditions placed

them in closest proximity to the most damaging consequences of heavy urban industrialism. This contextual background is essential to understanding the political situation in which land use planning legislation was introduced.

A conspiratorial view of history is not necessary to explain the political uses of environmentalism in 1970. Elites, including the President of the United States, were forthcoming about the possibilities of employing this issue to unite the dangerously divided population. As the New York Times observed in connection with the President's State of the Union message in 1970, the speech explicitly avoided issues of race and class in favor of those affecting "All races and classes" such as "inflation, overcrowding and the steady erosion of the environment."[71] (emphasis added). In the President's words, "Restoring nature to its natural state is a cause beyond party and factions. It has become a common cause of all the people of America." Then, as if to leave no doubt as to his intended audience, he added, "It is a cause of particular concern to young Americans because they more than we will reap the grim consequences of our failure to act on programs which are needed now if we are to prevent disaster later."[72]

Despite his manipulation of the ecology issue, Nixon cannot be faulted for providing only promises. Within a month after the State of the Union message, he called upon Congress to provide nationwide air quality standards, precise Federal-State water pollution criteria for industrial and municipal polluters, tougher auto emission standards and charges for

corporations using municipal waste treatment facilities. As the New York Times observed, "One aspect of the message that struck observers here with particular force was the fact that Mr. Nixon - who has long preached the virtues of State and local control - has clearly chosen to give the Federal government immense authority both to design the anti-pollution effort and ultimately to enforce it."[73]

Yet it is important not to misconstrue the approach adopted by the Administration. Environmental protection was viewed as entirely consistent with the economic-technological system that produced the problem in the first place. Nixon was careful to make this point,

> The fight against pollution, however, is not a search for villains. For the most part, the damage to our environment has not been the work of evil men, nor has it been the inevitable by-product either of advancing technology or of growing population. It results not so much from choices made, as from choices neglected; not from malign intentions, but from failure to take into account the full consequences of our actions.[74]

A proper, responsible environmental policy is one addressed to creating structures of decisionmaking that will "take into account the full consequences of our actions." In practice this means internalizing the social costs of private decisions by inviting all groups interested in decisions with significant environmental impact, developers as well as environmentalists, to participate in competitive regulatory processes. Environmental regulation should work through an adversary proceeding. This is a limited, conservative approach to the danger of ecological collapse which has the benefit of

establishing governmental structures with full opportunities for access to leading social interests. Merely taking "into account the full consequences of our actions" does not mean a substantive change in the prevailing pattern of economic development in the country. Nixon proclaimed, to the contrary, that continued economic growth and technological development are not incompatible with, but are actually indispensable for, environmental protection.

"I realize that the argument is often made that there is a fundamental contradiction between economic growth and the quality of life, so that to have one we must forsake the other", however, the President added:

> The answer is not to abandon growth, but to redirect it. For example, we should turn toward ending congestion and eliminating smog, the same reservoir of inventive genius that created them in the first place.75 (emphasis added).

This made it all the more necessary for interest groups to control the legislative process that dictates what criteria will be consulted by administrators.

Business reacted aggressively to the opportunity of shaping environmental protest along lines suggested by the Administration. In the days preceding Earth Day, 1970, they aided the student defenders of nature. In a speech to the Harvard Club, the President of the New York Board of Trade assured his audience that Earth Day "will provide us with a real chance to show that business is concerned about the environment."[76] Teach-ins on the environment at the University of Michigan received financial assistance and cooperation

from the automobile and chemical industries.[77] And the Administration itself created an organization called SCOPE (Students Council on Pollution and the Environment) to link itself directly with Earth Day activities.[78]

Despite, or perhaps because of its dangerous political implications, ecology was appropriated by elites at the state and local levels too as a matter of legitimate concern requiring quick action. By 1970 environmentalism had become so popular in California for example, that a resolution urging the federal government to halt new offshore oil drilling was delayed a week in the state legislature, not by oil lobbyists, but by partisan squabbling over which party would receive credit for its sponsorship! Simultaneously, at least twelve states made environmental legislation a top priority while still others acted directly to regulate pollution and development in fragile areas.[79]

Until 1970 only Hawaii regulated local land uses from the state level. Back in 1960 it established comprehensive land use regulations when major pineapple and sugar growers complained of the encroachment of residential developers on their agricultural lands.[80] A state Land Use Commission divided the islands into four zones: urban, conservation, rural and agricultural. It retained control over all uses in the latter two zones while another state agency controlled the conservation zone. Urban areas came under the authority of four county zoning agencies. But since these were not required to mandate intensive development for all urban lands,

developers pressured the State commission to re-zone agricultural and rural areas to a higher use. According to Bosselman and Callies this has led to a more trim but also more expensive pattern of development. In their words,

> The commission has granted more rezoning of agricultural land than the staff had recommended, but these rezonings have been far less than the developers would like. More importantly, they have been concentrated on the fringes of the existing urban area, thus reducing to a minimum the "scatterization" that is typical of other rapidly growing areas, but also giving the owners of the land immediately adjoining the existing area a monopoly that has led to extremely high land prices.81

Like Hawaii, Maine and Vermont had economies based almost exclusively on natural resources and agriculture. They also shared its lack of a local tradition of land controls. Both acted in 1970 when development pressures appeared ready to inundate particularly fragile environments - ones traditionally the domain of local economic groups.

After experiencing several years of uncontrolled boom in the second-home development business, Vermont suffered from a rapidly disintegrating environment. The situation reached a critical point in 1968 - 1969 when the International Paper Company proposed construction of a giant housing development on 20,000 acres in a hilly, thin-soiled area described by one environmentalist as "clearly inhospitable to septic systems."[82] The Governor reacted to bitter controversy over the project by forming a Commission on Environmental Control which laid the basis for passage in 1970 of Act 250. This law established eight multi-county district commissions with authority to control large-scale development through a permit review

procedure. District decisionmaking had to include consideration of comments and analysis from state agencies interested in the local projects and was subject to review by a statewide Environmental Board. Decisions of the latter were themselves appealable to the Vermont Supreme Court. Major corporations did not necessarily have a friend in the State house either.

Similarly, in the face of oil company plans to construct major terminals in coastal areas lacking land use controls, Maine established an Environmental Improvement Commission with the power "to control the location of...developments substantially affecting the local environment in order to insure that such developments will be located in a manner which will have a minimal adverse impact on the national environment..."[83]

Although the laws differed from place to place, they shared the underlying assumption that major projects in fragile unprotected areas should proceed only after public scrutiny to determine their consistency with statewide environmental criteria. It is crucial to remember that the tradition of municipal land regulation was well established in none of these states. These are primarily agricultural regions where local zoning had always seemed an unnecessary restriction of private rights. State action was viewed in these places, not as a whip to correct a municipal error, but as an essential remedy for local vulnerability in the face of complex, large-scale pressures from the outside. These states were not displacing existing power centers, but inaugurating new systems of control where none existed before.

Environmentalists may have been the first to spot the need, but a broad consensus of key state groups had to be gathered to insure the response. Thus land use controls in each case required and received the initial support of major land owners. In Hawaii it was the agri-businesses, in Vermont and Maine the timber and electric power industries. Each viewed urbanization and residential development as threats to traditional patterns of resource exploitation as much as to the environment itself. State land regulation was approved as a restriction on those viewed as destructive outsiders, while no changes were made in the opportunities available to locally based interests. Both Maine and Vermont exempted the timber and electric power industries from their law's provisions.

The first state land regulations originated in response to political forces remarkably alike those which sponsored zoning years before in New York City. Regulations ostensibly designed to protect the public's interest in a clean, healthy environment were inexorably woven into the existing structures of economic power with the effect that one set of property owners was saved from the encroachment of others. Administration of zoning has been deeply affected by this relationship. It remains to be seen what will result from the early state laws. Already builders have begun to complain of rising land prices and concern has been expressed about the fate of Hawaii's law once farming declines and the agricorps branch out into residential developments of their own.[84]

In any event major corporate builders had reason to proceed warily in supporting state land use regulation, for they were no more assured of a friendlier reception from Governors influenced by local economic interests than from suburban zoning commissioners acting in the name of snobby homeowners. Thus caution should be used in generalizing about these cases. The early state land regulations were introduced in small, relatively simple political economies, where the issues could be drawn sharply in terms of insiders vs. strangers. The common external enemy that united business groups and conservationists will not appear in states with complex social and economic structures and a less obvious division of benefits and costs from growth decisions. Nor would it present itself in Congress, for as the number of interests multiplies the possibilities of consensus and compromise are reduced. "Extend the sphere" (of society), said Madison, "and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens"[85]-or to accomplish any political objective whatsoever!

Still, the fact that several traditionally conservative resource oriented states were quietly transforming their systems of land control did help illustrate the need for a national policy to guide development. Neither the central government nor centralized corporate builders could sponsor growth amidst a non-system of inconsistent regulations and frameworks. Predictable public and private investment

required a national policy or at least national guidelines. Especially worrisome to growth-oriented elites in this regard was the translation of environmentalism into a new array of no-growth and limited growth ordinances in the suburbs.

Nowhere was interest in the environment greater than in the suburbs. Their salability rested in large part on the creation of a quasi-natural environment with appropriate, but sterilized urban resources available for the paying. The converse of the suburban affinity for grass was the loathing of cities. This only deepened as the latter decayed. The rising pressures to open suburbs to greater opportunities for low-income residents only compounded it. Finally, as more highways, homes, factories and commercial establishments penetrated the hinterland a new generation of growth ordinances was fashioned.[86] Moving beyond the traditionally narrow focus regulations, such as large-lot zoning, some communities implemented general, overall growth laws designed to set fixed limits on new population and development. The town of Ramapo, New York, squeezed by the completion of two major state highways, created a comprehensive plan, whose stated purpose was "to preserve those natural features of the town which give it a pleasant, open setting and which serve as an attractive background to the more developed areas of the town."[87] To achieve this it introduced density limits of two to four families per acre near its larger villages and then placed a general moratorium on all development except that which fit the standards set by an 18 year capital budget,

itself a completely local document. Unless the developer could show that the infrastructure would be made available by the city or that he would provide it, the proposal would be denied. This cut the building rate in Ramapo from 1,000 to 450 units per year. In a similar vein, the town of Petaluma, California resisted the growth of nearby San Francisco by limiting multi-unit construction to 500 apartments annually. Boca Raton, Florida, amended its charter to forbid all future building permits after the town reaches a population of 100,000.

It is not always clear whether such laws are honest attemps to rationalize difficult pressures or are only more strenuous efforts to preserve economic and racial segregation. Such ambiguity caused environmentalists to state clearly the differences between ecological protection and social exclusion, and to dissociate themselves from advocacy of the latter. Inevitably this meant cutting off an admittedly obnoxious, but still potent base of support for more rational and fair growth controls. As one environmentalist put it, "Land use management to protect the environment is not exclusionary zoning....It means change, development and redevelopment, but in ways better than those of the past."[88]

Massachusetts was one state that sought to institutionalize the difference. In 1969 its legislature passed a Zoning Appeals Law to guarantee that communities incorporate their fair share of low-income housing. A low-income housing developer denied local building permits could appeal the decision to a Committee in the State's Department of Community

Affairs. If the developer succeeds in showing the decision to be inconsistent with the state's regional housing quotas, it could be vacated and the municipality instructed to issue a permit. According to Bosselman and Callies, the Massachusetts law represents the first effort by any state to use its land use control powers to attack the widely recognized shortage of decent low- to moderate-income housing in the suburbs and fringes of the city.[89]

In sum, the failure of years of inconsistent and contradictory urban development produced calls for a basic shift from local to state control over land use in order to overcome the irrationalities inherent in local resistance to minority housing, regional facilities and the increasing scale of corporate development activities. Alternately, increasing federal influence over land use planning was seen as a method of natural resource management, an expression of changing techniques introduced by the central government in connection with its own holdings that could be applied in the states as well.

Administrative centralization of land use control was not inherently functional for business or the environment. It could serve either depending on the bias set into the administrative process by legislative action. Because environmental protection and corporate rationality each required more centralized administration of land use the political struggle shifted to the Congress where the decision over the appropriate bias for a national land policy legitimately could be made. Neither side held any illusions about the neutrality of

planning, although each proclaimed allegiance to the principle of a balanced process. In practice, they operated in full knowledge of Schattschneider's law "all organization is the mobilization of bias."[90] And administrative bias is shaped first in the legislative process as delegated criteria and authority are weighted in words to favor one set of values and interests at the expense of others.

As the Nixon Administration settled into power the forces working to upset the local monopoly of land control did not seem irreconcilably opposed. Belief in the principle of a neutral regulatory process encouraged Senator Henry Jackson to propose the idea in 1970. Yet basic questions remained. Is regulation equivalent to planning? Can a process established to make specific judgements about specific projects produce sounder growth without clear criteria defining what "sound" means? If the federal government makes grants to encourage regulation does it also have a responsibility to require plans guaranteeing the predictability and integrity of regulation? Should such a requirement include specific categories and standards for each State to apply? How valid is the implicit assumption that environmental integrity and continuing growth are compatible? When does regulation of property become the taking of property? And perhaps most critical, is the concept of neutral regulation workable? Isn't the struggle over the passage of legislation explicit proof that regulation is inherently biased, with the principle of neutrality a sham to conceal administrative and political

rules which inevitably carry unequal benefits and costs? Isn't it merely a way of avoiding the statement of who shall get what, when and how? In sum, even as the policy formulation process was initiated formally through the introduction of legislation, there was no clear idea about what ends changing the jurisdiction over land use should promote, nor how the reforms should be accomplished. Acceptance of the legitimacy of federal action appeared widespread. But legitimacy for what? How could planning and regulation be neutral while actually producing outcomes favorable to some groups at the expense of others? The following chapters are devoted to analysis of the politics flowing from this contradiction.

Notes to Chapter Five

[1]Charles Abrams, "Housing Policy 1937 to 1967" in Shaping An Urban Future, Essays in Memory of Catherine Bauer, ed. Bernard Friedan and William Nash (Cambridge, Mass: M.I.T. Press, 1969), p. 43.

[2]Richard Babcock, The Zoning Game (Madison: University of Wisconsin Press, 1966), p. 47.

[3]John Kenneth Galbraith, The Affluent Society, 2nd ed., Rev., (New York: New American Library, Mentor Books, 1958, 1969), p. 197. For a sampling of the effects of federal growth policy see: Charles Abrams, The City is the Frontier (New York: Harper & Row, Colophon Books, 1967); Alan Altschuler, The City Planning Process (Ithaca, N.Y.: Cornell University Press, 1965); Martin Anderson, The Federal Bulldozer (Cambridge, M.I.T. Press, 1964); Edward Banfield, The Unheavenly City Revisited. A Revision of The Unheavenly City (Boston: Little, Brown & Co., 1974), Jewel Bellush and Murray Hausknecht, eds. Urban Renewal: People, Politics and Planning (Garden City, NY: Anchor Books, Doubleday & Co., 1967); Leonard Downie, Jr., Mortgage On America (New York: Praeger, 1974); Dan Geogakas and Marvin Surkin, Detroit: I Do Mind Dying (New York: St. Martin's Press, 1975); The American City: Realities and Possibilities, A Symposium ed. Kenneth W. Tolo (Austin: Lyndon B. Johnson School of Public Affairs, University of Texas at Austin, 1974.

[4]Norton Long, The Unwalled City (New York: Basic Books, 1972), p. 37.

[5]National Commission on Urban Problems, Building The American City, (Washington: U. S. Government Printing Office, 1968), p. 8.

[6]Mel Scott, American City Planning (Berkeley: University of California Press, 1971), p. 272.

[7]National Resources Committee, Report On Our Cities - Their Role In the National Economy cited by William Reilly "National Land Use Policy" in Federal Environmental Law ed. Erica Dolgin and Thomas Guilbert (St. Paul, Minn.: West Publishing Co., 1974), p. 1437.

[8]Robert Dahl, Who Governs (New Haven: Yale University Press, 1961), pp. 138-139.

[9]Henry E. Hoagland and Leo D. Stone, Real Estate Finance, 3d ed. (Homewood, Ill: Richard D. Irwin, 1965), pp. 5-6.

[10]President John F. Kennedy, "Housing Message," Congressional Quarterly Almanac 1961 (Washington: Congressional Quarterly, Inc., 1962), p. 883.

[11]Ibid.

[12]President John F. Kennedy, "Housing Message," Congressional Quarterly Almanac 1963 (Washington: Congressional Quarterly, Inc., 1964), p. 886.

[13]President Lyndon B. Johnson, "Message on Housing and Urban Development," Congressional Quarterly Almanac 1965 (Washington: Congressional Quarterly, Inc., 1966), p. 1401.

[14]John J. Harrigan, Political Change In The Metropolis (Boston: Little, Brown, 1976), p. 333.

[15]Johnson, "Message on Housing and Urban Development,", p. 1401.

[16]Lewis Mumford, The Culture of Cities (New York: Harcourt Brace Jovanovich, Harvest Books, 1970), p. 215.

[17]Herbert J. Gans, "The Failure of Urban Renewal : A Critique and Some Proposals" in People, Politics and Planning, p. 474.

[18]Report of the National Commission on Civil Disorders, introduction by Tom Wicker (New York: Bantam Books, 1968), p. 473.

[19]Ibid., p. 475.

[20] Ibid., p. 482.

[21]See Otis L. Graham, Jr., Toward A Planned Society (New York: Oxford University Press, 1976), pp. 164-165. On the increasing threat to farm land and open space see William H. Whyte, The Last Landscape (Garden City, NY: Doubleday Anchor Books, 1970); Committee on Interior and Insular Affairs, United States Senate, "Agricultural Lands" in Readings on Land Use Policy (Washington: U.S. Government Printing Office, 1975), pp. 319-389.

[22]Advisory Commission on Intergovernmental Relations, Urban and Rural America: Policies for Future Growth (Washington: U.S. Government Printing Office, 1968), p. 137.

[23]National Commission on Urban Problems, Building The American City, p. 24.

[24]Ibid., p. 239.

[25]Ibid., p. 242.

[26]Congressional Quarterly, The U.S. Economy (Washington: Congressional Quarterly, Inc., 1972), table II, p. 5.

[27]Kennedy, "1961 Housing Message," p. 883.

[28]Miles Colean and Robinson Newcomb, Stabilizing Construction: The Record and Potential (New York: McGraw-Hill Book Co., 1952), p. 14.

[29]Ibid.

[30]Kennedy, "1961 Housing Message," p. 882.

[31]Ibid., p. 883.

[32]New York Times, 3 May 1975.

[33]Colean and Newcomb, Stabilizing Construction, p. 95.

[34]Leo Grebler, Large Scale Housing and Real Estate Firms, Analysis of a New Business Enterprise (New York: Praeger, 1973), pp. 7-9.

[35]"Ryan Homes: Stellar Performer In The Housing Slump," Business Week, 25 August 1975, p. 49.

[36]A.C.I.R., Urban and Rural Growth, pp. 80-81, chap. 4 passim; also see Grebler, Large Scale Housing, pp. 11-13.

[37]Ibid., p. 153.

[38]Ibid.

[39]Richard Babcock, "The Courts Enter the Land Development Marketplace" CITY, Jan-Feb. 1971, p. 59.

[40]"Builders assault the no-growth laws," Business Week, 8 September 1973, p. 44.

[41]"Builders see a bleaker future," Business Week, 9 June 1973, p. 26.

[42]"Packaging land for profit," Business Week, 18 August 1973 p. 86.

[43]John L. Kain, "Postwar Changes in Land Use in the American City" in Toward a National Growth Policy, ed. Daniel Patrick Moynihan (New York: Basic Books, 1970), p. 74.

[44]Dorothy Newman, "The Decentralization of Jobs" Monthly Labor Review, May 1967, cited in Building The American City, p. 47.

[45]The Commission on Community Development and the Domestic Council, 1976 Report on National Growth and Development, The Changing Issues for National Growth, The White House, February 27, 1976, p. 33.

[47] Building The American City, p. 48.

[48] "A new assault on suburban zoning," Business Week, 16 January 1971, p. 30.

[49] Quoted in Long, The Unwalled City, p. 62.

[50] James O'Connor, The Fiscal Crisis of the State (New York: St. Martins Press, 1973), p. 137.

[51] Jerome Aumonte, "Domestic Land Reform," CITY, Jan-Feb., 1971, p. 51.

[52] C, Wright Mills, The Power Elite (New York: Oxford University Press, Galaxy Books, 1956, 1959), chap. 11.

[53] Alexander Hamilton, John Jay, James Madison. The Federalist Papers with an introduction by Clinton Rossiter (New York: New American Library, Mentor Boooks, 1961), p. 79.

[54] "Builders vs. the suburbs," Business Week, 8 September 1973.

[55] Elizabeth Haskell "Land Use and the Environment: Public Policy Issues," reprinted in Readings on Land Use Policy, p. 8.

[56] Council on Environmental Quality, Environmental Quality, The First Annual Report (Washington: U.S. Government Printing Office, 1971), p. 171.

[57] R. England and B. Bluestone, "Ecology and Social Conflict" in Toward A Steady State Economy, ed. Herman Daley (San Francisco: W. H. Freeman and Co., 1973), p. 194.

[58] See chapter four.

[59] See Frank Graham, Man's Dominion: The Story of Conservation in America (New York: M. Evans & Co., 1971), pp.160 f..

[60] Ibid., pp. 295-297. Also see Grant McConnell. "The Environmental Movement: Ambiguities and Meanings" in Environmental Policy, Concepts and International Implications, ed. A. E. Utton and D. H. Henning (New York: Praeger Publishers 1973), pp. 31-32; McConnell, "Prologue, Environment and The Quality of Political Life," in Congress and the Environment ed. R. A. Colley and G. Wandesforde-Smith (Seattle: University of Washington Press, 1970), p. 9 f.

[61] Wayne Aspinall, "Turns and Curves on a Well-Traveled Road: The Vicissitudes of Establishing Land Use Planning Policy," in National Land Use Policy, The Proceedings of a Special Conference sponsored by the Soil Conservation Society of America, Nov. 27-29, 1972 (Ankeny, Ia: Soil Conservation Society, 1973), p. 4.

[62]Marion Clawson and Burnell Held, The Federal Lands, Their Use and Management (Baltimore: John Hopkins University Press, 1957), p. 80.

[63]Ibid., pp. 226-228.

[64]U. S. Congress, House, Committee on Interior and Insular Affairs, Establishment of Public Land Law Review Commission H. Rept. 1008, 88th Cong., 1st sess., 1964, p. 5.

[65]Aspinall, "Turns and Curves," p. 4.

[66]Public Land Law Review Commission, One Third of the Nation's Land (Washington: U. S. Government Printing Office, 1970).

[67]Ibid., p. xl.

[68]Ibid.

[69]"National Land Use Policy Approved by Senate," Congressional Quarterly Almanac 1972 (Washington: Congressional Quarterly 1973), p. 825.

[70]McConnell, "Environment and the Quality of Political Life," p. 11.

[71]New York Times, 23 January 1970.

[72]Ibid.

[73]New York Times, 11 February 1970.

[74]Ibid.

[75]Ibid.

[76]New York Times, 23 February 1970.

[77]New York Times, 13 March 1970.

[78]New York Times, 5 May 1970

[79]New York Times, 24 February 1970

[80]Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control (Washington: U.S. Government Printing Office, 1971), p. 6.

[81]Ibid., p. 24.

[82]Phyllis Meyers, So Goes Vermont (Washington: The Conservation Foundation, 1974), p. 11. Cf. Bosselman and Callies, The Quiet Revolution, pp. 54-107.

[83]Ibid., p. 188.

[84]Ibid.,pp. 14-15.

[85]Hamilton, et al. The Federalist Papers, p. 83.

[86]See Richard Babcock, Exclusionary Zoning (New York: Praeger, 1973); Don Allensworth and Robert Linowes, The Politics of Land Use (New York: Praeger, 1973); Anthony Downs, Opening Up the Suburbs (New Haven: Yale University Press, 1973); Michael N. Danielson, The Politics of Exclusion (New York: Columbia University Press, 1976).

[87]The Rockefeller Brothers Fund, The Use of Land: A Citizens Policy Guide to Urban Growth, ed., William K. Reilly (New York: Thomas Y. Crowell, 1973), pp. 91-92.

[88]Haskell, "Land Use and the Environment," p. 8.

[89]Bosselman and Callies, Quiet Revolution,pp. 164 f.

[90]E. E. Schattschneider, The Semi-Sovereign People (New York: Holt, Rinehart & Winston, 1960).

Chapter Six

THE NATIONAL LAND USE POLICY PROPOSALS

Land And Confusion

By the late 1960s the look of the American landscape was only matched by the equally bewildering tissue of formal controls and informal private influences which created it. Land use reflected the social preferences of thousands of local governments and their allies in the real estate, construction and finance industries; the auto-oil-rubber complex; small farmers, agri-business and major resource firms working in cooperation with the Departments of Agriculture and Interior; the huge federal development agencies such as the Army Corps of Engineers, TVA, and the Bureau of Reclamation; and not least by the tax writing committees of Congress. While everyone in society has to live on and off the land the society as a whole lacked a general policy or decision framework to guide its use toward the fulfillment of human needs in efficient, ecologically respectful ways. Although environmentalists argued that the failure could be remedied only by halting the treatment of land as a commodity, neither that cultural bias nor the jumbled structure of private power was likely to be scrutinized or changed. However, the confusing governmental apparatus could be reorganized and made more efficient. The managerial approach to conservation after all, had for long been politically acceptable to major land users on the public

domain. Perhaps the same logic could be applied to the state and local systems of control which guided access to the res privata.

Such thinking lay behind Henry Jackson's interest in formulating a national land use policy, a policy for making more rational decisions about access to, and protection of the landscape. Jackson's land policy bill S3354, introduced in January 1970, prefaced a nasty and ultimately unsuccessful battle to legitimize comprehensive public land use planning. Because it spoke first to the question, S3354 laid the boundaries for later debate, including the Nixon administration's counter-proposal. This chapter will examine the initial proposals as a technical groundwork for understanding the political process which determined the fate of national land use policy.

Conservation Revisited

The fundamental premise underlying S3354 is the inevitability of growth. Repeatedly Henry Jackson proclaimed that "we must build again all that we have built before. We must build as many homes, schools and hospitals in the next three decades as we built in the previous three centuries."[1] Standing against the inexorable forces of construction however, was the political fact of hardheaded, local resistance. This tended increasingly to channel growth away from environmentally suitable locations into unregulated sites, or to kill projects altogether. Thus the land problem did not stem from the substantive conflicts between businessmen and

environmentalists, but from the political system's failure to manage them on a scale compatible with the range of concerned interests. Jackson viewed such conflict as the natural partner of economic development. It did not signify potentially irreconcilable values. As long as the need for growth was accepted, both local political interests and environmental values could be integrated and rationalized on its terms. Stated differently, Jackson did not want to question either big capital's need to mobilize land into its expanding scale of production or the local real estate mentality habituated to manipulating land as a marketable commodity. He chose to focus instead on the more manageable institutional contradiction between the local political economy of land use control and the rising logic of regional economic development. His frame of reference was the old cleavage between capitalism and federalism which appeared first in the debate over land disposal and resurfaced in the tussles over conservation and zoning.

This conservative attitude toward the boundaries of conflict as they accumulated over the long haul of American development is not surprising; but it should not go unnoted. Typically, of course, public officials deal"with phenomena that persist so thoroughly through time that no one may reasonably talk about eradication of conditions that constitute 'solutions'".[2] (emphasis added). This reasonable toleration of problematic "conditions" which do not go away forgives the policy maker of the need to examine directly the social forces

which make those conditions. Changing social needs yield before the given logic of untouchable social relationships as if the structure of society was more permanent than the seemingly exchangeable land upon which it rested. In this framework the responsible attitude is to invite more effective management of the established conditions and conflicts while avoiding a challenge to the political economy which gave rise to them in the first place or analysis of the social costs paid as a result of earlier managed solutions. Indeed shifting to this higher level of conceptual analysis allows policy-makers to discover hitherto unrecognized harmonies among what now only seem to be conflicting interests. Thus Secretary of Interior Rogers Morton joined Senator Jackson in observing that

> We are beginning...to realize that most of our environmental ailments are the result, not of men scheming to destroy the country for their own profit but simply a lack of foresight, planning and coordination in activities that affect the environment.[3]

Of course, differences will arise over the location of particular facilities, or with respect to whether a certain space should be preserved, but it is government's responsibility to integrate the competing views, balancing local desires against the regional need for additional facilities and a healthy environment. As Business Week summarized this perspective, "the way to reconcile business needs with new environmental and urban goals is to adopt rational planning of land use on a broad scale."[4] Otherwise, Jackson predicted, "conflicts will multiply, unbalanced development will take

place, and irreversible decisions will have been made without proper consideration of alternatives."[5] The only question was which level of government was the most rational juggler of land use alternatives?

The argument for maintaining local control had in its favor the weight of prevailing political mythology, the sanctity of established tradition. But it was losing appeal among large scale development interests and environmentalists alike because it was increasingly the case that local governments exhibited a narrow minded, vested interest in the outcome of their own decisions. Anxious to defend their towns' fiscal and social integrity against outsiders, municipal officials no longer seemed capable to performing their most simple Lockean role: to serve as "Umpire, by settled, standing Rules, indifferent and the Same to all parties" over "all the differences that may happen between any members of society."[6] Under pressure from external forces to change existing land use practices, the official "Umpire" of land use conflict in the United States had itself become one of the most important contestants. Failing to meet the simplest test of fairness, it decided in its own cause. Thus land use in America was determined by the narrowest of municipal criteria, the values dearest to well positioned citizens of the legal city and town. The physical result was leapfrog development into zones of minimum political resistance and cheap land. Not nature's tolerance of development or the region's need for growth, but the introduction of capitalism and an irrational

organization of legal power dictated who would use the land and how.

Healthy ecology, economic growth, and the goal of simple fairness would be achieved only if the old framework were supplemented with a new, more comprehensive one bound by a set of rules respectful of the modern scale of growth, less "indifferent" to the fate of the land, but still "the same to all parties." Hence for Senator Henry Jackson it was crucial that any federal effort to improve land use practices focus not on the practices themselves, but on the breakdown in administration of land use decision and the failure of local government to consider and represent fairly the conflicting interests. Presently, he complained, decisions were made

> ...on the basis of expediency, tradition, archaic legal principles (and) short term considerations, by units of government unwilling to include all the contending interest groups or to consider what the real concerns of national, state and local land use management should be.7

The old liberal philosophy had viewed government as a neutral arbiter of private conflicts, a shared coercive institution to secure particular interests from invasion by other particulars. It was a defensive theory. The goals were peace and the protection of private wealth. Locke would have understood and appreciated zoning. Jackson's approach to land use policy conformed to the old Lockean idea. He recognized that its workability depended upon the representation of all significant interests. If some were rendered invisible or helpless by the arbitrary scope of government organization then the Umpire's decision would not only be unfair, it would also

intensify the anger of the excluded and thus contribute to heightened political instability. There is, after all, an intimate association between the political system's stability and the comprehensiveness of its scheme of representation. To get an impartial, binding decision from its Umpire, the community must assure the inclusion of all its powerful interests.

But Jackson was also saying something else, and as will become evident later, this addition to the old philosophy was to become one of the nubs of controversy over a national land use policy. Locke held that the Umpire's function was to regulate particulars in whom he had no personal or public interest save the desire to protect the public peace and the rights of private property. Jackson urged however, that modern conditions required the umpire not only to balance private interests against one another, but also against standards of substantial public interest. Values beyond peace and security were at stake. Modern political economy generated large and dangerous land use demands and impacts. These government had an obligation to control. Planning, backed by the same coercive force available to the old neutral judge, was now necessary to bring non-market as well as regional economic and social values into the process of balancing local property interests. Here law is supposed to serve more than predictability. It is used to guarantee the physical location of definite social functions and the achievement of particular substantive policy goals on a statewide and nationwide scale. And this inevitably includes limitations on the political, and

perhaps even the private property rights, of some citizens. "In the past," Jackson explained,

> ...many land use decisions were the exclusive province of those whose interests were selfish, short-term and private. In the future - in the face of immense pressures on our limited land resource - these land use decisions must be long-term and public.8

Apparently the values of local and private autonomy must themselves be measured against the claims of social and environmental interests previously rendered invisible by the scope of government or a lack of public awareness. This did not however, mean their denial, only a reduction in their old oligopoly position. This point is crucial, for it illustrates a basic ambiguity in Jackson's thinking, one that would haunt the bill to its death. On the one hand, it is argued, public authority should be used to rationalize conflict by dealing with it on an appropriately wide governmental scale. This fits the old logic of neutrality. But on the other, it is urged that such authority must protect, that is, give precedence to, substantive regional interests in a sound environment and the availability of energy, housing, transportation and other values. How can public policy makers balance values impartially while juggling them to accommodate what must inevitably become a list of priorities? Judgements imply values after all. Jackson's comments suggest varying positions on this issue. At the same time he called for "long term and public" decisions about land use, implying the protection of specific public interests, he also stated to the Senate that planning,

> ...should not be viewed as mission-oriented, either in the narrow sense of fostering a specific set of activities or in the larger sense of pursuing exclusively the goal of environmental protection or the goal of improving social services."9

Rather, by balancing competing environmental, economic and social requirements, "society can avoid the costly mistakes of both thoughtless, precipitate development and unwarranted dilatory opposition to beneficial development."[10]

Similarly, he assured representatives of the utility industry during hearings on S3354 that

> The greatest problems we face in the 1970s is (sic) to modernize governmental institutions, bringing them up to date so that we can fulfill our proper economic goals and objectives consistent with a quality life.
>
> The task is easy if all you do is say we are going to protect the environment, and you close everything down. What about the 26 million people at the poverty level in this country?11

Here planning is offered as entirely consistent with the expansive logic of corporate rationality. It becomes a functional requisite of privately planned corporate growth just as high land prices and conservation were. Precisely because local government ratified the exclusion or subordination of what Jackson termed "the real concerns of...land use management", it was dysfunctional for the political economy as a whole, and for the multiarea focus of corporate rationality in particular. Government's responsibility for what Madison called "the regulation of these various and interfering interests" had itself been systematically undermined by the authority of municipal government to exclude from its decision processes any values it wished, save those represented

by influential organizations within its legal constituency. No longer responsive to the scale of modern political economy, its power to control land use affecting those beyond its borders had to yield to more responsible, comprehensive arenas of power. The Senate Interior Committee Report put it this way,

> All those affected by land use decisions should be afforded the opportunity to participate in the decisionmaking...including members of the public who would be affected by the results of decisions but who are not represented by and cannot vote for the local decisionmakers....As many land use decisions do have an impact far beyond the jurisdiction and interests of the local, largely urban governmental units which make those decisions, the traditional urban focus of planning should be de-emphasized in favor of a planning process which not only reflects a balance of economic, social and environmental values, but also a balance of geographical areas.12

One executive from a top planning and consulting firm stated the case from a business standpoint.

> Businessmen would profit by taking part in the evolving (sic) of state land use plans...and having their needs taken into consideration. It would 'simplify choices', take some of the heat out of local opposition to specific projects, and give business expansion plans more assurance. Large-scale land developers, for one, might find this helpful.13

Or, as James O'Connor stated, "the development of capitalism required the constant widening of administrative units."[14] But it is not only that the scale of administration is increasing along with the scale of production and accumulation. It is also necessary to identify within the logic of Jackson's analysis, the effort to introduce administration itself as an instrument of political control over local political and economic forces which refuse to admit the necessity of centralized production and planning. Indeed, at every stage in the growth

of the land economy traced in this study groups interested in advancing the scale of accumulation and production have pushed not only for greater political centralization but also for bureaucratization. It was employed by the mercantile planners in the form of administrative coordination of land sales, by the industrial conservationists who insisted upon functional planning by experts in the Interior and Agriculture departments, and even by the proponents of zoning who sought to replace the free market in urban land by creating an administrative forum to resolve conflicts on the basis of functional segregation of land uses in the city.

Bureaucracy gives expanding capitalist forces a hearing when they are blocked by the local scale of representation. Administration is the solution to backward looking geographic representation. Conversely, the protection afforded by federalism to groups which remain unpersuaded of the advantages of economic centralization and expansion is moderated by the use of central public administration as a means of policymaking. It is this underlying tension between federalism and capitalism which fueled Congressional concern for a more rational land policy in the 1970s. Thus the very first "finding" of S3354 proclaimed the public interest in land policy as the need to improve not land utilization but the political system's capacity to issue predictable, rational decisions, to enhance its powers of adjustment to the widening scale of land use problems and conflicts. "There is a national interest", it stated, "in a more efficient and comprehensive system of national and

statewide land use planning and decisionmaking" to meet the broadening scope of conflict emanating "from the rapid and continuing growth of the nation's population, expanding urban development, proliferating transportation systems, large scale industrial and economic growth, conflicts in emerging patterns of land use, the fragmentation of governmental entities exercising land use planning powers, and the increased size, scale and impact of private actions."[15]

Senator Jackson rested the case for a national policy on the seemingly unarguable principle that good land use followed "efficient and comprehensive" decisionmaking. Such formal values endangered neither the integrity of capitalism nor the legitimacy of local government. Admittedly, small business and local politics would play a diminished role in molding the course of big scale land development and undoubtedly this fact would stimulate opposition to national action. But, Jackson seemed to say, this would be misguided since the objective was not to destroy the system of local powers and rights, but simply to rectify an outmoded pattern of regulation by realigning it with modern conditions and demands. This was a technically necessary adjustment in the political system's scale of operation, a method of enhancing social rationality and efficiency.

A first step in this direction was taken a year before, in 1969, when Congress passed Jackson's National Environmental Policy Act (N.E.P.A.). This provided that the dozens of development agencies in the Federal government must "identify

and develop methods and procedures...which will insure that presently unquantified environmental amenities and values may be given appropriate consideration before undertaking major projects."[16] N.E.P.A., it should be stressed, neither prohibited environmental degradation nor specifically defined substantive guidelines for agencies to follow in their revised planning procedures. It only mandated the filing of environmental impact statements outlining the likely influence of a project on its surrounding ecological neighborhood. As one Senator noted in an evaluation of N.E.P.A., "We now have merely an exposé...but we still go ahead with some unhealthy projects."[17] But since the obligation to examine environmental impacts was made justicable, Congress gave the courts to environmentalists as a forum for compulsory representation of ecological values. Procedural due process would mandate consideration of values previously neglected or excluded from policymaking. It was this implicit theory of compulsory administrative representation Jackson had in mind when he said N.E.P.A. "provides a model for state government action in land use planning."[18] Without stating an explicit substantive standard for federal policy, N.E.P.A. transformed the planning processes, although not necessarily the activities, of major federal development agencies and gained indirect representation for environmental interest groups. It remained to assure representation at the local level not only for environmentalists, but also for the large corporations that often had as much difficulty with municipalities as the ecology groups did

with the Army Corps of Engineers.

The Congress' motive in passing N.E.P.A. was to place a handle on the sprawl of federal development programs, and at least insure the administrative examination of environmental values. But it was one thing to get a single agency to "plan" the environmental impact of its action, it was quite another to "put these plans together to see if they are consistent, to see if they make sense and to see if they are compatible with local goals and aspirations."[19] By itself N.E.P.A. did nothing to alter the tendency for the federal government to intensify social demand for space by functioning, through its many agencies, as just another interest group competing for land in the absence of a comprehensive plan for channeling investment into areas able to absorb its costs.

Effective coordination of the federal influence on land use patterns required not merely the collection of impact statements, but their evaluation in terms of substantive values and criteria to aid decisionmakers in choosing between competing proposals. In turn, this could not be achieved without consulting the state and local officials who presumably know best the peculiar composition of regional problems, requirements and conditions. Experience with local opposition to federal projects, however, indicated even a greater absence of coordination down in the interstices of the federal system than was typical in Washington. Jackson's tenure as Interior Committee Chairman brought him into intimate contact with the complaints of citizens who could not understand how two or

more federal agencies could be encouraged by Congress to pursue totally inconsistent policies within overlapping geographic areas. In Florida for example, at least three federal agencies were working at loggerheads in or near the Everglades National Park. The Park Service worked to protect the land's recreation value; the Army Engineers were preparing to build a major flood control project which would radically transform precisely the values guarded by the Park Service; and the Department of Transportation was considering construction of a major jet-port. And each federal agency had its own local and state government allies. An incredulous Henry Jackson declared,

> Millions of dollars were authorized by different Committees of the Congress, and spent by different agencies of the Federal government, and by State and local agencies in the pursuit of separate goals and objectives, totally without any recognition that success...would involve serious and in many cases, irreconcilable land use conflicts. 20

Coordination had to be established. The exploding scale of development must be subject to control. Federalism had to be adapted to capitalism and the giant public investments which accompanied it. Without a basic adjustment in land use authority big projects would continue to run into opposition and be forced into locations of least political resistance and minimal environmental protection or face cancellation altogether. The likeliest candidate for a new locus of land use power was as obvious as the struggle to make the change would be difficult. In fact, it was not even necessary to manufacture a new authority, the states already owned it! Unfortunately most of these powers had long since been delegated

to local governments. Indeed, despite the P.W.A.'s early encouragement the states probably played the least salient role in land use planning of all the American governments.

Largely the creatures of rural, and more recently, suburban political interests, most State legislatures allowed municipalities to regulate land use or not, as they chose, although in states like Texas and Montana domination by natural resource industries kept power over land near the top of state government.[21] But Jackson had little choice: in the absence of regional government and with direct federal intervention unacceptable in Congress he had to rely on the states, banking on the chance they might realize the old Progressive hope that they were the laboratories of public innovation.

On January 29, 1970, Jackson introduced his proposal to establish more comprehensive decisionmaking and planning structures within the federal system. It consisted of three elements: a grant-in-aid program to help states establish planning and management programs, a process for coordinating intergovernmental land use policies and a general policy to guide national decisions and indicate the proper procedural basis for State action.

The first goal was easy to meet. Congress rarely found it difficult to distribute federal money to the States. With it States could hire and train planners to staff the new land agencies. S3354 authorized an expanded Land and Water Resources Planning Council to pay for up to two-thirds of the estimated cost of planning for three years, and new grants to

be made to cover half of new planning costs and up to one-quarter of agency operating costs.[22]

The more difficult task consisted of improving federal coordination. It was after all, the absence of coordination among federal, state and local officials that led to Jackson's concern in the first place. The problem with coordination is that it is another name for control. Inevitably it involves at least two uses of power. First it is necessary to bring otherwise disjointed elements into relation as a unified whole. Next, control must be applied to keep them working in place. Separated from the question of power, coordination merely symbolizes efficiency, the image of a businesslike way of doing things. Jackson well understood that true coordination required a basic adjustment in the structure of political power over land in the United States. But was it legitimate or proper for the Chairman of the Senate Interior Committee, whose jurisdiction lay almost exclusively in the public lands, to urge so fundamental a change affecting not only the internal political relations of the federal system but private property rights across the nation? Other committees had authority over urban planning, public works projects, intergovernmental relations and other spheres directly implicated in a national land policy. Would they permit an Interior land polcy take-over? In the jealous political environment of Congress, Henry Jackson stepped deliberately around the status quo. Thus, the principal mechanism for achieving coordination would be a state, not federal land planning agency. Although it would formulate

comprehensive land policies which in turn might serve to guide federal development proposals, the obvious emphasis was on encouraging intra-state, not federal coordination. Jackson aimed at fostering fifty state land use plans, not a national plan. Yet even with respect to the streamlined, intra-state emphasis, Jackson was amazingly cautious, limiting State authority to areas where planning did not already exist! S3354 excluded from its coverage "lands...located within the boundaries of any incorporated city which had exercised land use planning..."[23] Precisely the governmental units that habitually employed land regulation to manipulate growth for their own narrow ends were themselves excluded from the authority of a national land use policy! Cities and incorporated suburbs were automatically relieved of concern about a State takeover. In effect, Jackson chose to deal with members of his natural Interior Committee constituency, the timber, mining and oil interests accustomed to benign regulation on the public domain, rather than ignite the opposition of the urban and real estate lobbies (and their Congressional friends) who benefitted from the existing metropolitan political economy of land.[24] Now it could be argued, and the Administration did, that this tactic seriously compromised the overall strategy of using state authority as the principal means of coordination in land policy. But Jackson anticipated the challenge by pleading that the bill constituted only a preface to more detailed legislative analysis and construction later on.

> The National Land Use Policy Act of 1970 as introduced today does not purport to be a final

> product or to provide final answers to all of the relevant questions which may be raised. It does, however, provide a starting point for review and for analysis. It furnishes a working draft which Federal, State and local officials, planners and representatives of industry, business and public interest groups may comment upon.25

The omission of local government notwithstanding, S3354 did ask states to take firm control of new development in rural areas. Acceptance of federal dollars obligated them first, to make a comprehensive inventory of land resources, including the collection and analysis of information related to population characteristics, economic trends, "directions and extent of urban and rural growth, public investment plans, and perhaps most important,

> ...ecological, environmental, geological and physical conditions which are of relevance to decisions concerning the location of new communities, transportation and utility corridors, and other land uses.26

The States were also expected to project their land use requirements "for recreation, urban growth, commerce, transportation, the generation of energy, and other important uses for at least the next fifty years."[27] The collection and analysis of this data would serve as the groundwork for the formal identification and designation of lands

> ...where ecological, environmental, geological and physical conditions dictate that certain types of land use activities are incompatible and undesirable.28

Performance of this analysis would culminate in the formulation of a "Statewide Environmental, Recreational and Industrial Plan." In effect, Jackson called for "statewide zoning" of all

areas which presently lacked planning. He made this explicit during Hearings on S3354:

> What we are trying to do, of course, is to give some help to the Governors so that they can get their legislatures to provide for Statewide zoning.[29]

Later the supporters of land use planning would recant the phrase when it became a red flag to real estate interests and the urban lobby, but it is clear that S3354 was designed to supplement the old zoning technique with a comprehensive rural development plan for administration on a statewide basis. Should a state fail to apportion its unplanned spaces in conformity with the requirements noted above, or should it refuse to participate in the program entirely, it would face termination of the grant as well as loss of up to 20 percent of "certain additional Federal Assistance Programs...designated by the President" as well as denial of right of way or other permits "to use or cross the public domain" for any State purpose until the Act's requirements were met. Nor was the mere issuance of a plan sufficient to avoid the penalty. State planning agencies, the bill declared, "must have the authority necessary to implement the plan", including powers, "to acquire interests in real property if deemed to be necessary under the Statewide Land Use Plan" and "to place restrictions on the type of land use activities which may take place in areas designated for a special use under the...Plan."[30] Planning would not only precede zoning, but enforcement would have to flow from the direction of the plan itself, not the regulatory process which so typically neglects it. Zoning, at least

at the state level, would finally come under the hold of planning.

Federal evaluation of the State program was defined in Section 406:"Federal Guidelines and Requirements". This was a list of values, interests, and procedures which had to be incorporated in the planning process. Thus, in addition to designating lands for recreation, industry and environmental protection, lands would also have to be made available for transportation and utility corridors and development of "new towns." "Appropriate provisions" had to be included "to insure that regional requirements for material goods, natural resources and energy" were given consideration too. Consistency with existing anti-pollution laws and protection of the public domain against damage from "transportation and utility corridors" was also prescribed. Finally, full public participation and rights of appeal were guaranteed.

On the basis of this "comprehensive", albeit, non-urban program of State planning and zoning, all Federal development actions would henceforth have to be consistent with the "approved plan for the area" in which they were slated to occur - unless national considerations of overriding significance dictated otherwise, a determination to be made by the Land and Water Resources Planning Council. In addition, a N.E.P.A.-type provision was included requiring all federal agencies as "part of their planning procedures on projects involving a major land use activity" to consult with the Council to determine whether their proposals would conflict in any way with

the plans of other Federal, State and local agencies.[32] By proposing this limited reorganization of governmental planning and land use authority, Henry Jackson hoped to initiate a process which would culminate in achievement of the prime objective of the National Land Use Polict Act: creation of "a more efficient and comprehensive system of national and statewide land use planning and decisionmaking..."[33]

Despite the exception of metropolitan areas, the National Land Use Policy Act represented the most comprehensive statement of federal interests in state and private land use activity since the policy of restrictive sales was inaugurated by Congress in 1785. Through a combination of essentially procedural requirements, the bill would compel states to anticipate and plan for every phase of social and economic growth in undeveloped areas over a 50 year period and invent mechanisms to guide it into the most environmentally suitable locations.

Whatever else might be said of S3354 it effectively defined debate on the national responsibility for land. Instead of examining the structurally explosive relationship between capitalism and nature directly, it narrowed attention to the admittedly contentious, but far less subversive issue of inter-governmental relations.[34] An outmoded organization of public authority, not an archaic system of private production was the root of the matter for Henry Jackson, and as will be seen, for the Nixon administration as well. Obviously, the tension between capitalism and the environment could not be

excluded from the debate over land policy. However Jackson's definition of the question assured its consideration within an essentially legalistic, procedural framework, one fully consistent with the continuation of the present economic arrangements. This is an example of Bachrach and Baratz' second face of power at work, realigning troublesome questions to fit the prevailing mobilization of social bias.[35] As the Senator noted in opening Hearings on S3354, it

> ...would enable the States and the Federal agencies involved in land use activities to establish machinery for comprehensive land use planning which would incorporate environmental as well as economic considerations. It would not thwart material progress, but rather would guide it...without sacrificing our national heritage...[36]

By emphasizing the question of "machinery" Jackson was sure of his legal ground, for what was being urged was "simply an effort to provide incentives to the States to exercise their States' rights."[37]

The initial Senate hearings, held in 1970, were neither extensive nor combative. Jackson clearly intended to corral support for the principle of a national policy, carefully inviting witnesses from State government, land related industries and the planning profession, who, often as not, criticized the bill for not being sufficiently comprehensive.

Governors John Love of Colorado and Winthrop Sargent of Massachusetts for example, applauded the effort to enlarge State power, but criticized the omission of metropolitan areas. Love was especially anxious about the energy and recreation boom hitting the Rockies. He warned, citing the example of

Colorado Springs, "(T)here is no way they voluntarily are going to limit the size of that particular city."[38] Obviously, the task of shifting power back to the states would be difficult, much more difficult than the original establishment of zoning locally, but unless the new State planning bodies possessed authority to enforce plans the program would amount to nothing except "extra expense, red tape, and bureaucracy."[39] Congress, he insisted, must compel the States to retake enough of their original jurisdiction over land use to gain influence over developments and areas of regional or metropolitan scope. Threatening sanctions against the States was an unpleasant but necessary club to beat the local forces into line behind regional approaches to land use. "I think you can't avoid the stick", said Governor Sargent, "I think the stick has to be available."[40]

Similarly, representatives of the utility industry warned that cities must not be permitted to escape payment of the economic and environmental costs of locating energy plants outside their borders. A spokesman for Consolidated Edison, the big New York utility, noted that,

> Timely, comprehensive land use planning could facilitate...an appropriate use for our land (but only if) city planning (is) part of the proposed program. Some of the most critical land use problems are within cities and more particularly in the relationship of cities to their surrounding areas...when you decide to locate a plant some distance from the load center, you are of course, using up a valuable land space for transmission lines (and) you also increase the cost of power. 40 (parenthesis added).

Comprehensive planning, suitably framed and administered, "could" rationalize the production and distribution of energy

as well as the use of land. According to industry representatives however, sound administration would not leave authority in the hands of a land agency because it would inevitably develop a pro-environment bias. This would only lead to further duplication of existing regulation and thus more delay. A more rational policy would grant siting authority to the State Public Service Commission. "(I)t seems essential to us", noted a spokesman for the Edison Electric Institute, that "The body resolving the utility siting issues should be one which has responsibility for electric utility rates."[42] He did not remark on the potential anti-environment bias of the State PSC. Responsible spokesmen for major associations of course, limit their scrupulous concern for conflict of interest to those institutional biases which compete with their own.

The forest product industry was less equivocal in its support for land use planning. James Turnbull, representing the National Forest Products Association, cautioned the committee never to forget that "our entire economy is like an inverted pyramid with land at its apex...Removal of the basic ingredient, access to material resources has a domino effect."[43] Worrisome political tendencies were, he feared, moving in precisely this direction. "The pressures for withdrawals of lands which are the economic foundation of large areas of the country and their citizens are relentless."[44] Increasingly, wood companies find themselves unable to plan investment in production due to harrassment by environmentalists. Unless stability is returned to the political economy of timber, the

industry would not be able to meet increasing demand. Presently, the average timber company has "very little...assurance...that its investment for processing raw materials will be reasonably safe in terms of supply for continuous economic operations."[45] There must be a limit to the risk an industry can be forced to accept. To gain an environment for stable, predictable economic action wood producers were anxious to support a comprehensive, "balanced" national land use policy. This would aid not only the timber business but other land users as well, such as the cattlemen, and recreational developers, by guaranteeing "their particular resource or use will be available on a continuing basis."[46] In this view, corporate stability depended upon public planning for private access.

The planning profession was not nearly so optimistic about the benefits of S3354. They voiced several doubts, most pressing of which was a fear that fifty state plans would merely compound the existing system's disarray. As one planner advised, just as "A state land use plan cannot be a collection of the plans of the governments within the state...a collection of State plans (does) not add up to a national land use policy."[47] The Senate should pursue instead the goal of a national land use plan, culminating in the power "to direct the location of economic and urbanizing activities."[48] Similarly, the American Institute of Architects called for implementation of a national growth policy to regulate urban development and guide population movements. This might include federal aid to state and local urban development corporations

on the New York Model, planning of state investments, and the creation of metropolitan planning agencies empowered to control public investment and location decisions for "major highways and mass transit - the locations of airports, the location of major utility lines, water and sewers, the acquisition of major open spaces, and major land use allocations for such things as housing and industry."[49] As might be expected, planners were less reticent than Senator Jackson in proclaiming the need for, or possibility of, a substantive federal role in shaping land use at the state, regional or even local level. Yet the county planners, likely to lose influence under even a limited state program, criticized sharply the elevation of authority to a jurisdiction they described as "much too extensive and...too greatly separated"[50] from all the diverse needs of the state. Local governments, especially counties, must have their interests protected by inclusion among those formulating the plan.

Thus the first Hearings on S3354 indicated in rough outline the content of the forthcoming Senate debate. Planners and environmentalists generally sought greater concentration and definition of authority at the national level, including a list of land use priorities with environmental integrity at the top. These substantive values, should, they felt, be guaranteed by sanctions against states which neglected their consideration and protection. Governors from states which experimented with land use laws tended to support sanctions also, knowing from experience how bitterly local

officials would contest the elevation of power. Finally, big business tended to share Jackson's desire for an evenhanded or "balanced " approach to planning, one that would assure a more predictable investment climate, even at the cost of greater centralization of political power. For the debate to be joined it only remained to hear from the President and later, from the representatives of the local political economy of land use.

The Administration's Response

The Nixon administration reacted politely to Jackson's initiative, but in the midst of an escalating war effort, Cambodia was invaded only a few days after the hearings, land use could hardly be expected to command a high position on the President's agenda.

Yet neither could the Administration afford to allow Henry Jackson, a potential Democratic opponent in 1972, to grasp a monopoly in shaping what was increasingly recognized to be an inevitable change in the local land control system.

It is unclear whether any Presidential advisor sat down to compute the political implications of alternative land policies. But if one did he would soon become aware of the discomforting reality that much of the President's reelection constituency would be intimately affected - but in contradictory ways. Traditionally conservative real estate and suburban homeowner groups were adamant about the need to secure municipal freedom in land use matters. Builders,

manufacturers, utilities and resource interests, on the other hand, desired the greater predictability and reliability in gaining access to land that would come only through a new public mechanism guaranteeing representation of their views in the decision process.

The administration's courting of the environmental movement only deepened the complexity. Ecology groups, like other functional interests, were not primarily concerned with federalism as a philosophical question. They were agnostic in choosing levels of governmental support to buttress their holding actions against growth. While sometimes localities might prove a worthy ally, just as frequently their unquenchable thirst for revenue threatened urban ecological disasters which called for resistance with the aid of wider public jurisdictions.

The troublesome point confronting the President's men was, the New Federalism notwithstanding, that most interest groups regarded government organization as a tactical question. Save for the city officials, real estate men and homeowners whose political power rested almost exclusively on local authority, groups with a national or even regional outlook, that is significant groups in the political economy, favored whatever level of government met their needs best. Certainly, business has an established affinity for local units, and environmentalists, as McConnell has suggested, have probably done better with the national government, but nowadays propositions about shifting power to or from the

different layers of government can be expected to arouse opposition or win support less for ideological reasons than for their expected impact on the political influence of the groups involved. In this case, it came down to which ox would get to gore the local political economy of land use control or whether any would get inside at all.

By taking a positive stance toward change the administration opened itself up to political attack from the right. Land use could have split the President's anticipated coalition by attracting suburbanites and local developers to a Reagan candidacy. But a failure to act was no less risky. With home construction stagnant, in part stemming from rising land costs due to haphazard introduction of growth controls, the politically necessary recovery from the 1970 recession was doubtful. A method had to be invented for overcoming the stalemate in land use; Jackson's initiative had to be met. There is abundant evidence that the President and several top Administration officials were thinking, speaking and even acting to change the local complex of public and private forces controlling land use in America.

In August, 1970, shortly after Jackson's hearings the President advanced beyond the Senator, warning not only that established attitudes and practices with respect to land use in America were out of phase with modern conditions, but that use and wont must bend to the demands of comprehensive social control and planning.

> We have treated our land as if it were a limitless resource. Traditionally Americans have felt

> that what they do with their own land is their own business. This attitude has been a natural outgrowth of the pioneer spirit. Today, we are coming to realize that land is finite while our population is growing....The time has come when we must accept the idea that none of us has a right to abuse the land, and that on the contrary, society as a whole has a legitimate interest in proper land use. There is a national interest in effective land use planning all across the nation. 51

Where Jackson stressed neutral sounding words like "decision-making"and "rationality", Nixon attacked American land practices themselves, hinting that continued "abuse" might lead to substantive land use regulation in the interest of "society as a whole" that is, by the federal government. However, in adding his public support to the principle of a national land use policy, the President was careful to steer clear of a direct threat to local government embracing instead the principle of federal "partnership" as the proper vehicle of policy:

> I believe we must work toward development of a National Land Use Policy to be carried out by an effective partnership of Federal, State and Local governments together, and where appropriate, with new Regional institutional arrangements. 52

Durings Hearings on S3354 Russell Train, chairman of the newly established Council of Environmental Quality, testified for the administration that while improved coordination of intergovernmental land policies is a worthy objective, Senator Jackson was correct in admitting that his proposal represented only a beginning in the analysis of the problem. "Much remains to be done", Train warned, "before these land planning relationships between the levels of government can be properly established.[53] The public's readiness to accept basic change was suspect. "(P)ublic attention and discussion needs to be

carefully focused" by the policymakers themselves to insure that it does not spawn wild fears about an impending national take-over of private property rights and local freedom."[54] Its understanding of land use policy must be shaped cautiously and deliberately. This would take time. After all, said Train, state oversight of local decisionmaking,

> ...is a highly sensitive area, it is a matter of very strong local interest, and if there are going to be any major changes in this area, I think it has to come about by evolutionary process and a great deal of public discussion and more understanding than there is today. 55

Even while it urged slow, assiduous study by Congress, the Administration was energized by the special interests of several key Nixon appointees into pursuit of an assortment of land policy initiatives of its own. Daniel Moynihan, Spiro Agnew, George Romney and John Ehrlichman each came to prominence after demonstrating expertise in using, or explaining the implications of, the political economy of land in America. Perhaps by chance, or maybe due to an affinity between local Republicanpolitics and the real estate business, Richard Nixon surrounded himself with people who understood the politics of development.

Moynihan was an old hand at advising Democratic Presidents on urban policy when he joined the new conservative regime. He had hopes of setting the tottering "Great Society" programs on the more rational footing of a national growth policy, one committed to the popular ecology idea that "everything is related to everything else."[56] This might well lead to economy in government spending, an extremely attractive goal to a

President nurtured on the civic discipline of stringent public budgeting. The old conservative rhetoric of efficiency was Moynihan's tool for guiding Nixon into tentative approval of nationally coordinated urban planning. Moynihan must have excelled at the art of persuasion for the first executive order issued by the new President established an Urban Affairs Council to "devise a National Urban Policy" describing "what the national government would hope to see happen , what it will encourage, what it will discourage."[57] The Council was Moynihan's brainchild, a coordinating instrument to facilitate urban planning, directed and guided by cues from the top, not unlike the mercantile planning of John Quincy Adams, functioning through the selected lure of federal investments. Following establishment of the U.A.C., Moynihan persisted in his efforts to enlarge the planning capacity of the federal government. By July, 1969, a National Goals Research Staff was created to pursue social analysis of the development process. It was "directed...to engage in forecasting, in monitoring social indicators, in measuring alternative courses of action; in integrating and summarizing the findings of social research " The results would be reported annually with conclusions "setting forth some of the key choices facing the nation" and "the consequences of those choices."[58] The N.G.R.S., like its much earlier predecessor, the National Resources Planning Board, was unable to claim the institutional power essential to protect its existence, hence it faded into oblivion. But it did manage publication of one venturesome statement entitled Toward Balanced Growth.

Its basic premise, unexamined since Rexford Tugwell's Resettlement Administration in the New Deal, was that "trends towards megalopolis in some areas and underpopulation in others are reversible."[59] Not only was new growth subject to manipulation, but the great urban centers could actually be reduced to manageable dimensions by moving people out and stimulating the expansion of undeveloped and backward areas! Here was a call to view the American development process as the old mercantilists did, as an integrated whole whose subordinate elements required central planning and control to further the national strength. Yet not even the most advanced of the mercantile planners ever considered the possibility of actually reversing the growth process. At most they sought to limit and channel what was regarded as its inevitable westward direction. Still, it would be unwise to exaggerate the significance of Toward Balanced Growth. Too many federal bookshelves were lined with innovative, farsighted analyses of the need for planning to place much stock on the influence of one more volume. Yet, as a review of the report in an important architectural journal concluded:

> When executive staffs this close to the sources of power are permitted to discuss such complex and politically dangerous issues, it generally means that important decisions about them are in the process of being made. 60

President Nixon's State of the Union address for 1970 alluded to the establishment of a federal capacity to make precisely such "important decisions":

> In the future, government decisions as to where to build highways, locate airports, acquire

land or sell land should be made with the clear objective of aiding a balanced growth for America.[61]

"If we seize growth as our challenge", the President added, "we can make the 1970s an historic period when by conscious choice we transformed our land into what we want it to become." Richard Nixon, like C. Wright Mills, was coming to understand that the executive branch of the "power elite" possesses tools for managing the shape of America's development, tools whose use was apt to be supported and encouraged by its corporate branch.[62]

Equally absorbed by the possibilities opening for national direction of growth was Vice-President Spiro Agnew, a man whose climb up the governmental ladder was helped along by real estate and construction interests. (In a trivial example of the unfolding dialectic, they also contributed to his fall). Agnew was less captivated than Moynihan by the intellectual satisfaction of planning; he viewed it as a method to stimulate the stagnating development industry while alleviating the causes of urban violence. He believed, along with the many Johnson study commissions, that the contradiction between city and suburb could be transcended only by dispersal of poor blacks throughout the metropolis. The War on Poverty he said, failed because it was reluctant to challenge

> ...the geographical distribution of resources throughout the metropolitan region. Resources needed to solve the urban poverty problems - land, money and jobs...exist in substantial supply in suburban areas, but are not being sufficiently utilized in solving "inner city problems." 63

If the suburbs refused to accept their obligation then the best policy was not to use legal force, but the taxpayer's

pocketbook to subsidize construction of "New Towns" on a massive scale. Otis Graham labels this "an inoffensive and thoroughly unradical proposal to build more houses for Americans in the tried and true manner, hiring capitalists on government contracts."[64] But it might quickly turn odiferous were the program to require achieving control of large blocks of suburban land and the regulatory tools to influence their use. Indeed, this is precisely what happened when the Department of Housing and Urban Development, under the leadership of George Romney, tried to implement a program for resuscitating the building industry by supporting experiments is more efficient methods of construction in the suburbs, the only place where new houses were being built after all.

Operation Breakthrough, as it was called, was, in the words of Michael Danielson, a program designed "to facilitate the large scale production of factory built housing by large corporations."[65] Although not directly concerned with land use as such, H.U.D. specialists recognized that unless substantial blocks of land could be assembled, high volume, low cost methods were unachievable. They were led inexorably to the invocation of reform in "local zoning and building codes."[66]

At first it was thought that by making federal grants available for a variety of expensive public investments local governments could be induced to lower their opposition to large scale social and industrial experimentation next door. This was optimistic. According to Danielson, "substantial local opposition materialized to some of the projects when it became

known that Breakthrough would involve subsidized housing and blacks."[67] Disciplined by the power of suburban political systems to resist unwanted development, H.U.D. was compelled to accept only one site for construction under Operation Breakthrough. Romney and the H.U.D. planners returned to the policy drawing boards, hoping to invent more successful methods for overcoming the local politics of land use. The result was the Open Communities Program. Under this more punitive strategy, community development grants were to be selectively withheld from communities practicing discrimination against low-income projects. Moreover, one provision, the only one requiring Congressional action, explicitly prohibited communities from introducing "planning, zoning, subdivision controls, building codes or permits...affecting land use" to block the provision of federally subsidized housing. Since established communities were not subject to this section and local regulations in new communities had to be proven inconsistent with a comprehensive areawide plan, the initiative represented something less than all out federal war on the suburbs.[68]

After a few successes, H.U.D. once more ran into implacable resistance, this time in Secretary Romney's own backyard, the Detroit suburb of Warren, Michigan. Warren was an industrial, working class community, many of whose citizens labored in the auto plants in and around the city. Although up to 40% of the city's work force was black, only 28 non-whites actually lived inside its borders. Here was a classic setting for the

metropolitan enigma: how could the interests of black workers and corporate labor requirements be reconciled with the democratic will of other workers expressed through their possession of the municipal power to exclude? The drama was embittered by the fact that heading the federal attack was a former automobile executive. Warren's population quickly became incensed at the prospect of an ex-corporate chieftain brandishing public authority, presuming to tell them how to run their city, much as other auto executives told them everyday how to run their lives at work.[69] When H.U.D. threatened to cut off funds for urban renewal unless the city's discriminatory housing regulations were lifted, local officials demanded a meeting with the Secretary. They did not find a sympathetic response. Romney warned the city fathers:

> You can try to hermetically seal (sic) Warren off from the surrounding areas if you want to, but you won't do it with Federal money. 70

Once the scope of conflict was widened by a series of inflammatory headlines describing the administration's supposed bust-the-suburbs policy, Romney was forced to back down. The bitterness of the community's reaction and the President's anxiety over potential damage to his popularity among suburbanites was too much for the Secretary. In the following weeks and months, several statements were proffered by the administration explaining the President's firm opposition to "forced integration" of the suburbs, and his equally strong commitment to the tradition of local land use control.[71]

Once again in his career, George Romney underwent "re-education" by officers of the public trust - this time he

learned the correct line on administration suburban policy. He proved to be a fine student. During the 1971 Hearings on land use policy he was tested by Senator Lee Metcalf of Montana on the propriety of using such policy as a lever against discrimination. Metcalf wondered,

> ...how we are going to have a national land use policy for two very important areas which you are in charge of administering...low-income and minority housing - if, within a State, you have discriminatory and de facto segregation or discriminatory zoning...? 72

Disciplined by political experience and executive wrath into reverence for local control, he replied,

> Well, you have enacted certain aspects of a national policy with respect to housing...(the) fair housing statute (and)...a civil rights statute. And we are administering those statutes and enforcing them vigorously.
>
> But those acts do not give the Federal government or to our Department the authority to zone. Zoning is a State and Local responsibility, not a Federal power. And consequently...we comply with local zoning or with State zoning, if the State decided to exercise its power...
>
> But we are not proposing by this act or any other act that the Federal government take over the power to zone. 73

Spurred by a concern for rationalizing urban policy, yet burned by opposition to integrationist housing programs, the Nixon administration became less optimistic about the chances for comprehensive planning than Jackson. Yet it was still impressed by the need to improve the pursuit of large-scale development and the protection of vulnerable environments. The presence of an extremely successful ex-land use lawyer, John Ehrlichman, as head of the Domestic Council, assured a receptive ear close to the President for any suggestions

about how to reform publice management of major development proposals with minimum political costs among anxious suburbanites. Thus, although it wanted to rationalize federal influence over development and protect the land from destructive growth, the Nixon administration was ideologically committed and politically restricted to maintaining a large sphere for local decisionmakers to exercise their traditional discretion. Its response to Jackson's proposal was conditioned by the need to reinforce symbolically municipal power over land use even while fostering new and wider powers and institutions suitable to the expanding scale of capitalism and the rising toll of its environmental impact.

The administration's strategy rested on the belief that the Jackson bill, by excluding state oversight of local planning completely missed the central issue of land policy: the disjunction between the rising scale of development and environmental crisis and the narrow range of municipal decision. For all the farsighted talk about "comprehensive planning", S3354 did nothing to meet this problem where it most painfully emerged: in metropolitan areas characterized by a proliferation of mutually inconsistent plans. In 1971 Secretary of the Interior Rogers Morton cited this as a basic defect in the Jackson bill, although a year before he sponsored an identical bill in the House. In a letter to the Washington Post criticizing the paper's support of S3354 he worried that,

> Most of the really difficult planning decisions are in or near urban areas, where development pressure is most intense, and where jurisdictional

> disputes are greatest. By allowing the states to shirk the tough political task of asserting control over major metropolitan areas, Senator Jackson had begged the really tough issue and cast his bill essentially (as) a planning bill for rural areas. 74

To keep silent about the metropolitan confusion, in effect, to ratify its worst consequences, was bad enough. But to compound the matter by building another layer of planning in the middle without introducing a means of coordination would actually increase the waste, destruction and disarray. The immediate solution he suggested, lay not in more planning, but in a more comprehensive process of regulation, specifically, a method of adjusting the narrow perspective of local decision-makers to accommodate regional, state and national interests in obtaining necessary development and protection of precious, irreplacable environments. The first step in gaining effective regulatory reform would be to recognize that most land use decisions do not carry significant economic or ecological consequences for the surrounding area. These the municipality should continue to make unconstrained by a wider agency. Most of what local governments do in land use need not change at all. Only in cases where local decisions directly influence regional interests should they be held accountable to a larger government's jurisdiction. Very simply, the land use problem could be solved short of comprehensive planning. As Russell Train pointed out, "It is not difficult to get people to agree upon the general desirability of comprehensive state planning, and certainly we are not opposed to it if a state wishes to do it." However,the point is to go "beyond planning to the central issue of controls" to "a fundamental

reallocation of responsibilities between state and local governments where regional issues are involved."[75]

The Administration sought a regulatory mechanism capable of discriminating between legitimately local decisions and those carrying substantial regional consequences. The point was to create a new layer of enforceable, regulatory power designed to incorporate all areas of the state subject to large-scale development and all values relevant to the proposal. This limited, regulatory approach to land use conflict would extend the logic of zoning to fit modern circumstances. But with an important difference. Zoning was intended to limit directly those private land use practices which impinged on the health, safety and property values of nearby owners and the community at large. Today the Administration argued, it is not so much the private owner who must be regulated as the local governments which legitimate abuse of the land or unfairly deny access to it. Statewide regulation is needed to restrict the bad social and environmental consequences of public decisions, not private action.[76] Present conditions did not require a change in the ongoing zoning processes where extra-community values were not at stake.

In another sense however, statewide regulation was remarkably like zoning. Each enlarged the scope of public authority to regulate the negative costs of previously unrestricted choices, but without denying, only limiting, the jurisdiction of the original agent, be it the property owner of local government. Thus an enlarged framework of public decision could serve at the state level as innocuously as

zoning did locally, simply protecting diffuse, hitherto unrepresented values, without anticipating, planning or controlling the future development of the area as a whole. Insertion of specific development proposalsinto an ongoing process of state regulation based on general, predictable rules could assure informed administrative decisionmaking at a level of authority appropriate to the range of social effects implicit in the proposal. In effect, the Nixon administration was urging a replication of the political process that culminated in zoning: first regulation, then planning. It would elevate a zoning-type power to the state level without actually requiring the state to cordon off particular parts of itself for specific functions, without requiring it to zone, much less to plan. Where Jackson recommended planning without enforcement in the key metropolitan areas, the administration wanted enforcement in exactly those areas, but without any comprehensive planning to guide it! In Morton's words, the administration placed "primary emphasis on restructuring the land use regulatory mechanism...on institutional reform", but without challenging the conceptual framework upon which it rests, that is, without repudiating "the entire existing state mechanism for land use control."[77] But except for a handful of states, there was no "existing...mechanism" to repudiate! Russell Train was less inclined to obfuscation:

> We do not want to force any state to take more control than is absolutely necessary to deal with regional or statewide land use issues. The federal interest in proper land use is not in the wholesale dismantling of local control over land use. 78

Such an approach, at once more narrow and more coercive than S3354, was already under examination by a group of expert land use attorneys working under the sponsorship of the American Law Institute, a prestigious think tank for the U.S. bar. The Institute was responding to the identical complaints about disorderly and unpredictable land use control mechanisms which led to Congressional action. These were the men who daily battled within the thousands of local land use arenas for clients habituated to more responsible hearings from the public powers that be, this despite the fact that lawyers themselves fabricated zoning in the first place. One would think its early legal engineers would have bequeathed a more rational inheritance to its successors. But as Richard Babcock notes, the legal preeminence in zoning's birth was not as important to the institution's subsequent growth as the profession's notable lack of interest during the following three decades."[79] It was, he adds, "as though the bar regarded the initial victories for zoning in the United States Supreme Court and the state courts in the 1920s as an intellectual exercise. Having demonstrated their facility at the game, the lawyers tossed the cards to onlookers to play with as they chose."[80] Forty years of rule shuffling, compounded by the same conflicts which troubled Henry Jackson, moved the A.L.I. to initiate work on a new "model land development code", the first effort in this direction since that undertaken by Secretary of Commerce Herbert Hoover in 1924.

A principal objective of the code, according to Professor

Allison Dunham of the A.L.I. was to "give State agencies the power to intervene in major land use decisions of local governments having an important impact on the State as a whole or a region."[81] The problem lay in being able to distinguish truly local from regionally significant decisions. The states, another A.L.I. attorney warned, would have to learn to "discriminate between decisions that warrant oversight and those logically remaining at the local level....Flexibility in excluding areas from State regulation is essential."[82] This was missing from the Senate's proposed automatic exclusion of incorporated areas with existing planning authority.

The A.L.I.'s proposed regulations, from which the Interior Department and the Council on Environmental Quality drew heavily in formulating the Administration's draft proposal, rested upon the continuing exercise of local power for most land use decisions. In a"note" to the State Land Development Regulation, the Institute's Reporters stated,

> ...it is the local government's Land Development Agency that remains the primary regulatory body. It continues to hold the public hearings and make the initial decision on all applications for development permits...
>
> Although the Reporters desired to see increased State participation in land use regulation, they do not seek to replace local regulation as the basic mechanism for controlling the use of land. 83

State action would come into play only in connection with what the Institute termed "Areas of Critical State Concern" and "Development of Regional Impact". According to the Model Code, an Area of Critical State Concern may be designated only for,

(a) an area significantly affected by, or having a significant effect upon, an existing or proposed major public facility or other area of major public investment;

(b) an area containing or having a significant impact upon historical, natural or environmental resources of regional or statewide importance;

(c) a proposed site of a new community designated in a State Land Development Plan; together with a reasonable amount of surrounding land; or

(d) any land within the jurisdiction of a local government that, at any time more than (3 years) after the effective date of this Code, has no development ordinance in effect. 84

The State Land Planning Agency was also required under the Code to "by rule define categories of development which, because of the nature or magnitude of the development or the nature or magnitude of its effect on the surrounding environment is likely...to present issues of state or regional significance."[85] These "effects" might include air, noise, water pollution, traffic congestion, size of the site, the number of people likely to be residents, employed "or otherwise present", the likelihood of "additional or subsidiary" growth, and "the unique qualities of particular areas of the state."[86] Development of regional benefit was defined as:

(a) development by a governmental agency other than the local government that created the Land Development Agency...

(b) development which will be used for charitable purposes including religious or educational facilities, and which serves or is intended to serve a substantial number of persons who do not reside within the boundaries of the local government...

(c) development by a public utility which is or will be employed to a substantial degree to provide services in an area beyond the territorial jurisdiction of the local government...

(d) development of housing for persons of low and moderate income. 87

The A.L.I.'s plan met the political tests imposed by the Nixon administration. They recommended an important, but limited change in existing powers over land use: thus there would be minimal disruption of present arrangements, assurance that major projects would receive a fair hearing at an appropriate level of government, protection for critical environmental areas, and avoidance of the planning rhetoric so distasteful to the small property interests whose support passage of the bill would require. The A.L.I. only wanted to modify the existing regulatory framework, enabling private attorneys to plan legal strategies for their clients secure in the knowledge that the rules will not change at the last minute. But this perspective stripped S3354 down ot its barest minimum, representing a response only to the problem of gaining a decision. It spoke not at all to the deeper questions of national development, of whether and how "society as a whole" should plan for the achievement of substantive public values and alternative futures.

Burned by the experience with Operation Breakthrough, committed ideologically to a preference for local and state action, the C.E.Q. and Department of Interior wed themselves to the narrow principles embodied by A.L.I.'s model. In 1971 they presented their alternative proposal for a national land use policy. Its basic premise was the failure of existing land use controls to meet the challenge of large-scale growth. Like Plato, who sought "the least change that would affect a

transformation", the Administration hoped to use the simple lever of grants-in-aid to accomplish a basic reform in land use choices.[88] With the money states would develop, "land use programs, including unified authorities, policies, criteria, standards, methods and processes for dealing with land use decisions of more than local significance."[89] The procedural adequacy of these would be subject to review by the Secretary of the Interior. State programs would initially have to include not substantive plans or programs but "methods" for inventorying and designating "areas of critical environmental concern." Thus the administration singled out for special protection the needs of environmentally sensitive lands but without specifying how these should be guarded. All the states were told was that such areas included those,

> ...where uncontrolled development could result in irreversible damage to important historic, cultural, or esthetic values, or natural systems or processes, which are of more than local significance; or life and safety as a result of natural hazards of more than local significance.90

The administration hoped to incorporate within this category the coastal zone as well as fragile inland areas. It wanted each state to have a single regulatory apparatus covering all areas of "critical environmental concern" and subject to review by the Department of Interior, an agency whose record in resource protection was hardly a model for ecologically minded states to follow.[91] Thus the President opposed Congress' desire to place authority over the coastal zone in the Commerce Department's National Oceanic and Atmospheric Administration. It was his wish to see all national resource protection

programs consolidated in the same agency responsible for resource development, a future Department of Natural Resources to replace the narrow land focus of Interior. This would facilitate coordinated federal management, narrow the political options for obstreperous states, and based on Interior's track record, create a national resource supermarket for one-stop industrial shopping.

States would also have to regulate the environmental impact of major public facility construction. Projects such as airports, highway interchanges or major recreational facilities would be considered "key facilities" whose "greater than local impact" would have to be controlled by inventorying, designating, and establishing land use controls for areas in which they were to be sited.[92] Environmental protection would also be afforded by requiring "methods" to control land use around new communities as well as controls and regulations to assure that land use decisions do not result in "a violation of any applicable air, water, noise, or other pollution standard or implementation plan."[93]

But this was not meant to be exclusively environmental regulation. The bill also included an important provision which seemed to answer the demand of large corporate developers for a lever to pry open the boundaries of unwilling municipalities. In Morton's words:

> The Administration's bill is not simply exclusionary or protectionist - designed to tell developers where they <u>cannot</u> develop. It is also designed to assist development and land use projects of regional benefit to <u>overcome</u> exclusionary ordinances and find places where they can develop (emphases in original). 94

Thus every state program was to contain "a method for assuring that local regulations do not restrict or exclude development and land use of regional benefit". Here was a provision aimed explicitly at limiting the power of local government to exclude "unwanted regional growth" defined as,

> ...land use and private development for which there is a demonstrable need affecting the interests of constituents of more than one local government which outweighs the benefits of any applicable restrictive or exclusionary local regulation. 95

The Administration's proposal would lead states to exercise regulatory powers over precisely the areas where the conflicts were most pressing, where the narrow scope of decision seemed only to intensify struggle, prolong delay, and raise the costs of growth. But it did so without explaining how the "benefits of...local regulations" could be measured against the pressure of regional needs in the absence of regional, state and national plans which defined those needs. In this substantive vacuum there was still reason for cities and states to evade "unwanted regional growth".

Designed to encourage but not coerce the states into action, the administration bill also allowed them substantial discretion in choosing methods of review and enforcement. Three possibilities were held out: a statewide agency could write substantive regulatory standards "subject to judicial review and judicial enforcement" of local compliance: the state might create procedures for administrative review of local plans and regulations; or it could, like Hawaii, choose to engage directly in land use regulation and control, i.e.,

zoning. Whatever mechanism it adopted, the State had to demonstrate it was "organized to implement its State land use program."[96]

As noted above the authority to review state compliance was lodged with the Secretary of the Interior. The administration felt that since its' emphasis, as opposed to Jackson's was on regulation, not planning it was important to locate administration of the program in a line agency with "recognized expertise."[97] To assure the comprehensiveness of that expertise the Secretary was required to consult with other executive officials before authorizing program management grants. The latter would include "all federal agencies which conduct or participate in construction, development, or assistance programs significantly affecting land use in the State."[98] In particular, to gain the support of builders, the Administration bill required that no grant approval could be made by the Interior Secretary until "he has ascertained that the Secretary of Housing and Urban Development is satisfied that those aspects of the State's land use program dealing with large scale development, key facilities, development and land use of regional benefit and new communities" meet the requirements described above, e.g., are not excluded by local jurisdictions.[99] Since H.U.D.'s relations with the building industry paralleled Interior's intimacy with the mining and oil companies this requirement did not strengthen the bill's environmental orientation. Nevertheless many small builders refused to support any national land use policy unless it was fully under H.U.D.'s jurisdiction.[100]

Finally, the administration sought more effective coordination of social investment by mandating that all federal development policies and programs must be consistent with the newly established state land use programs, "except in cases of overriding national interest." This would be added to the N.E.P.A. impact statement. Guidelines for federal compliance would be written by an agency designated by the President, probably the C.E.Q.[101]

States failing to submit a program for review would, after December 31, 1974, find themselves at a disadvantage in receiving federal development aid. Any national agency proposing a project in the State would be required to hold a public hearing 180 days in advance of its proposed action. Its funding request had to be submitted to the Secretary of Interior and where appropriate, to the Secretary of H.U.D. for comment. The Secretary's decision would be binding unless excepted by the President in a case of overriding national interest.[102]

Termination of the basic grant was the only other penalty for failure to submit an acceptable program. There was, unlike the Jackson version, no cutback on other federal development assistance. Reductions in airport and highway aid were included in early administration drafts but these were eliminated because it was felt such discipline was inconsistent with the President's revenue-sharing program.[103]

Although Henry Jackson stated that S3354 was offered as a draft for discussion rather than a finished product, he did

not hesitate to criticize the Nixon administration for missing the point of reform with its encouragement of regulation at the expense of planning. They were engaging, he charged, in a kind of regulatory nominalism. Without first requiring data gathering and analysis, the administration was promoting a scheme in which by merely labeling an area or activity as "critical" or "key" states could a priori justify their regulation.[104] Furthermore, with the latitude available under the A.L.I. model, states would expand or shrink the categories as they pleased. "The distinct possibility exists", said Jackson, "that one category would be defined very broadly and another very narrowly."[105] One state might define its whole surface as "critical" while another could swallow all the development it was offered by insisting each proposal was "of regional benefit". And as groups gained experience with the flexibility of the new categories they would struggle every bit as hard to manipulate them at the state level as they traditionally have fought to dominate the local zoning code.

> Pressure from conservationists would evoke sudden state assumption of control over the proposed sites of power plants. Pressure from transportation interests could result in effective control over highway routes and airport sites. The exercise of control to solve immediate issues and to meet immediate pressure invites narrow consideration of the important problems at hand.[106]

If all the administration desired was zoning writ large, then Jackson hinted, perhaps it would be better not to change jurisdictions at all.

With the introduction of the administration's alternative measure, the Senate prepared itself to consider seriously the

formulation of national land use policy. But one crucial phase of policy was completed in early 1971. Jackson and the administration successfully established the principle that impending federal action must be defined in procedural terms independent of an analysis of the economic and property systems which are the motors of growth in America, and therefore the roots of her land question. In a profound sense, the basic consistency of the political and economic orders, the fundamental unity of the political economy, was demonstrated and reinforced by the exclusion of a self-conscious analysis of the substantive public responsibility for the land, for the growth of communities, and for their decay. From this point on the land policy debate trudged ahead as a discussion about the future of federalism's relation with capitalism.

Notes to Chapter Six

[1]U.S., Congress, Senate, 92nd Cong., 2nd sess., 18 September 1972, Congressional Record 118:31069

[2]Eugene Lewis, The Urban Political System (Hinsdale, Ill: Dreyden Press, 1973), p. 177. Also see Edward Banfield The Unheavenly City Revisited (Boston: Little, Brown, 1974). Cf. Parson Thomas Malthus' opinion that "whether a government could with advantage to society actively interfere to repress inequality of fortunes may be a matter of doubt." An Essay On The Principle of Population, intro. and ed. by Anthony Flew (Baltimore: Penguin Books, 1970), p. 177. There is an intimate connection between belief in the inevitability of social inequality and faith in markets. See Karl Polanyi, The Great Transformation (Boston: Beacon Press, 1957), part two.

[3]U.S. Congress, Senate, Committee on Interior and Insular Affairs, National Land Use Policy, Hearings before the Subcommittee on Environment and Land Resources on S632 and S992, 92nd Cong., 1st sess., 1971, Part 1, p. 81.

[4]Business Week, 26 August 1972. After devoting a long article to analysis of "The land use battle that business faces," the magazine editors concluded with the warning that "The U.S. must develop effective controls on land use, and it must begin planning on a regional basis, not town by town, or even county by county."

[5]U.S., Congress, Senate, 91st Cong., 2nd sess., 29 January 1970, Congressional Record 116:1759.

[6]John Locke. Two Treatises of Government intro. and ed. Peter Laslett (New York: New American Library, Mentor Books, 1965), p. 367. Classical Lockean liberalism should be compared with what Theodore Lowi calls "interest group liberalism." (see chap. four, note 30). In the latter the object is less to reconcile particular interests than to avoid their conflict in the first place, to keep major combatants apart. This involves not merely inviting groups to petition for a redress of grievances but also making sure that, in Arthur Schlesinger's words, "members or advocates of...the leading interests in society...are included in key positions of government." Governmental neutrality is no longer viewed as functional to the stability of a complex industrial society. Reduction in the intensity of debate, leading to smoother integration of society, economy and polity, requires that government be personally equipped to speak for the "leading interests." (the quote from Schlesinger may be found in Lowi, The End of Liberalism, p. 78). It is worth remembering in this connection, Madison's more realistic and cynical formulation of the problem: "The regulation of these various and interfering interests forms the

principle task of modern legislation (and administration) and involves the spirit of party and faction in the necessary and ordinary operations of government." Alexander Hamilton, James Madison and John Jay, The Federalist Papers, with an introduction by Clinton Rossiter (New York: The New American Library, Mentor Books, 1961), p. 79. (Emphasis and parenthesis added).

[7]Congressional Record, 29 January 1970, 116:1759.

[8]Congressional Record, 10 September 1972, 118:31069.

[9]Ibid.

[10]Ibid.

[11]U.S. Congress, Senate, Committee on Interior and Insular Affairs, National Land Use Policy, Hearings before the Subcommittee on Environment and Land Resources on S3354, 91st Cong., 2nd sess., 1970, Part 1, p. 421.

[12]U.S. Congress, Senate, Committee on Interior and Insular Affairs, Land Use Planning and Policy Assistance Act, S. Rept. 197 to Accompany S. 268, 93d Cong., 1st sess., 1973, p. 45.

[13]"The land use battle that business faces," Business Week 26 August 1972.

[14]James O'Connor, The Fiscal Crisis of the State (New York: St. Martin's Press, 1974), p. 137.

[15]S. 3354, 91st Cong., 2nd sess., sec. 401(a).

[16]National Environmental Policy Act, 83 Stat. 853 (1970), sec. 102(B).

[17]U.S., Congress, Senate, Committee on Public Works and the Committee on Interior and Insular Affairs, The Operation of the National Environmental Policy Act of 1969, 92nd Cong., 2nd sess., 1972, p. 25.

[18]Congressional Record, 29 January 1970, 116:1757.

[19]Ibid., p. 1759.

[20]Ibid.

[21]On the domination of Texas government see V.O. Key's old but still accurate analysis in Southern Politics (New York: Random House, Vintage Books, 1949), pp. 254-276. Key appropriately titled his chapter on Texas "A Politics of Economics." For a more recent exploration into the tight world of economic power in the state see: Harry Hurt III "The Most Powerful Texans," Texas Monthly, April 1976. Also see

Robert Engler's discussion of oil power in the state: The Politics of Oil (Chicago: The University of Chicago Press, Phoenix Books, 1967), passim. The case of Montana is less well documented. But consider how many of her sister states would permit a corporation to dig a pit more than "a mile wide, more than a mile long, and deep enough to swallow the Empire State Building" directly under the business district of one of its few major cities. Yet that is exactly the fate of Butte under the power of Anaconda. The description is from Business Week, December 1, 1973. But see the amazing photograph in the New York Times, 15 February 1973.

[22]The expanded council would include: The Secretaries of Interior, Agriculture, the Army, HEW, Transportation, HUD, and the Chairman of the FPC. Senator Jackson differed in this recommendation with the Public Land Law Review Commission. That body proposed conprehensive land use planning not by the states themselves but "through regional commissions along the lines of the River basin commissions created under the Water Resources Planning Act of 1965." These were coordinating bodies however, not agencies with authoritative responsibility to direct action by any subunit of the federal system. Thus while the PLLRC recommended a basic reevaluation of all public land policy, the most it sought from "the regional commission arrangement" would be to "provide a single point of contact for states with the different Federal agencies engaged in planning." See the Commission's Report: One Third of the Nation's Land (Washington: U.S. Government Printing Office, 1970), p. 64. For a discussion of its public land policy recommendations, see chap 8, pp.401-405.

[23]S3354, sec. 406(b)(2)(A).

[24]For an illustration of one industry's ability to manage the public land managers see Engler, The Politics of Oil. Also see Grant McConnell, Private Power and American Democracy (New York: Vintage, Random House, 1966), esp. chap 2. In a recent article explaining corporate chagrin with the increasing rate of withdrawl of the public lands from entry Business Week admitted that the surprise stems from habituation to an older, more charitable attitude. "For years", it noted, "BLM's orientation was toward placing lands in the private sector for exploitation." B.L.M. of course, refers to the Bureau of Land Management. See "Better use of federal lands," Business Week, 24 November 1975, p. 100.

[25]Congressional Record, 29 January 1970, 116:1758.

[26]S3354, sec. 403(b)(2)(E).

[27]Ibid., sec. 403(b)(2)(F).

[28]Ibid., sec. 406(b)(3)(A).

[29]National Land Use Policy, Hearings, 1970, p. 147.

[30]S3354, sec. 406(c)(1-2)(A-B).

[31]Ibid., sec. 406(c)(2)(C).

[32]Ibid., sec. 408.

[33]Ibid., sec. 401(a).

[34]Like the Editors of Fortune, Jackson believed that in spite of the fact that "the political and social ground rules within which business is conducted will have to be drastically amended" the "way out of the present mess will have to rely heavily upon business for resources, for innovation and for leadership." See Editors of Fortune, The Environment (New York: Harper and Row, Perennial Library, 1969, 1970) p. 196. Environmentalists were less optimistic. One of the most carefully argued analyses of the incompatibility between profitmaking and environmental security is Barry Commoner, The Closing Circle (New York: Alfred A. Knopf, 1971), esp. chap. 12, "The Economic Meaning of Ecology." An earlier and still useful work in the same vein is K. William Kapp, The Social Costs of Private Enterprise (New York: Schocken Books, 1950, 1971). For a radical class analysis see Richard England and Barry Bluestone, "Ecology and Social Conflict" in Toward A Steady State Economy" ed. Herman Daley (San Francisco: W.H. Freeman and Co., 1973), pp. 190-214. An interesting look at environmental politics from the vantage point of equality is Hugh Stretton, Capitalism,Socialism and the Environment (London: Cambridge University Press, 1976). The political implications of squeezing public debate into harmony with the existing power structure are analyzed by Peter Bachrach and Morton Baratz, Power and Poverty, Theory and Practice (New York: Oxford University Press, 1970), esp. chaps. 1,3.

[35]Ibid.

[36]National Land Use Policy, Hearings, 1970, p. 2.

[37]Ibid., p. 148.

[38]Ibid., p. 142. This position was not out of step with the views of the Nationl Governors Conference. It was on record in support of a National Community Development Policy, including national guidance "as to what lands are appropriate for urban development, agricultural production, conservation, and open space and recreation." It also sought a "reassertion of state authority in zoning where local land practices constitute unreasonable barriers to such land development and capital investment policies." See the Report of the National Governors Conference Committee on Rural and Urban Development cited in National Land Use Policy, Hearings, 1970, pp. 490, 497.

[39]Ibid., p. 143.

[40]Ibid., p. 17.

[41]Ibid., testimony of Harry G. Woodbury, Senior Vice President, Consolidated Edison Co. of New York, pp. 416, 415,420.

[42]Ibid., letter of W. Donald Crawford, Managing Director, Edison Electric Institute to Senator Henry M. Jackson, May 21, 1970, reprinted pp. 411-412.

[43]Ibid., p. 444.

[44]Ibid., p. 443.

[45]Ibid., p. 445.

[46]Ibid., p. 446

[47]Ibid., testimony of Herman D. Ruth, American Society of Planning Consultants, pp. 350-351.

[48]Ibid., p. 351.

[49]Ibid., testimony of Rex Allen, President, American Institute of Architects, p. 41.

[50]Ibid., testimony of Thomas H. Haga, President, National of County Planners, p. 453.

[51]Congressional Record, 10 August 1970, 116:28040.

[52]Ibid.

[53]National Land Use Policy, Hearings, 1970, p. 91.

[54]Ibid., p. 95. In effect, Train was providing a basic lesson about politics. As one text puts it "Government does not just reflect the will of some of the people. It also creates public wants, beliefs and demands, with powerful impact upon who gets what in politics." (emphasis in original). See Kenneth Dolbeare and Murray Edelman, American Politics 2d edition (Lexington, Mass.: D.C. Heath & Co., 1974), p. 479.

[55]National Land Use Policy, Hearings, 1970, p. 95.

[56]Otis Graham, Jr., Toward A Planned Society (New York: Oxford University Press, 1976), pp.197 f; also see Toward a National Urban Policy, ed. Daniel Patrick Moynihan (New York: Basic Books, 1970).

[57]Graham, Toward A Planned Society, p. 197.

[58]Ibid., p. 200.

[59]National Goals Research Staff, Toward Balanced Growth: Quantity with Quality cited in Graham, Toward A Planned Society, p. 200.

[60]Jonathan Barnett, "Beginning the Debate on a National Planning Policy," Architectural Record 149 (May 1971): 118.

[61]Cited in Graham, Toward A Planned Society, p. 202.

[62]Mills never left clues to more humane uses of the presently concentrated structure of powers. Responsibility was his central problem and the one he portrayed so dramatically in The Power Elite (New York: Oxford University Press, 1956). "Political men", he wrote, "now have every reason to hold the American power elite accountable for a decisive range of the historical events that make up the history of the present." (p. 27). The question remains, and Mills did not answer it, is responsible for what?

[63]Cited in Frederick M. Wirt, et. al, On The City's Rim: Policy and Politics in Suburbia (Lexington, Mass.: D. C. Heath and Co., 1972), p. 187.

[64]Graham, Toward A Planned Society, p. 198.

[65]Michael N. Danielson, The Politics of Exclusion (New York: Columbia University Press, 1976), p. 216.

[66]Ibid.

[67]Ibid., p. 217.

[68]Ibid., p. 222.

[69]The fullest account of the Warren case is in William Lilly III, "Housing Report/Administration and Congress Follow Courts in Promoting Residential Integration," National Journal 3 (November 12, 1971). But also see Danielson, Politics of Exclusion, pp. 222-236 for a good discussion of the Nixon administration's queasiness in the politics of opening the suburbs from Washington.

[70]Ibid., p. 223.

[71]Ibid., pp. 228-229. Danielson cites a "Statement of Equal Housing Opportunity" offered by the President which reveals the sensitivity of his administration to the suburban outrage at having to "accept"neighbors who did not pay to get in. The President pleaded:

...the kind of land use questions involved in housing site selection are essentially local in nature: They represent the kind of basic choices about the future shape of a community, or of a metropolitan area, that should be chiefly for the people of that community or that area to determine...

they must live with their success or failure. (Danielson, p. 229).

Of course the national failure was the local success. Cf. William H. Riker's thesis in Federalism (Boston: Little, Brown, 1964): "If one approves the goals and values of the privileged minority, one should approve (of) federalism...Thus, if in the United States one disapproves of racism, one should disapprove of federalism." (p. 155). The brunt of this analysis however, is that the implications of federalism are more ambiguous, especially in environmental politics and resistance to industrial centralization.

[72]National Land Use Policy, Hearings, 1971, p. 161.

[73]Ibid., pp. 161-162.

[74]Washington Post, 8 January 1972,reprinted, along with an exchange of letters between Jackson and Train, in U.S.,Congress, Senate, Committee on Interior and Insular Affairs, National Land Use Policy: Background Papers on Past and Pending Legislation and the Roles of the Executive Branch, Congress, and the States in Land Use Planning, 92nd Cong., 2nd sess., p. 26. (Hereinafter cited as Papers, 1972).

[75]Washington Post, 15 December 1971, reprinted in Papers, 1972, p. 23.

[76]See the testimony of Prof. Allison Dunham, American Law Institute in National Land Use Policy, Hearings, 1970, p. 340.

[77]Papers, 1972, p. 26.

[78]Ibid., p. 23.

[79]Richard Babcock, The Zoning Game (Madison: University of Wisconsin Press, 1967), p. 87.

[80]Ibid.

[81]National Land Use Policy Hearings, 1970, testimony of Professor Allison Dunham, p. 341. The initial motive for re-examining the land use control apparatus came however, from a half-million dollar Ford Foundation grant to the Institute. See Babcock, The Zoning Game, p. 17. Thus the two major institutional sources of private intellectual charity in America, the Rockefeller and Ford families,were crucial factors shaping the politics of land use. The A.L.I. model ultimately became the land use framework discussed in Congress, while the Rockefeller Brothers' Task Force on The Use of Land: A Citizens Policy Guide to Urban Growth ed. William Reilly, (New York: Thomas Y. Crowell Company, 1974) became a major factor in arousing conservative fears about the security of property rights. In this respect, surplus capital drawn from two of the most entrenched and concentrated industrial cores in the American political economy, helped finance the formulation of the issue. Even in "the middle levels of power"it is

difficult to escape the influence of the higher echelons of wealth and power.

[82]National Land Use Policy, Hearings, 1970, testimony of Fred P. Bosselman, pp. 342-343.

[83]The American Law Institute, A Model Land Development Code, Proposed Official Draft No. 1; Tentative Draft No. 6 (Philadelphia: American Law Institute, 1974) p. 289.

[84]Ibid., p. 293.

[85]Ibid., p. 305.

[86]Ibid.,pp. 305-306

[87]Ibid., pp. 306-307.

[88]The Republic of Plato, trans. and ed. by Francis McDonald Cornford (New York: Oxford University Press, 1945), p. 178.

[89]S992, 92nd Cong. 1st sess. sec 101(b).

[90]Ibid,, secs. 102(a); 104(a)(3).

[91]Supra, note 24. For expressions of support for centralized resource authority see National Land Use Policy, Hearings, 1971, testimony of Secretary of Interior Rogers Morton, p. 85; and testimony of Chairman of the Council of Environmental Quality Russell Train, p. 91. Also see Train's testimony in 1973, U.S., Congress, Senate, Committee on Interior and Insular Affairs, Land Use Policy and Planning Assistance Act of 1973, Hearings before the Subcommittee on Environment and Land Resources on S268, 93rd Cong., 1st sess., p. 190. Indeed, the Nixon administration refused to fund the coastal zone program pending establishment of the integrated resource apparatus. For the reaction of its Senate sponsors see Congressional Record, 18 June 1973, 118: 11387-11894. (Also see Senator Ernest F. Hollings' testimony before the Jackson Committee, Land Use Policy, Hearings, 1973, pp. 165-169. Also see Chap. 7, pp. 358-359.

[92]S992, secs. 102(b); 104(a)(2)(3).

[93]Ibid., sec. 104(a)(7).

[94]Papers, 1972, p. 26.

[95]S992, sec. 102(c); 104(a)(4).

[96]Ibid., sec. 104(e).

[97]Supra, note 91.

[98]S992, sec. 105(a).

[99]Ibid., sec. 106.

[100]See for example, the statement of the National Association of Home Builders in the 1970 Senate Hearings National Land Use Policy, pp. 512f. The thesis did not change with time. Cf. U.S. Congress, House, Committee on Interior and Insular Affairs, Land Use and Resource Conservation, Hearings before the Subcommittee on Energy and the Environment on H.R. 3510 and related bills, 94th Cong., 1st sess., testimony of John Hart, First Vice President of the National Association of Home Builders, pp. 479-484.

[101]National Land Use Policy, Hearings, 1971, p. 93.

[102]S992, sec. 106(a).

[103]National Land Use Policy, Hearings, 1971, testimony of Russell Train, p. 92.

[104]Papers, 1972, p. 24.

[105]Ibid.

[106]Ibid. p. 25.

CHAPTER SEVEN

THE SENATE PASSAGE

A Sober Discourse

In August, 1972, a month before the United States Senate considered land use legislation for the first time, the Wall Street Journal published an editorial in praise of the measure, calling it "a sensible sounding bill".[1] The paper went on to make the observation that curiously, planning aroused "surprisingly little substantive opposition considering the amount of controversy the subject usually generates." It was a telling point. Earlier steps toward public control of private opportunity inflamed the political economy of land. Rstricted public land sales, conservation and zoning were each perceived as threats by small businessmen anxious to keep the land business open and unregulated, a kind of special private domain for the unorganized and unadministered pursuit of wealth in a society falling under the sway of concentrated industrial, financial and political powers. Objectively, the Jackson bill represented a continuation of that menacing tradition. It contained a mechanism to protect the environment while facilitating large-scale appropriation of wealth from land development - at the expense of the local political economy's power to manipulate growth in its own interest. Yet, except for the representatives of local government, there was little opposition from the current beneficiaries of the land business.

Their absence had a profound effect on the Senate's debate. Basic criticism of state land use regulation was omitted. Discussion followed the sedate lines of a bankers conference or a university colloquium. Occasionally, personal or committee jealousies led to a raised voice, but otherwise the train of events was sober, logical and predictable. Thus, between 1970 and 1973 Henry Jackson, his Senate colleagues, administration leaders and a handful of private groups discussed land use policy as if its passage were undeniable. The key questions revolved about its form and whether the states should be forced into compliance. But underlying these disagreements was a tacit consensus about its inevitability. It seemed to be the logical next phase in the tide of environmental management conducted on businesslike lines. No doubt was voiced about its legitimacy, only about its weight on state and local government. The issue was how to move toward a more disciplined federalism, a more centrally controlled management of the political economy of land. But the local merchandisers in land were not encouraged to see how they were served by higher level control. Nor were members of the non-landowning general public made aware that a battle was brewing in Washington over no less than the future of their land. The intoxicating effects of democracy were absent. A sober discourse could proceed.

Early in 1971 the administration's "bill to establish a national land use policy" was introduced in the Senate as S992. Jackson likewise introduced his comprehensive planning

bill as S632. It was in all important respects a duplicate of S3354.[2] Jackson continued to defend the comprehensive approach insisting that it assured "a broad and careful consideration and integration of all social, economic and environmental concerns before the implementation of controls while giving leeway to the states to delegate their "planning and implementation functions...to those localities which possess planning competence" - subject of course to state review.[3] Precisely because state planning was here made a condition of land use control Jackson underscored his eagerness to accept the continuing role of local planning and regulation whereas "the administration's bill would prohibit any delegation of planning to localities."[4] Reform at the state level now precluded the necessity of overturning the municipal imperium in land. Local decisions could be enlightened merely by requiring their adherence to state prepared analyses of general growth trends, regional needs and environmental capacity.

In April, 1971, Jackson held a second round of hearings. His first witness was a former House co-sponsor of S3354, Rogers Morton, the newly appointed Secretary of Interior. Morton began by noting the belief underlying both bills,

> ...that in order to reverse trends which could in a few lifetimes cause irretrievable damage to the natural values formed through billions of years will require nothing less than a profound reshaping of the institutions and attitudes that make up the patterns of land use in this country. 5

In a crisis this severe, he argued, it does not make sense to wait for prolonged analysis of admittedly bad

conditions. The institutional changes must be in place before it is too late to implement the reams of technical analysis already available. In calling for such an extensive accounting of growth trends and resources Jackson's bill, said the Secretary, "tries to cover so much ground in a single stride that its directives lack clarity and sharp focus." The list of values it would ask states to consider "is so all encompassing...(that) the effort it engenders will, we feel, be diffused too broadly to accomplish meaningful results." Unless the institutions which control land use are restructured, the further accumulation of planning data would be largely fruitless."[6]

The answer was more power, not more knowledge. Morton played Thracymachus to Jackson's Socrates. But no one spoke Rousseau's part. The debate between the Senator and the Administration centered on the form of public management while neglecting to attract the interest of the wider public which had traditionally been mute in land use politics. Implicit in this debate was the assumption that land should remain the concern of specialized interest groups negotiating in a formal structure within accepted boundaries framed on the one side by the continued merchandising of land and the other by a sense that unusually fragile spaces should receive special protection. But the typical patterns of local real estate and large scale development were to remain the dominant forces in the future of land. Small private owners and big corporate users would continue

to serve as the main surrogate defenders of the general interest in land. Land use planning was merely a technique for smoothing conflict among the public's surrogates and between them and the economically non-rational environmental groups. Outside this structure of publicly ordained private bargaining the non-landowning citizenry would continue to move across a built environment over whose construction they had little control.

The executive branch shunned public planning. Ours "is not a planning bill" proclaimed Russell Train. All we want is a method to lead States into "better control over development" on their own terms and without central guidance from Washington. "(W)e want the States to do this job. If a State does not want to do it, there is no forcing mechanism in this legislation, save the loss of these grants in the bill."[7] Apparently the administration was more sensitive than Jackson to the political necessity of avoiding charges that a national land use policy would undermine both federalism and local enterprise, perhaps especially because its proposal, more than the Senator's really did threaten local and private perogatives over land. Regulation sounds less ominous than planning, although it may in fact be more painful. And there was, particularly after H.U.D.'s distressing experience with "forced integration", a pained sensitivity among administration policymakers that manipulation of local economies and political forces must be handled with care and deliberation. The states' power

is a key determinant of the policy options in American government warned Morton,

> No matter what kind of a law you have, if you have a federal law that spells out in a blueprint fashion the total land use plan for the whole country, if there isn't any interest in supporting that concept at the State level, it is just never going to happen as a matter of fact. 8

But the resistance to comprehensive planning was anchored in more than objective analysis of political reality. There was also ideological hostility to premonitions of a Washington based national land use plan. Such a plan, Morton agonized, would contradict,

> ...the American way of doing business. And I doubt there is a capability in the federal government to produce such a plan and there shouldn't be. If we have a national land use plan, it is going to be a composite of the State plans...a group of land use plans as opposed to a national land use plan. 9

Despite his opposition to S992 as "narrow" and "short-term" in outlook, Senator Jackson ultimately came around to the administration view of things. In June the Senate Interior Committee reported out a new bill patterned almost exclusively on the executive draft. Jackson refused to omit however, despite the administration's objections, a separate title requiring that within three years of the legislation's enactment each state develop a planning process including most of the data gathering requirements he asked for in 1970 as well as projections of economic needs and environmental capacity. But the provision for "Statewide Environmental, Recreational, and Industrial Land Use Plans" was dropped

in favor of regulation in the administration's suggested mode. Thus while land use planning remained part of the bill, its implementation was now to be narrowly focused through the predefined "areas of critical environmental concern" and those impacted by key facilities and development of regional benefit. Hence planning would serve regulation instead of regulation being a tool of planning. After studying the question for two and a half years the Committee considered the new bill "the most realistic and sound" approach to the land use problem."[10] But it carefully noted that "comprehensive statewide planning" was no longer mandated.

> It is the Committe's view, after thorough consultation with the administration, many Governors, State planning officials, and many experts and professionals in the field of land use planning, that most States now lack and probably could not develop in less than five to ten years, the capacity to undertake and implement a comprehensive planning effort for their total land resource base... 11

A look at the Committee's Hearings however, suggests that Jackson's desire to win the President's support as much as the counsel of experts led him to accept the regulatory approach. The testimony of "many Governors...experts and professionals" included calls not for less State power but more federal direction! As one regional planning official put it, without explicit national growth priorities and goals, "State, regional and local land use decisions will continue to be made on the basis of either subjective judgements as to what national goals and priorities may be, or worse, without any regard to the larger considerations

at all."[12] Most professional planners echoed this call for a substantive, comprehensive national land use policy. On the other hand, there were only a few instances of support among experts and officials for the more hesitant regulatory strategy proposed by the Administration. And two of these, Richard Babcock and Fred Bosselman, were instrumental in formulating the A.L.I. draft on which it was based. They predictably urged caution in shifting regulatory power to the states.[13] Bosselman in fact, was so impressed by the silence of the previous moves in this direction that he called his analysis of the subject (written for the Council on Environmental Quality) The Quiet Revolution in Land Use Control.[14] A latent anxiety about potentially restless natives down in the political jungles of local land use caused the lawyers who were well traveled in its thickets to warn that,

> The State's goals can be achieved if only the major decisions can be regulated. One of the important issues in each State land regulatory system is to separate the major decisions from the minor so that State officials are not bogged down with gas station applications when they should be considering power plant sites...the need is apparent for some method of concentrating state efforts on major land use issues. 15

Then in an obvious swipe at Jackson, they proclaimed,

> Those who cry for comprehensive regulation of all development by the State show that they have not thought through the problem. 16

The A.L.I. alliance with the Administration behind a regulatory strategy was supported by Richard Slavin, President of the Council of State Planning Agencies.

Suggesting it would be wisest "to make haste slowly", he offered a prescription for what C. Wright Mills used to call "organized irresponsibility". He advised Congress to pass the Nixon bill as a framework within which planners could bargain the definition and use of their delegated authority with interested groups just as the old conservation planners did years before.

> ...get the framework, the policy, the direction in the bill, and allow the development of the guidelines for the implementation...negotiate the guidelines. 17

Slavin would permit the state planners, and whichever social forces commanded their respect, broad discretion in defining the terms of regulation without being bound by rigid, that is, clear policy directives set by the formally elected representatives of the people. The Senate Interior Committee found this argument persuasive. It reassured local and State officials that

> ...it is not the intent of the Committee that this proposal have the effect of transferring a significant measure of authority over what have traditionally been local and state decisions on certain land use matters to the Federal Government.[18]

But why the curious addition of the phrase "on certain land use matters"? Might there be <u>other</u> areas of traditionally local and state authority where the federal government was now legitimately involved in exercising direct controls? Superficially, the revised version of S632 suggested not. After all, the Secretary of the Interior was empowered to review only the procedural adequacy of state programs, that is, their "methods" for inventorying and controlling lands

in critical environmental areas or those subject to large-scale construction of key facilities and projects of regional benefit. The substantive use of those controls however, the specific regulatory decisions made by the land agency, were not to be examined by the Secretary. This is precisely what the administration meant by a regulatory approach to national land use policy: specifying for the states the kinds of matters which they should act on without prescribing how they should act. Only if the Secretary determined that a state lacked "methods" and "procedures" to regulate the formal categories of land and development defined by the bill would the grant be terminated. But the administration, after lobbying by Train, now supported an additional sanction of its own to assure state compliance. This consisted of a percentage reduction in funding (seven percent the first year, fourteen percent the second and twenty-one, the third) for three major programs, only one of which was actually under the jurisdiction of the Interior Department or the Congressional Interior Committes, the Land and Water Conservation Fund. The others were airport and highway programs. These, said the Committee Report, "were carefully chosen...because of their extraordinary impact on land use patterns."[19] The threat of strong sactions however, seemed to conservatives a potent technique for vastly enlarging the federal government's control over land use.

In their Minority Report to S632 Senators Clifford Hansen of Wyoming and Paul Fannin of Arizona maintained that

"there is nothing voluntary at all about this bill. It constitutes economic coercion."[20] They cited with special alarm one provision, buried deep in the midst of a long list of other responsibilities, which gave the Secretary of Interior power to assure that states do not exclude from their programs "areas of critical environmental concern to the Nation." With this they charged, he could determine that "any private land within any state is...necessarily a part of the state land use plan."[21] This was a question of substance, not procedure. In effect, the Secretary of the Interior was being granted authority to protect directly, through his power to interfere with at least four separate grant-in-aid programs, all critical environmental areas in the nation, those in private as well as those in public ownership. Nor was limiting the Secretary's authority to review of procedures a strong protection against abuse of power. This, said Senator James Buckley of New York, merely supplied a shrewd administrator with a range of technical reasons "for disapproving a program" which he in fact believed to be "bad" on substantive grounds.[22] Could it be that the administration, in cooperation with the Senate Interior Committee, was engaging in a bit of what Bertram Gross calls "legislative deception", authorizing an exercise of power in one section that it appeared to prohibit in another?[23] This was the main subject of the floor debate.

As S632 headed toward consideration by the full Senate however, it commanded the approval of respected journals of

opinion. The New York Times called it "enlightened legislation","the most important and far-reaching environmental legislation ever to be considered by the United States Congress", while the Washington Post said Jackson's measure would challenge "the planners to assure a brighter future for America". Less environmentally conscious papers such as The Wall Street Journal called S632, "a sensible sounding bill", while Business Week nominated it as "a good way to make a beginning" toward the type of regional planning which treats the environment "as an economic and ecological organism, not as bits and pieces."[24]

In fact, the strongest resistance Jackson encountered before reaching the Senate floor stemmed from the jealousy of other committee chairmen. This was resolved relatively easily however, or so it seemed at the time. When the Chairmen of the Banking and Commerce Committees complained that their constituencies would be affected directly by the implementation of a national land policy, Jackson encouraged them to hold additional hearings on S632 in their own domain.[25] Similarly, he showed sympathy for the criticism of the Public Works Committee that the Administration's proposed sanction fell unfairly on programs under its jurisdiction by agreeing to support an amendment changing the penalty back to a general freeze on all new federally subsidized large-scale development.[26] Finally, with Senators Ernest F. Hollings of South Carolina and Warren F. Magnuson of Washington, co-sponsors of coastal zone planning legisla-

tion, Jackson agreed to place in the Record a statement that neither bill would "stand in the way or impinge upon the jurisdiction" of the other.[27]

With these objections assuaged, at least temporarily, Jackson brought S632 to the floor on September 18, 1972. The criticism of local failure and confusion, so plain in earlier phases of the policy process, was replaced now by a charitable attitude toward the municipal bulwarks of American federalism.

> The State land use planning process and program would not displace land use planning functions that have traditionally been made (sic) by local government. It would strengthen local government while assisting the States to develop the capacity to make decisions concerning critical areas and uses that are regional in character or of more than local concern. 28

In the ensuing debate three general questions were raised. How far should a national land use policy go in asserting influence over the State and cities? What affect would such a policy have on the relations between State and local governments? And finally, did the bill require such extensive restrictions on development in "areas of critical environmental concern" that new legal protection was necessary to secure property owners against public "taking" of their land's value? None of these issues was resolved in 1972, but the debate did vent the important arguments.[29]

Standards

In his polemic announcing The End of Liberalism, Theodore Lowi argued that "Liberal governments cannot plan.

Planning requires authoritative use of authority. Planning requires law, choice, priorities, moralities. Liberalism replaces planning with bargaining."[30] This is an excellent summary of the philosophy underlying the National Land Use Policy bill. In Jackson's words, "Adoption of a balanced national land use policy would make it possible to identify tradeoffs, to compare on a national basis alternative proposals and competing social purposes."[31] Comparison implies standards. But since the drafters hesitated to write criteria(after all the bill only required states to produce "methods" of control) how could states anticipate whether their "methods" would satisfy the Secretary of Interior? "I think this can be done", said Rogers Morton, "in the approval process...in a matter of negotiation with the State as opposed to putting standards qualitative or quantitative (sic) in the legislation."[32] There was a faint echo of Montesquieu as he continued,

> I think...there should be a dialogue...(I)f the spirit of the act has been carried out, the State has formed its institution, has set up its controls, does know what its resources consist of, then I think the Federal government must accept that. 33

In the tradition of conservation and zoning, the substance of national land use policy would be filled in by dialogue, the negotiated "spirit" would infuse the empty formal letter. The national interest would be protected through talk, not law. Local, state and private rights could be preserved as well. The informal rules of "interest-group liberalism" could be applied to the relations of

governments as effectively as it was to the relations between government and private groups.

In the legislative politics of land use planning the theory of bargaining as a legitimate substitute for authority finally ran headlong into common sense. Its most forthright critic was Senator Edmund S. Muskie of Maine, Chairman of the Public Works Committe's Subcommittee on Air and Water Pollution, a man intensely jealous of his jurisdictional perogative and peeved about a lack of input into the bill whose "implications" he said were "perhaps greater than any domestic legislation we have yet considered in this session of Congress."[34] But his analysis is more significant than his pique. "This bill" he charged, "creates an outline for national land use policy with no substance...legislation of this magnitude with far-reaching impact on many Federal programs - at least twelve, by the Interior Committee's count - must provide some Federal policy guidance."[35] Criteria are essential, he insisted, to distinguish good planning from bad, to relate the land use program to other federal policies, to prevent states from undermining national goals, indeed, to protect States and localities from federal bureaucratic arbitrariness - for guidelines and standards are indispensable to administration, and therefore inevitable:

> There is no way of setting up a process of land use policy administered by a Federal bureaucracy that does not get that bureaucracy involved in making judgements about what the policy will be....

> The question raised by the issue is whether we establish the guidelines for that bureaucracy in the legislation, or whether we leave it to an ad hoc process. 36

Muskie posed a basic question. Passage of the bill would bring federal authority to bear in every part of America, but the uses to which that authority would be put were left unclear and ambiguous; it lacked measures of adequacy and responsibility. Yet if standards were written in could the bill pass? Standards are a sublimation of interests and values. As one list of priorities is drawn up, it becomes evident to groups whose values are sullied by a subordinate position that the legislation is contrary to their interest, a permanent statutory reminder of public inferiority. They struggle to oppose it. If they succeed in inverting or rearranging the list a new litter of political enemies is born. Consider for example, that in 1973 the omission of effective national land use standards was criticized simultaneously by the Sierra Club and Exxon.

John Loftis, Vice President of Exxon Co., U.S.A. explained that while his industry preferred that state and local governments "dominate the actual planning and management for the use of land resources, the federal government has a non-delegable role to act in matters of truly national concern." He added in fact that,

> ...in some instances, the activities of State or interstate land use agencies may impinge on or be at variance with the welfare of the nation as a whole. <u>In such instances, Federal policy must dominate and thereby affect State and local government decisions and private initiative</u>...37 (emphasis added).

National capitalism must subordinate parochial federal interests. Thus, in a separate addendum to his testimony, he noted,

> It would seem appropriate either to state federal goals regarding land resource use in the bill or to require the Secretary of the Interior to develop such goals and present them to Congress so they can be ratified as lawful national policy.[38]

Presumably energy would not be at the bottom of Mr. Loftis' list. Less subtle in their demands for bias, environmentalists also criticized the bill's neutrality. As a representative of the Sierra Club put it, "New land use legislation must be weighted toward environmental concerns, lest accelerating growth and development continue as the dominant factors in land use policy considerations."[39]

This debate suggests how deeply planning is stamped by politics. The task of organizing and regulating the use of a community's space or other key spheres of social life cannot be value-free. Public planning, at its best, involves intelligently organizing, regulating, or stimulating the various phases of community life in order to achieve democratically chosen ends. This inevitably includes a blending of values, interests, knowledge, power and politics. Controls and planning inevitably serve values hence they are never neutral or technical matters. This is hardly an indictment of planning; only a warning that because planning and politics are inseparable it is essential to examine closely the social structure and government processes which are their frame. Planning is not democratic or

public when done behind closed doors with participation by bureaucratic invitation only. Nor can it be public when most citizens are not encouraged to see that something as basic to their lives as the space and land which form the community's structure are private commodities whose collective regulation is a matter of limited expert control. The most likely outcome of this narrowly based government planning is the systematic exclusion of general interests by well-organized private and bureaucratic forces. This is the story of conservation and zoning. Muskie suggested it might also be the future of national land use policy.

Conservative critics of planning however, charged that because it is political land use planning should be restricted sharply in scope. The Minority Report to the 1974 House bill for example, insisted that since planning lacks "those standards and measurements that are the requisites of a scientific discipline...(T)he notion that land use within an entire state can be successfully planned should be repugnant to the intelligence."[40] Planning was only legitimate when limited to controlling development within the municipal boundary lines because those who live in a community "are more knowledgeable and more interested in the fate of the land in their area than those who are located at a greater distance." But if planning is respectably political inside the municipality, it is difficult to grasp why it is wrong to enlarge the scope of planning if its present framework hurts others outside the

jurisdiction. House conservatives charged that removing these decisions to a higher level of authority "precludes taking into consideration the special problems, wishes, and concerns of...the local citizens and their elected officials."[41] But this was not a critique of planning; it was an attempt to repel an attack on the autonomy of the local land use political economy. Given the presence of large corporate interests in the array of forces leading that attack, along with minority housing and environmental interests, the outcome of a national land use policy was ambiguous at best. Certainly there is a fine line between complementing local values with those of non-resident publics and precluding or abrogating those local values. And it nearly vanishes if the definition of extra-municipal values is left to the unpredictable results of a "process." Unpredictability is the essence of arbitrariness. No wonder conservative landowning interests attacked the land use bill fearing a bias in favor of precisely those environmental values Muskie said it should have but didn't. This was a confusing controversy but it illustrates how the debate over criteria and the struggle over planning were really always a struggle about who would control and benefit from planning, not about planning itself. America's long experience with public controls over land use assured that in one manner or another it would continue to be guided through government.

Jackson's pathetic response to the debate was a plea for its avoidance. Showing little mark of his earlier

support for comprehensive planning and hopeful of gaining at least the outline of a policy, he joined with the administration in arguing that the establishment of federal guidelines would not be "workable." It "would create mischief", and was "not in accord with the basic philosophy of the land use bill."[42]

Muskie's criticism was not wholly negative. He offered an amendment defining specific substantive values as yardsticks for measuring state compliance with national policy. These included requirements that development be in accordance with existing federal air and water pollution control laws, that no new development should occur on lands of high agricultural productivity, or exceed the capacity of existing public utilities unless new capacity is planned and paid for, that redevelopment of existing communities be favored over new construction in undeveloped areas, and that development in flood plains be prohibited unless no alternative is available.[43] But individually and as a group these recommendations were battered by Muskie's colleagues. Jackson said they would lead to "Federal zoning"[44], a charge other more conservative representatives would launch against the Senator's own bill! And Talmadge of Georgia proclaimed that strict application of these criteria would prohibit Americans from fleeing their dirty old cities" to get into an area which is relatively free of crime, where people can live together in peace, comfort and harmony, and free of pollution."[45] Unhappily Talmadge did not cite the coordinates

of this "area" on a map.

Muskie's amendment was voted down 61-14, winning the support only of a handful of liberal Democrats. For the time being the subject of standards was muted. Life was later breathed into it by conservatives and local economic and political interests who were opposed to big bureaucracy and change in the local organization of political power from which they benefitted. Indeed the fate of local government under the dispensation of a national land use policy was itself the subject of substantial debate.

Federalism

The late 1960s generated a raft of criticism of zoning and other community land use controls. Presidential Commissions, civil rights leaders, corporate executives, and planners cited the numerous disadvantages of permitting small units of government to channel and focus the big streams of American growth. Yet once the issue was removed to the more politically sensitive domain of Congress, consensus on the failure of local control vanished. Jackson himself introduced the land use bill to the Senate as a method "to strengthen local government", not suppress it. Even environmentalists, who were the most consistent supporters of land use legislation, were prone to fits of skepticism about lodging power with state governments as long as the national policy was not explicitly committed to protecting land against the forces of development.

Tested by a stream of preservation battles at that level of the federal system, they proceeded with caution not trust. As one said, "(W)e may have just more ad hoc influence peddling, too much of the local zoning game, simply removed one level higher."[46] Instead of progress this would only subvert established federal pollution standards. Giving the states authority without a mandate to protect the environment, said one former Congressional staff counsel, would leave the existing federal anti-pollution apparatus "helpless in the face of competing economic forces that are deeply rooted in our social fabric."[47] Interestingly, conservatives were quick to alert proponents of the bill about precisely this point. Bernard Seigan, a land use attorney who opposed all public controls over land including zoning, proclaimed

> The big owners and developers have the capacity and will frequently defeat regulations... they will easily succeed against those who cannot fight back....Moreover, most State legislatures are suburban-rural dominated. Legislators from these areas frequently represent the same point of view as...the local politicians who adopt zoning ordinances....And (although) the environmental orientation of this bill is quite obvious, and they (the environmentalists) will do well - perhaps not as well as they think...they may rue the day they ever thought of (this bill). 48 (parentheses added).

The strong lobbying effort by local government organizations (the U.S. Conference of Mayors, National Association of Counties and National Service to Regional Councils) plus the testimony of dozens of individual officials reinforced this skepticism. They were concerned primarily about

three issues: maintenance of "the primary responsibility for local land use decisions...in the hands of elected officials"; insurance against the "potential erosion of local capacity to control decisions affecting property values"; and a desire to change the proposed federal jurisdiction over land use planning from Interior to the Department of Housing and Urban Development or the Executive Office of the President.[49] In their battle to hold the major influence over public land use decisions local officials were yet to gain the active support of the real estate and homebuilder lobbies who became so influential in the House. Nevertheless in Senator John J. Sparkman of Alabama, chairman of the Banking and Currency Committee and Muskie, this time wearing his hat as chairman of the Intergovernmental Relations Subcommittee (of the Governmental Operations Committee) the local forces had influential spokesmen.

Beginning in 1972, these forces were increasingly successful in stunting the drive for an upward shift in governmental power. On the Senate floor, amendments were added to S632 clarifying its intent to support the planning objectives of housing policy, giving power over the formation of administrative guidelines to the Executive Office of the President while limiting Interior's role to their "administration", and strengthening H.U.D.'s influence in the review of state plans.[50] In addition, after consultation with the National League of Cities, Jackson helped secure an amendment establishing "an advisory body to each State

planning agency compoased of chief elected officials of local government", and also assuring local governments an equal role with States in advising Federal agencies about problems of coordination. This included an administrative procedure giving local governments and individuals the right to appeal State decisions. Finally, Herman Talmadge proposed an amendment, passed unanimously, declaring that nothing in S632 should be construed to give the Federal government any constitutional authority already held by State and local governments to zone non-federal lands.[51] Only the request for federal compensation of property tax revenues lost due to State imposed growth restrictions was denied completely. But to the degree local government status in the political economy of land was sanctified by national policy there was little risk that unwanted environmental controls would drive out desired revenues. Plenty of room was left for fiscal zoning.

More important than these essentially symbolic genuflections to the status quo was the successful effort to eliminate sanctions against states refusing to participate in, or declared ineligible from, the grant-in-aid program. Undoubtedly this was the most controversial and significant element in the legislation. For the first time in the history of its support for planning the Federal government was asking for a pound of state and local flesh even if it only took the form of a threatened deprivation of federal fat. Development aid would be cut unless it were channelled

through state "processes" and "methods" for guiding land use in critical areas. Even with Jackson's demure that withheld funds would be placed in escrow, this was compulsion. The federal system would, in connection with land use policy, be guided from the top down. Federalism was beginning to look like capitalism.

Sanctions had the support of the Administration, environmentalists, the National Farmers Union, the A.L.I., several governors, and most professional planners. But they were opposed by conservative Republicans, most economic interest groups and trade associations as well as by local officials, including the National Governors Conference. Two distinct arguments were launched against them. One was opposed to the principle itself, the other to sanctions in relation to the particular form of the proposed legislation. Conservative Republicans such as Hansen of Idaho and Fannin of Arizona argued that the introduction of penalties was incompatible with the principle of federalism itself; it would upset the existing balance of public authority and throw it in favor of Washington. Hansen argued that even if it was true that local zoning "has not been able to meet with all the problems" and "there has been a trend to migrate to some higher level of government for assistance", this has been chosen by only a few states in response to unique external pressures. But,

> This bill forces this trend to the State and Federal level. This bill not only takes zoning out of the realm of local determination, it puts

at the Federal level what areas will be zoned or planned. 52

Jackson's earlier accusation against Muskie's demand for criteria was now hurled against his own weakened bill! Indeed, based on that earlier defeat, Muskie turned around to oppose sanctions precisely because of the absence of standards to guide the Secretary in their use. A fatal weakness in one provision, he warned, must not be compensated by an uncontrolled delegation of power in another. Here the argument was not opposed to federal coercion per se, but only to its potentially irresponsible use.

> My concern about the penalty provision... is that, in effect, it gives the Administrative agency, the Secretary of the Interior, the authority to impose his own judgement about what is an adequate land use program, and if his personal judgement is not agreed to by the State, he can implement that personal judgement by withholding program funds. 53

Conservatives used this argument as well, however for them the question of responsibility was subordinate to preventing any use of pressure against the States. In Hansen's view,

> ...what this bill demands of the States is that they shall come up with a plan which satisfied not the people in the State government, not the State legislature, not the Governor, not the county commissioners, not the city, not the school board, but the Secretary of the Interior because he is all wise, all knowing, and knows best. It is up to the States to satisfy him. 54

As it turned out, the Senate voted twice on the sanctions question. First it was asked by Jackson to consider the amendment, worked out in cooperation with the Public Works Committee which replaced the percentage reduction

penalty with the freeze on development. In response to criticism that this might lead to a rupture in all federal aid to the States or to irresponsible exercises of power by the Secretary, Jackson explained that only "very large projects" would be affected and even then, a complex review procedure would have to be set in motion before implementing the sanction. The Secretary of Interior was required to consult with the Secretary of H.U.D. as well as the Environmental Protection Administrator before making his recommendation. Furthermore, the threatened State was eligible to make its case before an ad hoc review board appointed by the President and empowered to reverse the Secretary's decision, if, in its opinion, it was "unreasonable." The Board would be composed of a Governor "from a state with no particular interest" in the question, "one knowledgeable impartial Federal official," and one private citizen of similar virtue to be selected by the other two.[55] Since it would be the President's appointee who would be overriden, Senator Aiken wondered whether Presidents are "always neutral?"[56]

Jackson became exasperated with the opposition. All he desired was to insure that the states themselves establish "methods" to anticipate the impact of federal investment on their own land and communities. Moreover, he added,

> This is not a subjective thing where the Federal Government can intercede and substitute its subjective judgement for the State's judgement. As long as the plan covers the four principal areas...then the Federal Government is required to accept it. They do not have to go into all

> the details...do not have to satisfy the Federal Government in every detail, but they have to wrestle with these four areas...show they have made a good faith effort. 57

This was simply an extension of business rationality to the governmental process. After all, said the New York Times, "no well-run business would undertake a major expansion or a big construction project without relating it to the corporation's long term plans."[58] Could there be a higher standard of political acceptability than the prevailing business logic?

Their commitments to business notwithstanding, conservatives continued to oppose sanctions. In this they were happy to accept the support of liberals like Muskie who recognized not only the need for standards, but also the legitimacy of existing jurisdictional perogatives, those of other committees no less than those of the states.

Finally, Jackson withdrew the compromise sanction.[59] The next day Senator Hansen introduced another amendment striking the phased reduction sanction from the bill, and Jackson told his colleagues,

> ...in view of all the concerns that have been expressed by many members of the Senate, I plan to reluctantly support the amendment of the Senator from Wyoming, and I hope that at least this will expedite action on the bill. 60

The amendment was accepted by voice vote. Sanctions were dead. The bill now lacked the two principal components of law: clearly written, obeyable standards of behavior and the authority to enforce them. It was now truly a framework for bargaining.

Property Rights

Even before the Supreme Court's decision in Euclid v. Ambler back in 1926, landowners were liable to have limits placed on the use of their property where a community deemed it necessary to protect the "health, safety and morals" of the population. Now the land use policy debate offered the chance to expand the rights of property owners by re-defining the conditions under which they would be entitled to compensation. This possibility was raised when Senator Len B. Jordan of Idaho offered an amendment which would have permitted an individual to sue for compensation if "the State has prohibited or restricted the full use and enjoyment" of his land.[61] Now, to the degree an individual property owner already possessed the right to sue where he feels unjustly treated by government, this amendment was innocuous, it changed nothing. However, the reference to "full use" was ambiguous. It could have meant that any public restriction on the use of property, even a partial one, brought standing to sue. Or it might have referred only to the case where a State declared a parcel of land "an area of critical environmental concern," enjoining all or most development on it. Jordan said he meant the latter, that is, where government regulation had the effect of severely "limiting and prohibiting the use to be made of that land." Even though such limitations do not amount to "outright confiscation" or "taking", they "should be compensable."[62]

As several witnesses pointed out during hearings, if this theory were written into the law it might alter radically the prevailing obligations of government to property owners. Thus Russell Train explained the absence of a compensation or eminent domain provision in the administration's draft by explaining "that if this route becomes available, we could just about kiss any effective regulatory systems goodbye (for it) would involved compensating almost every owner of land all over the country."[63] Similarly, in 1973 Governor Richard Lamm of Colorado warned that such a provision "would tie the States' hands and set land use planning back to before the first U.S. Supreme Court case in this area."[64]

Most senators took the provision to reflect only an endorsement of existing rights and not the foundation for an enlargement of those rights. Henry Jackson argued that the bill as a whole was in the line of established legal thought. It "does not change anything", hence neither would addition of the amendment.[65] In a colloquy between the latter and Senator Hansen however, there was evidence of a desire to expand the rights of property owners. Jackson tried to rephrase Hansen's position as a question about whether the federal government could interfere in local zoning decisions. Hansen replied:

> Mr. Hansen: No, just to give them the right.
> Mr. Jackson: The right?
> Mr. Hansen: The landowner the right.
> Mr. Jackson: Well, the landowner has all the rights he had before.

> Mr. Hansen: If the Senator can cite one example where so far a landowner has been able to go into court and petitition that he has been adversely affected and has been entitled to a judgment on account of a zoning ordinance, I would be interested...
>
> Mr. Jackson: Look, we are not involved in that.
>
> Mr. Hansen: As a landowner, I am involved in it.[66]

After an extensive debate on the meaning of the amendment no consensus was reached. Liberals interpreted it as a statement of existing principles, conservatives as a new bulwark for property rights against what Hansen termed "the Federal coercion...this bill supposes." The amendment passed by a vote of 58-14, the nays coming from a scattering of liberal Democrats. Yet little was actually resolved. Hansen summed it up best when he said, "Well, I suspect we must leave it to the courts to determine what was intended by Congress!"[67]

As befits the responsibility assigned to it by the Founding Fathers, the Senate modified S632 to bring it closer into harmony with the status quo. The cap to the progressive limitation of federal influence came with passage of an administration sponsored amendment reducing the funding from $100 million annually for eight years to $40 million for each of the first two years and $30 million for the next three. In the words of one dismayed environmentalist, "at each step in the process, we have retreated from the proposals as initially introduced and we have been moving more and more towards the status quo."[68] This was not only a fair summary of the past, it was a deadly accurate prediction of the legislative future. Nevertheless, on

September 19, the bill was easily passed by the Senate 60 - 18, 14 conservatives joining four liberals (Muskie, Proxmire, Eagleton and Harris) in opposition.

One More Time

The reelection of Richard M. Nixon did not appear to dim the outlook for a national land use policy; he had supported the idea consistently. The bill drafted by officials of his administration had, in the main, displaced Senator Jackson's proposal and won passage in the Senate. Thus as the 93rd Congress geared into operation in the early spring of 1973, Richard Nixon named land use one of the "major subjects which we will be addressing in 1973:"

> Land in America is no longer a resource to be taken for granted. We no longer live with an open frontier...so we must conserve and protect the land, and plan for its wise and balanced use.... That is why I will urge passage again, this year, of legislation designed to encourage states to establish effective means of controlling land use.[69]

Spurred by victory in the 92nd Congress, and by the President's encouragement, Senator Jackson once more held hearings on, and brought to the floor, the "Land Use Planning and Policy Assistance Act of 1973."[70] Interestingly, although the planning component was wittled down considerably since 1970, in a fit of legislative optimism Jackson chose to link the bill officially with "Planning." Environmentalists were less impressed by the symbolism than they were disgruntled with some of the compromises made in 1972 but they continued to press for passage. They were, in

fact, pleased with several additions to it, in particular an amendment urged by Gaylord Nelson of Wisconsin to control more effectively "large land sales or development projects" by requiring builders to meet prescribed "standards concerning protection of the environment, maintenance of public services and financial capability."[71] This was the only section ever to appear in the bill which prescribed substantive federal standards for the states to meet. Furthermore, the Interior Committee included a new provision authorizing the C.E.Q. and a proposed Interagency Advisory Board on Land Use Policy (composed of the heads of federal bureaucracies with land related activities) to cooperate with state and local governments in studying the need for, and potential content of, a truly national land use policy.[72] Other provisions were added as well to assure planning on Indian land, gauge the effects of land regulation on local property taxes, study the special licensing and permit problems of industry and strengthen the rights of participation for all citizens interested in land planning decisions. In addition, a new grant program was incorporated providing up to $2 million annually for research and training in land management, while the funding level of the basic planning grant was raised to $100 million for eight years (from an average of $34 million for five years). Finally, the federal share of the program was raised from 66-2/3 percent for two years and fifty percent thereafter to ninety percent for five years and 66-2/3 percent thereafter.

The Interior Committee, in Jackson's view, had been very accommodating in handling the requests for protection from the local government lobby. A new section was added in fact, denying that the bill changed any existing governmental power or authority over land! Section 512 of S268 assured local officials that

> Nothing in this Act shall be construed to expand or diminish Federal, interstate or State jurisdiction, responsibility or rights in the field of land and water resource planning...(or) granting to the Federal government any of the constitutional or statutory authority now possessed by the State and local governments to zone non-Federal lands. 73 (emphasis and parenthesis added).

As if this were not enough, the Committee adopted an additional amendment offered by Senator James Buckley of New York whose effect would be to reinforce the rights of a local government to exclude development on environmental grounds where its standards were higher than those prescribed by the State program. Thus nothing in the bill could be construed to prohibit local governments "from adopting or enforcing any law or regulation which results in prohibition or regulation greater than required by this Act."[74]

Embracing these changes, the bill now reflected what Jackson called a "careful balance" between the need for a "more efficient system of land use planning and decision-making" and the obligation to "protect existing rights and responsibilities of State and local government." He did not intend to accept any amendment the effect of which could be to upset that fragile "balance."[75] Confirming

the tenuous nature of the negotiations which produced the bill, Senator Buckley explained that S632 "succeeds by the thinnest of margins in conforming its requirements to its stated purpose" without tripping "over the very fine line which divides encouragement from coercion."[76] It was unclear though how legislation designed originally to offset the"inefficiency" of local control over large-scale development could avoid impairing local rights. Nevertheless, Jackson said nothing in the bill should be construed to mean that at all! Was this legislative mumbo jumbo, a "careful balance", or deception? Undoubtedly the point of the bill was to guarantee that certain major land use decisions would come under the purview of a state regulatory agency. Furthermore, the Secretary of Interior had authority to review State action, although without sanctions he could not command it. At bottom, the federal government was asking the states to revise their organization of legal power over land use, to bring it into line with the scope and scale of modern development pressures. But how much new influence would this institutional change give Washington over matters of traditionally local interest? The supporters of planning arged that the big change, to the extent it would occur at all, would come in the relations of city and state. Washington would not intercede in the substance of that relation except to authorize the change. Its particular form and content was left up to each state and its subordinate units. Conservatives

disagreed vehemently. They insisted that the "initiative" taken by the federal government to spur change itself constituted a modification, if not a full scale transformation, of the status quo. The "minority views" accompanying S268, offered by Senators Fannin, Hansen and Dewey Bartlett of Oklahoma once again insisted that

> Presently local and state governments maintain and possess all the initiative to plan and manage private and state land. S268 will remove that initiative, thus preempting land responsibilities and drastically alter the traditional system.[77]

Administration spokesmen did not disagree. Indeed, they stressed that is exactly why the bill was offered. For example, Russell Train answered critics who attacked the absence of criteria by proclaiming that such allegations were "simplistic" for they failed to grasp the purpose of the legislation,

> ...to bring about a basic institutional reform in the political institutions of this country... what we have here is a very revolutionary proposal to bring about a basic shift in political power as it deals with land use....A shift from local to state government. 78 (emphasis added)

Similarly, Under Secretary of the Interior John Whitaker noted that the result of meeting Washington's procedural requirements would be that states would end up "zoning" different areas "into different types of growth rates."[79] Nor was the Interior Committee Report any less bashful about stating the bill's goal:

> The Committee has concluded that changing land use requirements and public needs necessitate changes in present land use decisionmaking procedures and institutions. 80 (emphasis added)

As Bertram Gross writes, "The meaning of most bills can be ascertained only by appraising the interrelationships among a large number of highly complex sentences."[81] In this sense the general direction of the land use bill was unmistakeable: even in the absence of specific guidelines describing how the change was to be accomplished, it was designed to recast the formal power arrangements over land in the United States. It was unlikely this basic push could be redirected by tacking on a few reassuring clauses. Short of an all-out offensive against the principle of a national land use policy itself, conservative fear and suspicion were not unjustified. In the interest of accumulating maximum political support Jackson chose to avoid stressing change by presenting the bill on the floor without sanctions. He felt this would stymie accusations that the bill was coercive. But at the same time he made it clear that sanctions would be proposed on the floor as an amendment, the same sanctions which were drafted and sponsored by the Administration and rejected by the Senate in 1972. There was one modification however. In its 1973 version the proportionate reduction in funds would be delayed five years since it could be invoked only against states which failed to submit a plan. Otherwise, there was nothing, apart from termination of the planning grant itself, which could be used to compel states already in the program from interpreting its requirements as they chose.

Naturally the threat of sanctions drew immediate

conservative fire. Senator Dewey Bartlett said it would make the Secretary of Interior "a czar for zoning."[82] But more important to their fate was the opposition they drew from liberals and moderates acting to protect programs under the jurisdiction of the Public Works Committee, and from the National Governors Conference. Leading the fight against sanctions was the bill's old nemesis, Edmund Muskie. Senator Muskie told liberals fearful of an environmentalist backlash if they voted against sanctions, that he would propose an amendment to reconsider sanctions if necessary after the act was in force three years. He also promised that the vote on his amendment, not Jackson's, would be used by conservationists in rating the members' environmental record.[83] Public Works Committee Chairman Jennings Randolph assured any remaining skeptics that penalties on highway assistance were irrational since road construction already required planning "with meticulous care and consideration for environmental effects."[84] Muskie and Randolph were a persuasive pair, especially among members of their committee. The latter opted to oppose sanctions by a vote of 9-3. Since the measure was defeated by eight votes, 44-52, it is reasonable to conclude that, in the future, more rational management of federal capital investments will depend on less backbiting among the peoples' representatives.[85]

The 1973 version of the land use bill aroused anxiety on another front as well. Spokesmen for property rights

were on edge about what they saw as an effort to plant "The seed of the destruction of the American concept and practice of private ownership of land."[86] This nervousness had been moderated somewhat in 1972 by adoption of the Jordan amendment. In the interim however, the normally responsible Rockefeller Brothers Fund spread new seeds of disquiet. In a 1973 report entitled The Use of Land: A Citizens Guide to Urban Growth it advanced the old idea, not yet welcome in American real estate circles, that development is fundamentally a social process to which the property owner adds little except higher land values to his own net worth. Sound national land policy would profit from a separation of development from ownership rights. This was especially important to the securing of open space in and around cities. Then it went on to argue that even with the separation of rights noted above, increased environmental protection will bring not only "tough restrictions...on the use of privately owned land", but

> ...restrictions that landowners may fairly be required to bear without payment by the government.[88]

And as if all this were not enough, the report advanced on to recommend that henceforth Courts should "presume" all development "is likely to have adverse consequences difficult to foresee." They should thus compel

> ...the proponent of the change to demonstrate, as well as possible, the nature and extent of any change that will result....It is time that the U.S. Supreme Court re-examine its precedents that seem to require a balancing of public benefit against land value loss in every case and declare that, when the

> protection of natural, cultural or asthetic resources or the assurance of orderly development are involved, a mere loss in land value is no justification for invalidating the regulation of land use. 89 (emphasis added)

Compounding their fears, conservatives were faced by a change in the provision adopted in 1972 to protect property rights. After the Justice Department determined that the language of the Jordan amendment "might be read to expand rights to compensation beyond those currently recognized under constitutional 'takings' law", the Administration persuaded Jackson to accept a new protective clause which read:

> Nothing in this Act shall be construed as enhancing or diminishing the rights of owners of property as provided by the Constitution of the United States or the constitution of the State in which the property is located. 90

Of what value, Senator Paul Fannin asked, is this adulterated provision if it now became "reasonable to expect that novel forms of regulating the use of property may ultimately erode the original constitutional right?" "(B)oilerplate disclaimers" and "so-called safeguard provisions" are not, he proclaimed, "sufficient to protect traditional rights."[91]

Now it is more than doubtful that the land use bill would have led to the socialization of property in America. Although President Nixon fraternized with communists, he never evinced any particular attraction to their theory of wealth. Hence it is reasonable to assume his administration would hesitate before authoring legislation likely to move the country onto this course. Still, the combination of bad timing in connection with the Rockefeller Brothers Report

and the omission of some reassuring albeit potentially expensive words in S268, aroused the trepidation and ultimately the power of conservatives.[92] In the Senate however, they lacked the votes to make an impact on the content, much less the fate of the bill. They were, for example, unable to cut the funding level of the program as they did in 1972. But the new suspicions aroused about an impending threat to local and property rights became the clay which, in other conservative hands, was transformed into a mighty warning sounded throughout the realm of small property in America that Washington was on the march against liberty.

But this was in the future. On June 21, 1973, the Land Use Policy and Planning Assistance Act was passed by an overwhleming Senate majority, 64-21. The opposition came from conservatives in both parties. In the weeks that followed the only criticism of the Senate's decision was aimed at its failure to enact stronger legislation. Time magazine, not known as a powerful forum of liberal opinion, devoted a cover story to "The Land Boom" in which Jackson's bill was scored because it did "not fix policy at all." Time urged with respect to sanctions, that

> The penalties should be enacted if for no other reason that most states are traditionally reluctant to accept planning. Tough minimum standards should also be written into the act.[93]

Similarly, the New York Times accused Henry Jackson of poor tactical judgement in failing to press for sanctions in Committee.[94] Then, in a September 1973 series on land use, Gladwin Hill celebrated the emergence of a "New Land Ethic"

in America. This, it was reported, was likely to cause "a fundamental change in the American way of life, a change of possibly historic dimensions."[95] The essence of the change was no less than "the movement of the initiative in land use planning from individual owners and developers to the general public, acting through governmental agencies." But this was hardly a radical innovation in 1973, although some viewed it that way in 1914 when zoning was introduced. Then, beyond the shift from private to public, Hill foresaw another "fundamental change in the American way of life", perhaps even more startling,

> ...a certain redistribution of wealth implied in large-scale land use control. Individual freedom to maximize profits from land is replaced in varying degrees by collective decisions about the disposition of land. 96 (emphasis added)

It was as if he New York Times, a profitable enterprise in its own right, although less so since the suburban migration cut down its market (perhaps explaining the ax it ground against real estate men), wanted to lay down a gauntlet to the owners of landed wealth, one extending somewhat beyond the less intrusive intentions of Henry Jackson and Richard Nixon. Did it seek to praise land use planning or warn its grave diggers? No less dire in its admonition to the class of real property owners was the Washington Post which somberly declaimed that "the longer Congress waits to pass a strong land use bill, the tougher the bill will be when it does come.[97] Even Business Week headlined its editorial praising the bill with the ominous

expression, "When the Land Runs Out."[98]

The basis of this journalistic prediction was no more than a hesitant uneven advance of state land use controls and a castrated federal stimulus, half of which was still locked in the House Interior Committee. A brief overview of state action up to 1973 hardly supports the premonition of a basic transformation in American attitudes and institutions. By then only a handful of states had enacted controls over key land use questions, and a close look reveals less than uniform state powers across the spectrum of land problems. In Chapter Five the important industrial exceptions implanted in the Vermont and Maine laws were noted. Later state actions were no less equivocal. The laws in Delaware and California for example, affected only the coastal zone; Colorado's was limited to subdivision regulation while a comprehensive bill was defeated in 1972; Montana's focused on strip-mining, subdivision, and public utility siting regulation; and New York concentrated on the Adirondack Park. Only in Florida was substantial headway made toward a comprehensive land use control program on the A.L.I. model. Instead of a massive assault on property, most states, in the absence of a federal incentive, were moving cautiously and incrementally, their approaches varying widely from no action in Mississippi to specialized legislation in many states, to a state zoning system in Hawaii. As one summary concluded, "What the States are doing is selectively reclaiming powers that were delegated

in the past."[99] And beneath the somewhat exaggerated headlines Gladwin Hill correctly noted that "Up to now the spread of controls has been largely a patchwork."[100] If one wanted to organize a scare campaign against the "Land Use Policy and Planning Assistance Act", one could do worse than cull predictions of the consequences of state action from its most enlightened and reputable supporters. It was as if some pent up frustration drove them to magnify its impact by favoring its description with symbolic phrases certain to elicit the worst fears among America's small and middling property owners. Phrases like "revolutionary" and "basic institutional change," or "individual freedom...is replaced" were offered without respect for the really limited changes that had actually occurred or that were even contemplated.

Rhetorical overkill in the politics of land use began within the American establishment, not in the minds of the far right. Exaggerated ideas about the radical consequences of change were introduced first by the responsible centrist media only to be appropriated later by the Chamber of Commerce and Liberty Lobby for use in a highly skilled propaganda campaign aimed not at enlarging "The New Ethic", of course, but at killing it. To understand the progression and ultimate success of the drive to stop land use legislation however, it is necessary first to retrace some steps, to return to the bill's origins in the House of Representatives.

Notes to Chapter Seven

[1]Wall Street Journal, "Coping With the Hassles," 15 August 1972.

[2]The differences between S632 and S3354 included the following. An appeals procedure was provided for states which disagreed with decisions of the Land and Water Resources Council. A review board would be appointed by the President and include a neutral Governor, one disinterested federal official, and a private citizen. It was empowered to reverse the Council's decision. The second major change included a modification of the sanction. It now took the form of a general freeze on all new development funding with a major environmental impact if, after five years, a state failed to submit a program for review. Finally, the three year start-up for the program was expanded to five years, and the automatic exclusion of cities with established planning capacity was made a question of state discretion. See U.S., Congress, Senate, 92nd Cong., 1st sess., S632.

[3]Washington Post, 28 December 1971, reprinted in U.S. Congress, Senate, Committee on Interior and Insular Affairs, National Land Use Policy: Background Papers on Past and Pending Legislation and the Roles of the Executive Branch, Congress, and the States in Land Use Planning, 92nd Cong., 2nd sess., pp. 24-25. (Hereafter cited as Papers, 1972).

[4]Ibid.

[5]U.S., Congress, Senate, Committee on Interior and Insular Affairs, National Land Use Policy, Hearings before the Subcommittee on Environment and Land Resources on S632 and S992, 92nd Cong., 1st sess., 1971, Part 1, p. 81.

[6]Ibid., pp. 83-85.

[7]U.S., Congress, House, Committee on Interior and Insular Affairs, National Land Use Planning, Hearings before the Subcommittee on the Environment on HR 4332 and related bills, 92nd Cong., 1st sess., 1971, pp. 103-104.

[8]Senate, National Land Use Policy, 1971 Hearings, Part 1, p. 113.

[9]House, National Land Use Planning, 1971, Hearings, p. 133. In this connection Senator Gordon Allot of Colorado recommended to the administration that "we might at a subsequent time try to see if we can find another name for this bill or a modification of it because I do think that the national land use policy in this bill causes everybody who picks up this piece of legislation to wonder if we are going to set the guidelines and the

local zoning and everything else for every place." Senate, National Land Use Policy, 1971, Hearings, Part 1, p. 159.

[10]U.S., Congress, Senate, Committee on Interior and Insular Affairs, Land Use Policy and Planning Assistance Act of 1972, S. Rept. 869 to Accompany S632, 92nd Cong., 2nd sess., 1972, p. 19. The administration had three objections to the bill as reported. First, they wanted to eliminate Jackson's planning requirements. They also wanted to omit the ad hoc review board because by including a Governor it would constitute oversight of federal action by a state official. Finally, it urged a substantially lower funding level: $40 million annually the first two years covering up to two thirds of the States' costs and $30 million the next three years up to fifty percent of the cost. See U.S., Congress, Senate, 92nd Cong., 2nd sess., 18 September 1972, Congressional Record, 118:31071.

[11]Senate, Land Use Policy and Planning Assistance Act, Report, p. 20.

[12]Senate, National Land Use Policy, 1971, Hearings, testimony of James G. Martin, Vice President, National Service to Regional Councils, Part II, p. 310.

[13]Richard Babcock was Chairman of the American Law Institute's Advisory Committee on the Model Land Development Code while Fred Bosselman served on the project to develop a Model Land Code.

[14]Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control (Washington: U.S. Government Printing Office, 1971).

[15]Ibid., pp. 318-320.

[16]Ibid. p. 320.

[17]Senate, National Land Use Policy, 1971, Hearings, testimony of Richard H. Slavin, Director, Planning and Community Affairs Agency, State of Washington; President, Council of State Planning Agencies, National Governors Conference, Part II, pp. 326, 329.

[18]Senate, Land Use Policy and Planning Assistance Act, Report, p. 20.

[19]Ibid., p. 30. For a detailed summary of the different forms of sanctions which the supporters of land use planning attempted to incorporate in the bill see U.S. Congress, Senate, 93rd Cong., 1st sess., 18 June 1973, Congressional Record, 119:11312-11313.

[20]Senate, Land Use Planning and Policy Assistance Act, Report, p. 94.

[21]Ibid., pp. 95, 94. See also U.S. Congress, Senate, 92nd Cong., 1st sess., S992, sec. 104(c).

[22]Senate, Land Use Planning and Policy Assistance Act, Report, p. 97.

[23]Bertram M. Gross, The Legislative Struggle, A Study in Social Combat (New York: McGraw Hill, 1953), p. 216. Gross warns that "Deliberate intent to deceive is an inescapable element in any conflict" and "The drafting of a bill offers endless opportunities for deception...the substantive ideas in many measures are so complex as to provide endless opportunities for technicians to pull the wool over the eyes of laymen." (p. 216). For a masterful demonstration of this point, see Robert Caro, The Power Broker, Robert Moses and the Fall of New York (New York: Random House, Vintage Books, 1975), chap. 10, "The Best Bill Drafter in Albany."

[24]New York Times, 10 May 1972; Washington Post, 20 November 1971; Wall Street Journal 15 August 1972; Business Week, 26 August 1972.

[25]Congressional Record, 19 September 1972, 118:31202.

[26]Ibid., 18 September 1972, 118:31077. Another amendment was also introduced in cooperation with the Public Works Committee which would in Jackson's words, "remove identification of specific projects from the definition of key facilities," such as airports, highways and recreation facilities. "This change" he added, "is in the spirit of the Act. S632 is written so as to allow the States to identify the specific land uses which are of distinctly more than local concern and are most troublesome." The change was also in the "spirit" of a politically necessary compromise (p. 31078).

[27]Congressional Record, 18 June 1973, 119:11388. It should be pointed out though, that S632 did include language referring to portions of the coastal zone when it came to the floor. This was supported by Hollings and Magnuson to insure that if President Nixon vetoed the coastal bill, which he threatened if its jurisdiction were placed with the Department of Commerce rather than Interior, coastal protection might still be afforded under the land use act. Were the coastal bill to become law however, in Hollings words, "the land use bill would in no way apply to the coastal zones." As it turned out, the coastal bill did pass and Nixon refused to fund it in 1973, giving rise to the colloquy noted above.

[28]Congressional Record, 18 September 1972, 118:31068.

[29]Where however, arguments were stated more effectively in later discussions I will cite them for purposes of clarity.

[30]Theodore Lowi, The End of Liberalism (New York: W. W. Norton, 1969), p. 101.

[31]Senate, National Land Use Policy, 1971 Hearings, Part 1, p. 1.

[32]U.S., Congress, Senate, Committee on Interior and Insular Affairs, Land Use Planning and Policy Assistance Act, Hearings before the Subcommittee on Environment and Land Resources on S268, 93rd Cong., 1st sess., 1973, Part 1, p. 294.

[33]Ibid.

[34]Congressional Record, 18 September 1972, 118:31072.

[35]Ibid.

[36]Ibid., 19 September 1972, 118:31203. For example, in sec. 104(c) of S992 the States would be required to maintain "procedures to prevent action...in substantial disregard for the purposes, policies and requirements of its land use program." (emphasis added). Muskie's complaint was that such "policies" had no national framework to support a predictable environmentally sensitive land use control apparatus, cf. William Riker, Federalism (Boston: Little Brown, 1964), p. 144. "...when national uniformity is worth more than confusion, then federalism is an impediment to freedom because it deprives the national majority of the chance to eliminate the excess costs of confusion."

[37]Senate, Land Use Planning and Policy Assistance Act, 1973, Hearings, Part II, p. 87. Similarly, the American Petroleum Institute favored the "concept of land use planning" but worried that the bill failed to delineate "the appropriate Federal role in land use planning, which we believe must include machinery to insure that state land use programs achieve and maintain a balance among all the competing uses of land. Without substantive review on the part of the Federal Government to insure that full and adequate consideration is given to needs that are more than local in nature, the entire concept of a national land use policy could be frustrated." Ibid., Part 1, Appendix, pp. 361-362.

[38]Quoted in U.S., Congress, Senate, Committee on Interior and Insular Affairs, Land Use Policy and Planning Assistance Act, S. Rept. 197 to accompany S. 268, 93rd Cong., 1st sess., p. 48.

[39]Senate, Land Use Policy and Planning Assistance Act of 1973, Hearings, testimony of Lloyd Tupling, Sierra Club, Part II, pp. 92-93.

[40]U.S., Congress, House, Committee on Interior and Insular Affairs, Land Use Planning Act of 1974, H. Rept. 798 to accompany H.R. 10294, 93rd Cong., 2d sess., pp. 78-79.

[41]Ibid., pp. 79, 77.

[42]Congressional Record, 19 September 1972, 118:31202.

[43]Ibid., p. 31201.

[44]Ibid., p. 31202.

[45]Ibid., p. 31202.

[46]U.S., Congress, House, Committee on Interior and Insular Affairs, Land Use Planning Act of 1973, Hearings before the Subcommittee on the Environment on H.R. 4862 and related bills, 93rd Cong., 1st sess., 1973, p. 376. A spokesman for the Sierra Club, Charles Clusen, made the same point (p. 369): land use policy "cannot be neutral toward the environment, less accelerating growth and development continue as dominant factors in land use policy determinations."

[47]This statement was part of a letter to the Editor of the New York Times, 15 August 1972. It was sent by Thomas Jorling, a former minority council to the Senate Committee on Public Works. Muskie quoted it during the debate, see Congressional Record, 19 September 1972, 118:31201. Jorling insisted that "If this nation is to develop land use controls, by definition it means regulation, and effective regulation must be supported by a clear statement of the elements of land use that Congress considers good, or alternatively that Congress considers bad." Cf. the testimony of John R. Quarles, Jr., General Counsel for the Environmental Protection Administration. He explained to the Senate Interior subcommittee that "The results which will come out of this process will be predominantly controlled by the forces that operate within the State structure, through the State legislatures, at the State capitols. They will be tilted to some extent perhaps toward greater environmental protection and in favor of those values which have not been adequately protected within the last 20 years." See Senate, Land Use Policy and Planning Assistance Act, 1973, Hearings, pp. 301-302. (emphasis added).

[48]U.S., Congress, House, Committee on Interior and Insular Affairs, Land Use and Resource Conservation, Hearings before the Subcommittee on Energy and the Environment on H.R. 3510 and related bills, 94th Cong., 1st sess., 1975, pp. 292, 294, 305. Cf. the view of Representative Sam Steiger of Arizona who led the conservative opposition to land use planning in the House, "if we somehow consolidate this power to deviate or alternate or modify planning and zoning in specific situations, if we concentrate the power, we are going to concentrate the likelihood of the subversion of the intent." See U.S., Congress, House, Committee on Interior and Insular Affairs, Land Use Planning Act of 1973, Hearings before the Subcommittee on Environment on HR 4862 and related bills, 93rd Cong., 1st sess., 1973, p. 297.

[49]Congressional Record, 19 September 1972, 118:31196.

[50]Ibid., p. 31193. Jackson noted that "All of the amendments developed through joint efforts between the Banking and Interior Committees strengthen the role of local governments in the land use decisionmaking encouraged by S632."

[51]See Congressional Quarterly 1972 Almanac (Washington: Congressional Quarterly, Inc., 1973), p. 827.

[52]Congressional Record, 18 September 1972, 118:31091.

[53]Ibid., p. 31079.

[54]Ibid., p. 31091.

[55]Ibid., pp. 31082-31084.

[56]Ibid., p. 31082.

[57]Ibid., p. 31083.

[58]New York Times, 26 June 1972.

[59]Congressional Record, 18 September 1972, 118:31084.

[60]Ibid.

[61]Ibid., p. 31087.

[62]Ibid., pp.31089 f. The compensability of "critical areas" restrictions is a vague realm in the law. In formulating its land use strategy for example, The Pennsylvania Land Policy Project argued that "When close choices are necessary, the policy must be that long term public benefits take priority; the risk of permanent loss or damage is too great to decide otherwise. If such decisions do sufficient damage to private interests, restitution can be made." See The Pennsylvania Land Policy Project, A Land Use Strategy for Pennsylvania (Harrisburg: Pennsylvania Office of State Planning and Development, n.d.), p. 57 (emphasis in original). Also see Natural Resources Defense Council, Land Use Controls in the United States, ed. Elaine Moss (New York: Dial Press, 1977), pp. 5-11; and Task Force on Land Use and Urban Growth, The Use of Land, A Citizen's Policy Guide to Urban Growth ed. William Reilly (New York: Thomas Y. Crowell, 1973), chap. 4.

[63]House, National Land Use Planning, 1971, Hearings, p. 112.

[64]Senate, Land Use Planning and Policy Assistance Act, 1973, Hearings, Part II, p. 261; see also House, National Land Use Planning, 1973, Hearings, testimony of William H. Rodgers, Visiting Professor of Law, Georgetown University Law School, pp. 573-574.

[65]Congressional Record, 18 September 1972, 118:31087.

[66]Ibid., pp. 31088-31089.

[67]Ibid., p. 31089.

[68]House, National Land Use Planning, 1973, Hearings, testimony of William Huddleston, Conservation Foundation, p. 378.

[69]New York Times, 15 February 1973.

[70]The Administration continued to oppose Jackson's retention of extensive data gathering requirements as well as his deletion of sanctions from the bill as reported. For a list of these and other objections see Senate, Land Use Policy and Planning Assistance Act, 1973, Report, pp. 136-140.

[71]It required that developers of housing projects including fifty or more lots and/or units or any others designated by the state "not exceed the capacity" of existing water, energy, or waste disposal systems unless expansion of these systems is planned, approved and financed. Also, criteria were written protecting against soil erosion or construction in dangerous areas such as flood plains or those of high seismicity. Open space and scenic beauty were also provided for in state review. See U.S., Congress, Senate, 93rd Cong., 1st sess., S268, sec. 202(d); 601(k)(1).

[72]Ibid., secs. 305(a); 307.

[73]Ibid., sec. 612(a).

[74]Ibid., sec. 612(h); yet compare sec. 203(d), which specified that "Any method of implementation employed by the State shall include the authority to prevent arbitrary and capricious restriction or prohibition of development of public facilities or utilities of regional development..." (emphasis added).

[75]Congressional Record, 15 June 1973, 119:11273.

[76]Senate, Land Use Policy and Planning Assistance Act, 1973, Report, p. 180.

[77]Ibid., p. 154.

[78]Senate, Land Use Policy and Planning Assistance Act, 1973, Hearings, p. 186.

[79]House, Land Use Planning Act, 1973, Hearings, pp. 228-229.

[80]Senate, Land Use Policy and Planning Assistance Act, 1973, Report, p. 44.

[81]Gross, The Legislative Process, p. 216.

[82]Congressional Record, 20 June 1973, 119:11513. Senator Alan Bible on the other hand, said the bill represented "an outstanding exercise in creative federalism." Ibid.

[83]See Robert Cahn, "Land Use," Christian Science Monitor, 11 July 1973, p. 14. The Muskie amendment passed, with 31 opposing votes. Later, the League of Conservation Voters announced, despite Muskie's promise, that only the Jackson and Nelson amendments would be used in rating Senators on land use, not the Muskie amendment!

[84]Congressional Record, 20 June 1973, 119:11515.

[85]New York Times, 6 June 1973.

[86]Senate, Land Use Policy and Planning Assistance Act, 1973, Report, "Minority Views of Mr. Fannin, Mr. Hansen and Mr. Bartlett," pp. 154-155. For these men the function of land as a marketable commodity was indisputable. "Land utility is transient in nature. Historically, the marketplace has dictated the highest and best use of land. S268 would, however, define the use for large amounts of land and this would render the marketplace ineffective." Zoning's operation suggests that rendering the "marketplace ineffective" is not uniformly bad for property rights.

[87]Task Force on Land Use and Urban Growth, The Use of Land, p. 22.

[88]Ibid.

[89]Ibid., pp. 24-25.

[90]Senate, Land Use Policy and Planning Assistance Act, 1973, Report, pp. 55, 57.

[91]Ibid., p. 156.

[92]Senator Bennett Johnston tried to limit state action by limiting in turn, the grounds upon which its protection of critical environmental areas could be evaluated. The test would be whether it acted in "good faith" with the bill's intentions; "so long as its decisions cannot be held to be arbitrary or capricious, those decisions ought to be allowed to stand." Not even the formal standards prescribed by the administration would be left. In Jackson's words, "the bill becomes entirely discretionary." The amendment failed by a vote of 38-59, but it was a sign of things to come. See Congressional Record, 20 June 1973, 119:11519-11521.

[93]Time, "The New American Land Rush," 1 October 1973, p. 98.

[94]New York Times, 21 June 1973.

[95]New York Times, "New Land Ethic: Its Spread Raises Political and Legal Issues to be Resolved by Public," 4 September 1973, pp. 1,23. Hill concluded the piece by observing:

...substantial Federal coordination of the fifty states' land planning seems necessary and inevitable. But no one of prominence is saying much about this now because it is politically explosive.

Also see "Public Control Growing in a Land Use Revolution," New York Times, 3 September 1973, p. 1.

[96]New York Times, 4 September 1973.

[97]Washington Post, 20 June 1973.

[98]Business Week, 26 August 1972. The issues included a "Special Report" on "The land use battle that business faces", pp. 40-50.

[99]U.S., Congress, Senate, Committee on Interior and Insular Affairs, State Land Use Programs, 93rd Cong., 2d sess., p. 73.

[100]"Public Control Growing in a Land Use Revolution," New York Times, 3 September 1973.

CHAPTER EIGHT

KEEP OUT

The Politics of Time

The capacity to enforce delay is the most frustrating power at the disposal of conservative interests. Nothing embitters reformers more than knowing they are being forced to wait. This makes timing a key element in the legislative process.

The story of land use planning in the House of Representatives is a case study in the manipulation of time as a political resource. In the three years land use legislation moved from introduction through two successful Senate passages, the nearly identical House measure failed to clear even the gates of its home committee. And when finally, after one rejection, it managed to cross the obstacles thrown up by the Rules Committee, conditions in the country had changed so drastically that its former supporters, with a few disheartened exceptions, deserted the battle while its opponents masterfully exploited the new context to stop it.

But time laid a deeper imprint on the politics of land use. Not for a century had the mass of non-land owning citizens participated in the decisions which formed the future of the American land. The long dispute between the federal protectorate of small business opportunity and the rationalizing drive of capital had excluded any but land

owners, expert industrial users, and scientific conservers from engagement in the public control of land use. Nothing in the organization of the modern politics of land planning changed that limited range of interests. When it was needed at a decisive stage in the bill's progress the public's interest was not there. It had been kept out too long and the Jackson-Udall measure was not a very warm invitation to step inside.

Putting The Public House In Order

The House of Representatives rode roughshod over the land use bill in 1974 and 1975, but the seeds of this outcome were planted in the cool reception it received in the House Interior Committee back in 1970. In fact, the House never really provided a congenial setting for land use legislation. From the beginning with the exception of a warm welcome fromMorris Udall and a few other environmentally-minded representatives, it was shoved aside like something in the way of other more pressing concerns.

Wayne Aspinall, chairman of the House Interior Committee when the bill was introduced in 1970, did not share Henry Jackson's sense of urgency that the society's ability to regulate its private lands had deteriorated. Matters on the public domain were for him more acute. As noted in Chapter Five, Aspinall feared the public domain was about to be permanently appropriated by the new breed of conservationists, people who were more interested in preserving

the land than constructing the regulated paths of access favored by traditional conservationists. He agreed with the Public Land Law Review Commission, of which he was a member in good standing, along with other business minded conservationists, that uncritical acceptance of a permanent public domain spawned an untidy excess of federal land reservations. They rejected the principle that "merely because... lands are owned by the Federal government they should remain forever in Federal ownership."[1] A new planning scheme was called for to bring economic rationality back into management and disposal of the public domain after the temporary insanity of the Wilderness Act. To establish that new scheme Aspinall sponsored the Public Land Policy Act of 1971.

Measured against the drive for reevaluation of existing public land policies, the call for comprehensive state planning of private land use did not stand very high in the Chairman's view. It was at best, a subordinate question which should be handled after placing the public house in order, that is, after opening the doors. Exercising his authority as Chairman, Aspinall scheduled separate hearings on the two questions; the first, held in July 1971, were naturally devoted to the public lands. A year later he agreed to tie both bills into a single omnibus package, but by then he was so enveloped by a primary campaign back in Colorado that he found little time to press its case. Since Aspinall's fate and the bills' were blood relatives it is necessary to

examine briefly his shortlived experiment in reform.

The Public Land Policy Act was a long and complex piece of legislation, but to the new conservationists its direction was simple and clear: to facilitate more intensive economic use of the public domain at the price of existing environmental protections and the authority to maintain them. The keys to the bill were calls for a wholesale reexamination of the entire public land classification system, including the Wilderness areas, National Parks and Wildlife Refuges, and a shift to Congress of the power to authorize withdrawals. These initiatives were closely linked as the Committee Report made clear:

> Any comprehensive land use planning effort requires that (existing) withdrawals be reexamined, rejustified if continued need is shown...and cancelled or revoked if the need no longer exists or can be better served through the classification process. 2 (parenthesis added)

In effect, this meant suspending existing commitments to all the preserved lands of the public domain. Even Business Week admitted that the bill "drastically revises existing laws governing the public land." But this was the sort of radicalism to which corporations remained unopposed, for as the magazine hastened to add, "Business tends to support the bill."[3]

Environmentalists were less pleased. The Sierra Club labeled it "a horror," while The Friends of the Earth shouted about "Aspinall's most arrogant bid for power."[4] In this fight, nature had the Nixon administration on its

side, at least temporarily. Congressional influence over withdrawal policy was inconsistent with the President's desire to concentrate all federal authority over natural resources in his proposed Department of Natural Resources. Piqued by Aspinall's jab at Interior for making too many withdrawals, Secretary Rogers Morton replied that the initiative was a "setback in the long efforts of Congress and the executive branch to protect natural resource values."[5] In its place the Department proposed a more limited policy outlining authority for the Bureau of Land Management, an agency whose shaky statutory base rested on hundreds of antiquated and inconsistent laws, some dating back to before the Civil War. The remainder of the public domain would continue under existing classification rules, as would the Secretary's power to make withdrawals. By following the administration's suggested narrowing and separation of the public lands question from the issue of land regulation in the States the Senate was spared the battle over access to federal wealth which Aspinall insisted upon resolving first. In the latter's view no doors on State land would be closed until the federal ones were open. The Jackson bill became a hostage to easy entry of the public domain. As the Senate edged toward consideration of the land use bill in the Spring of 1972 the New York Times urged that it should not be ransomed from the House Interior Committee. "Good land use legislation" was not worth "the price of freedom to give away Federal lands with an abandon undreamed of in decades."[6]

Recognizing they might have an easier time convincing his constituents back in Colorado rather than the Chairman himself, environmentalists hounded Aspinall throughout his fall primary campaign, one made especially burdensome by the reapportionment of Boulder, site of the University of Colorado, into his district. The Congressman's new electorate did not appreciate his return, especially after the leading conservation organizations ranked him first among Washington's "Dirty Dozen." At the end of September, with his bill held up in the Rules Committee, a lame duck Wayne Aspinall admitted to the Wall Street Journal, "Those outsiders" were "partly responsible for my defeat. They spent a lot of their time and a lot of their money trying to get me."[7] He had little incentive now to pressure land use legislation out of Rules. Besides, most Congressmen were eager to go home for the November campaign; they still had a fair chance of returning after all. But another factor was working against the bill too. As in the Senate, the House Public Works Committee was jealous of the Administration's propsed reduction in funding for airports, highways and conservation as a penalty on non-compliant states. Its demand to review the legislation before clearance by the Rules Committee helped to stall action until Aspinall was too preoccupied with his own political survival to push for its release.[8] The New York Times nevertheless, remained hopeful, noting that "the groundwork has been laid for... enactment next year."[9] But this optimism rested on the

the invariably flimsy assumption that all things would remain equal, things like another passage of the Jackson bill by the Senate, continued support of the President after his landslide victory, increasing influence for the environmental movement, and the absence of organized opposition to the principle of a national land use policy. Only the first assumption actually held. With a quadrupling of oil prices and the country's entrance into the new quagmire of Watergate political conditions were dramatically unsettled. Each of the remaining assumptions was transformed into its opposite. As the times changed the impact of delay multiplied.

Bad Tidings

At first the bad winds swirling around the White House seemed to bear no relation to the progress of land use legislation. In the Spring of 1973 Morris Udall took hold of the land use issue by immediately defusing the row over disposal of the public lands. He incorporated into the framework of the Senate's bill a separate title mandating all public land agencies to inventory and plan for the use of the areas under their jurisdiction, while clearly stating that existing reserves such as the national parks and forests "are vital national assets...dedicated to the benefit of both present and future generations."[10] With the public lands issue tucked away he led the Environment Subcommittee into detailed hearings on state land regulation, once again thrashing over questions of criteria, sanctions,

federalism and property rights. The Presidential misery went unmentioned. Why should it be, what did it have to do with land use planning? There was no substantive connection of course, but by the end of April, several weeks after Udall's hearings were completed, a political tie began to reveal itself. John Ehrlichman, described by one Congressman as "the big advocate of land use planning in the White House" was forced to resign.[11]

It was not so much that Ehrlichman, the expert land use lawyer from Seattle, played a direct role in the concept's formulation or even that he lobbied for land use planning in Congress. There is no evidence of his having done either. Rather his significance lay in boosting the issue near the top of the President's domestic policy agenda, and keeping it there, insisting forcefully that the White House should stay behind reform.[12] While men like Russell Train, Rogers Morton, and Morton's assistant in the Office of Land Use and Water Planning, Lance Marston, helped formulate land policy and shepherd it through Congress, Ehrlichman persuaded the President to bolster their efforts with strongly worded statements defining the situation in land management as a crisis requiring immediate action. With his departure no one was left in the White House with a personal stake in the issue. Survival, not governance, became the central problem confronting the executive staff. The President's support for land use planning was no longer predictable.

Skyrocketing oil prices in the fall of 1973 did little to enhance the prospects for land use legislation. Booming inflation accompanied by deadening stagnation jacknifed the economy, leading Congressmen, particularly those indebted to unions, to become circumspect about policies which seemed to threaten jobs. Energy shortages and stagflation confused the previously clear need for environmental protection. Any land use bill coming to the floor of Congress in the period after October, 1973 would be examined from a standpoint substantially different from that which revealed its necessity in the late 1960s. In those days land use policy was viewed as a means of rationalizing the conditions of boom; it was a tool for straightening out the burgeoning tides of urban growth, a means for easing the way toward environmentally sound large-scale development. In November, 1973 only months after this earlier perspective had begun to be realized through passage of the Jackson bill, the question was no longer how to control growth, but how to ignite it. Businessmen were warned by other businessmen about "The end of the cowboy economy."[13] In the face of exploding energy costs the major capitalist nations feared collapse in the financial system which greased their postwar expansions.[14] Doubts were expressed not about whether America should use the land in traditional ways, but whether sufficient capital would be available so that it could be used at all!

As Bertram Gross argued, "The history of American

legislation reveals cyclical trends as sharp as the rise and fall in the level of business activity and employment."[15] Land use regulation was beginning to run against the cycle. Still, great waves of change are salient in everyday politics only to the degree they are identified and grasped as chances for new action, or as signposts of caution in the face of more hostile conditions. Machiavelli said it best when he observed that "it is probably true that fortune is the arbiter of half the things we do, leaving the other half or so to be controlled by ourselves...(T)he one who adapts his policy to the times prospers."[16] Thus a few weeks after Senate passage of the land use bill an able young lobbyist for the U.S. Chamber of Commerce sensed a change in the floodtide of social and legislative interest as well as a fatal weakening of executive power. Seeing new possibilities for managing, controlling and even ending the politics of land use, he began to adapt "his policy to the times." Like many other business representatives Dan Denning had argued before Udall's subcommittee that while the principle of land use planning was enviable, the proposed bill lacked adequate mechanisms to assure "balanced decision-making" or to protect property owners from new theories of their public responsibility.[17] He was unimpressed by the opinion that planning would rationalize controls or further opportunities for developers. Speaking less for major national corporations than for middle-sized manufacturers, real estate men, and small property owners, Denning was

aware that the existing political economy of land use control already functioned rationally from the standpoint of local business opportunity. It did not need changing. As one local builder candidly explains,

> Of course, ideally, we oppose any additional government regulations relative to land use. We feel it is imperative to keep regulations at the lowest possible level - so we can maximize our access to the controls. 18

Yet despite the interest of small business in maintaining local political power over land, its representatives had not yet acted effectively to resist potential change. The voice of local capital was barely heard in the weeks of hearings on land use policy. The heirs of the nineteenth century petty producers and speculators who were so effective in dismantling mercantile controls were mysteriously silent on this latest venture in central land planning. Indeed, the Chamber of Commerce itself did little to oppose Jackson in the Senate because in Denning's words:

> The Senate was a no-win situation....What we tried to do was get the bill amended. But as far as outright defeat, there was not enough awareness in the country or in the Senate at that point to oppose it. 19

He recognized that while land use planning was the subject of thousands of pages of Congressional testimony and volumes of technical papers, there was, in fact, little knowledge of the proposal around the country or even in the House itself.[20] The combined market of the journals which gave attention to the issue, while influential in Washington, hardly encompassed the class of small propertied individuals

who, if appropriately informed, might radically change the scope and intensity of land use conflict.[21] Thus in November, 1973, as Udall readied HR 10294 for presentation to the full Interior Committee, Denning began to stimulate a more general "awareness" of land use planning. He began by meeting with a few House conservatives who strongly opposed the Udall bill, including Steve Symmes of Idaho, William Ketchum of California and most important, Udall's fellow Arizonan, Sam Steiger. They agreed that in the new political context, buttressed by the normally more conservative stance of the House, land use legislation could be stopped. Unlike the Senate conservatives who struggled to moderate the bill, Denning and his House allies realized the chance was at hand to achieve the perfect conservative solution - no change whatsoever. This point is essential to understanding the outcome of land use politics in the House. The anti-land use forces planned their strategy around the goal of killing, not modifying the Udall bill. They took the issue to property owners less in hope of inviting more discussion than with the desire to eliminate it, to enlighten those who stood to lose the most from change that change was on the way.

The first step in this effort was the organization of existing private opposition. Senate conservatives failed to make a deep impact on the land use bill because they took their outnumbered position as a given instead of a starting point. They neglected to go outside the Senate to elicit support from groups which could be expected to

reinforce and strengthen their hand. Instead of viewing the absence of opposition as a vacuum which could, with organization, be filled, they saw it as a sign of the inevitable coming of planning. Taking advantage of improved conditions, House conservatives moved from precisely the opposite assumption. Understanding that the wellsprings of an excitable and powerful opposition remained to be tapped, that every political situation represents a dynamic, not a static configuration of forces, that peoples' minds can be aroused and changed, they began immediately to collect, concentrate and organize the groups which could reasonably be expected to suffer from change in land use controls. A coalition was formed of diverse trade and business groups called the Coordinating Committee on Land Use Control. It included, in addition to the Chamber of Commerce itself, the American Land Development Association, the National Crushed Stone Association, the National Sand and Gravel Association, the Associated General Contractors of America, the National Association of Home Builders, the American Mining Congress, the National Forest Products Association, the National Association of Electric Companies, the American National Cattlemen's Association and the American Farm Bureau.[22] Most of these groups had testified, as had Denning, that the bill should be balanced more evenly in favor of development.[23] However, not all were committed to stopping it. Some, the Homebuilders for example, were willing to bargain with Udall, to trade their support for

his commitment to incorporate their needs into the list of values State planners would be required to "consider" in their "methods."[24] Denning wisely attracted these moderate groups, convincing them of the need to bargain from strength thus adding their influence to the other forces already arrayed in the battle to avoid compromise. By early 1974, when the Udall measure was under consideration by the full Interior Committee, most of the potential opposition had been convinced by Denning that the legislation could and must be stopped. One lobbyist who still refused to oppose the bill recalls that Denning told him he was "naive....He told me we would just be sold out in conference."[25]

The point of all this organization of course, was to do to land use policy what the environmentalists had done to Aspinall and in much the same way - by focusing propaganda and the influence of important local imterest groups on the constituents of Watergate-conscious legislators anxious for reelection. Denning recounts that he,

> ...stayed on the phone a hell of a lot making sure they did things. If I heard of somebody in San Antonio or Shreveport that had an interest in this, I made sure they were energized. People need to be told what to do sometimes. You have just got to point a direction. They did their jobs. 26

Indeed they did. Congressmen were inundated with letters and wires protesting the coming federal invasion of private property. Samples include the following:

> This bill is unconstitutional and a threat to freedom and invidual liberty. It is not a bill to be passed in a free country.

> We look upon federal involvement in the management of our private lands as a serious infringement on constitutional rights. We feel that, in general, agricultural lands are being properly managed by those who own them. It is an economic fact that we must practice proper management and conservation to survive in our business. 27

Other citizens were more desperate. One for example, was outraged by the possibility that HR 10294

> ...could give...known thieves and criminals and specifically rustlers legal right to camp all summer in a pasture with an abundant supply of (my) choice beef. 28

Still others worried that the government was going "to take their house and garden away", while some feared the rise of "Big Brotherism."[29]

The Chamber was also effective in winning local media attention for its drive against land use. In Vermont, for example, where an anti-land use planning movement was already well organized in response to the State land use law passed in 1972, a warning appeared in the January 1974 issue of the Vermont Watchman. Echoing the Chamber's argument that the Udall bill would lead to direct federal regulation of private land, it predicted

> If Congress should adopt such a bill, it may well be seen years from now as perhaps the one most significant action of the century in destroying the institution of private property...This bill will, in the passage of a few short years, vest control over virtually all land use decisions in the Federal government. A more direct way of centralizing power in Washington can scarcely be imagined. 30

It should be pointed out that the bill which occasioned this outpouring of alarm not only included the modifications attached to weaken the Jackson bill in 1972 and 1973 but

new ones as well. For example, the provision requiring the state to protect "areas of critical environmental concern to the nation" was changed into an obligation merely to take such areas into "consideration" in the planning process.[31] Moreover, a new provision was added to guarantee that nothing in the bill's "means of implementation" should be "deemed to permit a Federal agency to intercede in management decisions within the framework of a comprehensive land use planning process..."[32] The hidden legislative doors through which a power hungry Interior Secretary might leap were being shut one by one. Consequently, in the face of the rising mail barrage Udall's main problem was to maintain the bill's capacity to protect the land while minimizing the loss of business support by offering ever more statutory insurance that state regulation would not stop local development. It became essential to produce a measure that, in the words of a Udall staff aide, could be "objectively viewed as a balanced bill."[33] For example, to enlist the support of the National Association of Realtors and the National Association of Homebuilders, Udall added another "finding" to the bill stating that

> ...existing State and local land use planning programs and decisions often have reduced the amount of land available for housing, have limited the construction of housing, and have reduced supply and competition in the housing market, and that land use policy should encourage greater supply and competition in the housing market to lower the cost of shelter for people of all income levels. 34

More important, the Committee was led to weaken further the states' obligation to control critical environmental

areas and those impacted by key facilities. Where Udall's original draft followed the Senate bill in specifying that states must have the authority "to prohibit" the use of land when necessary, the full committee merely required the state "to regulate" its use. Moreover, where Udall would have required states to "regulate subdivisions and land development", the Committee asked only that states "consider" their "environmental, economic and social impact" in terms of various criteria, including consistency with the state program itself.[35] Finally, the full Committee forbid the use of sanctions against states not participating in the program, arguing in its Report to the House that

> Since these provisions of the bill crossed over into programs other than those over which this Committee had primary jurisdiction, it appeared that either the bill would have to clear other Committees...or face delay before the principle of sanctions - and perhaps the bill itself - could come before the House. 36

These revisions were reflected symbolically as well. The shift toward a more explicit development focus was evident in the "findings" and "Declaration of Policy." For example, the very first "finding" placed "enhancement of the environment" last among the social demands which justified planning, beneath the needs "to promote the general welfare", "to secure a wise and balanced allocation of resources" (and) "to advance social and economic wellbeing." Similarly, the "Declaration of Policy" would have officially transcended the conflict between man and nature by ordering society to "create and maintain

conditions under which man and nature can exist in productive harmony."[37] Finally, under "Elements of the Planning Process" planning was now explicitly defined in economically rational terms, as a process,

> ...in which all land and other natural resources within the states and the cost and benefits of their use and conservation are taken into account.[38] (emphasis added)

But nowhere was the added economic thrust of the House bill more obvious than with respect to energy. Not only did it quite reasonably require states to consider, as part of the general planning process, the need "for adequate primary and secondary energy sources," but also, under the mandate to develop "explicit substantive state policies" for guiding land use in "areas of critical environmental concern" it required for the first time that "the production, conversion, transportation, use and storage of energy and energy resources" must be considered. Even the most fragile environments were not to be barred a priori from energy development.[39] As the Committee Report said,

> ...every effort was made to take a balanced approach to the concept of land use planning and to recognize that we are considering the use of land for various purposes that must be achieved, and are not proposing a no-growth policy....There (was) no effort to hasten the reporting out of a bill until every objective could be heard, debated and ruled upon.[40] (emphasis in original; parenthesis added)

Incredibly, the Minority Report continued to assail the bill as "lopsided in its concern for the physical environment while almost ignoring the needs of our citizens for economic development, for meeting our energy demands, for

feeding our people, and for housing."[41]

At least temporarily the effort to compromise attracted more support than the opposition's unvarying criticism. On January 20, 1974, the House Interior Committee voted 26-11 to report the Land Use Planning Act to the consideration of the House of Representatives. All the "nays" with the exception of three (Abrahan Kazen, Jr., of Texas, John Melcher of Montana, and Harold L. Runnells of New Mexico) were Republican. But since eleven other Republicans voted for HR 10294 it is fair to say the bill went to the Rules Committee with bipartisan support. Still it was not permitted the privilege of consideration by the House. On February 26, the Rules Committee, after exposure to the sort of mail with which the Interior Committee was now accustomed, voted 9-4 to delay action indefinitely. According to Congressional Quarterly, most members who voted against the bill "grumbled that environmentalists had delayed construction of the Trans-Alaskan pipelines, refineries, power plants and reclamation projects...(while) Sam Steiger told them HR 10294 would give environmentalists even more ground for litigation."[42] (parenthesis added).

More important to the outcome however, was the unexpected equivocation of the President. Although Morris Udall told the Committee that President Nixon continued to favor the bill, Congressman Steiger, backed by House Minority Leader John Rhodes, insisted that in a meeting the night before, they convinced the President to switch his support to

a substantially weaker version of the bill offered by Steiger which would fund state planning without even the minimal guidelines of the Udall bill. Rhodes did add though, that if Steiger's substitute failed, the President "would not be opposed to the Committee bill on final passage."[43]

The omission of land use planning specifically, and environmental matters in general, from the President's State of the Union message reinforces the impression that Nixon's support for the bill was slipping.[44] Ehrlichman's memory was not held with great affection. No less sympathetic to a man when he is floundering, Morris Udall accused the President of "double-dealing" by exchanging his position on land use for a handful of potential anti-impeachment votes. The Sierra Club concurred, insisting that "the flip-flop by the White House was motivated entirely to influence impeachment votes."[45] So did the New York Times, arguing in an editorial bluntly headlined "Land Use Bill Knifed", that

> Not for years has the House Rules Committee done anything as highhanded as its sudden and completely unexpected knifing (of the land use planning bill)...(t)here is all too much reason to blame President Nixon for taking a major hand in this severe setback (to a bill) of immense national importance. 46 (parenthesis added)

Dan Denning rejects this view, believing that the President was simply impressed by the logic of Steiger's argument.[47] While there is no way to confirm either position short of knowing the President's mind "at that point in time", it does seem odd that after four years of support for a piece of legislation drafted by his own administration,

twice seeing it through extended debate on the floor of the Senate, the President should so abruptly be persuaded that it no longer merits his approval.

Udall refused to accept defeat. He won a tacit agreement from the Rules Committee that its decision would be reversed if he held additional hearings on the bill to give its opponents more opportunity to state their case. Hence for three days in late April the Subcommittee on Environment opened its doors to a new parade of witnesses. There were representatives of southwestern loggers and cattlemen, farm organizations, rural property interests, construction unions, developers and the Liberty Lobby, practically all opposed in principle to land use planning legislation.[48] L.L. "Moon" Mullins, for example, a Mississippi tree farmer, urged the Committee to understand that where he came from "The most effective land use planning is an agreement worked out by neighbors."[49] They still read Herbert Hoover in Mississippi. And Robert Osborn, a Virginia timberman, argued that the bill's drafters forgot that "People who own timberland and farmland have no contact with zoning (hence) it would be difficult to have them accept (it) without getting their viewpoints on this matter."[50] (parenthesis added) He urged more hearings. One witness, a member of the Oklahoma Conservation Commission, though sympathetic to the bill's sponors and their goals, suggested a basic failure to grasp the continued prevalence of frontier attitudes in America. He told Udall this story

to make his point,

> I was in your state, Mr. Udall, about a year and a half ago...and that is where I first found out that Goodyear Farm was going into a housing development. I had been on this farm many years ago several times, and knew what a great piece of agricultural land it was. So I asked my friend Deswood...I said, what are you going to do, carving up all this good land? He said, ah hell, when we need it for food, we will take a bulldozer and scrape it off, and put it back into production. 51

That he concluded, "is kind of the way we operate in this country." Udall reassured such critics however, that his bill would, by itself, do nothing to change such practices. In his words, "if a community wants to choose sprawl constitutionally and openly after having public hearings and involving the citizens and local government they can damn well choose sprawl under this."[52]

Several weeks later, on May 15, under pressure from the House leadership, with Udall's promise to hold hearings fulfilled, and with Congresman Spark Matsunaga flown in from Hawaii just to guarantee what he called the "deciding ballot," the Rules Committee reversed itself with an 8-7 vote to bring the Land Use Planning Act to the floor.[53] The Committee also voted to allow amendments, including the Steiger substitute. But by this time the President's endorsement of the latter was official. Immediately before the vote, John Ehrlichman's replacement as top domestic advisor, Kenneth Cole, distributed a letter to the members stating that Steiger's bill "maximizes state and local responsibilities and minimizes the role of the federal government."[54]

By the first week in June, even Rogers Morton was officially lined up against Udall, although this did not prevent Lance Marston, Morton's subordinate in the Office of Land Use and Water Planning, from lobbying for the bill right down to the final House vote.[55] But with the President's position no longer at issue (although his tenure increasingly so) the only serious question remained whether the anti-land use forces could be induced to accept the Steiger substitute. It is doubtful though whether even Steiger could have been persuaded to accept it at this point. As one business lobbyist told Congressional Quarterly,

> Steiger didn't want any bill at all but he was afraid he would look bad if he showed up on the floor without a bill. 56

Nor were the witnesses who came before Udall's subcommittee in the mood for compromise. As one cattleman stated: "We do not want any interference."[57] In fact, by May, some groups whose lobbyists had agreed to negotiate with Udall were up in arms against the bill and their own national staffs. For example, during its convention the National Association of Home Builders was told by its new President, despite the staff's commitment to Udall, "to act fast to stop it." As Denning points out, "Sometimes your lobbying staff and your constituency run into each other."[58]

Not all business support evaporated though. Udall managed to convince some development interests that the bill would really facilitate growth by streamlining and rationalizing the regulatory process. By adding amendments

and clarifying language he was able to keep the backing of the National Mortgage Bankers Association, The League of New Community Developers and other groups representing parking lot owners and industrial parks operators. According to Udall,

> In many cases it depended on who was president (of a trade association) in a given year.... With the realtors, it depended on some enlightened national leadership. The Reatlors made some attempt to inform their membership as to what was in the bill. 59

In general though, business was no longer championing planning. Seemingly, the organized political power of small and medium size business was resisting successfully the secular trend toward enlarging the administrative scope of the political system to accommodate the requirements of large-scale capital. But the success of this opposition was itself buttressed by changes in the economic activity of large corporations. It is important to remember that the formulation of the land use issue was accompanied, indeed prefaced, by the entry of big capital into the development business. Large-scale developers wanted a means of breaking the opposition to growth inherent in the fragmented land use control system. But between 1970 and 1974, the years when land use planning's fate was being determined by Congress, major corporations lost millions in real estate ventures and were struggling to get out. This process was coming to a head in the spring of 1974, even as small business was clawing land use policy to death. During February and April of 1974 for example, Business

Week told its readers the sad tales of "Corporate giants that soured on real estate" and "New lows for the once mighty REITs". The themes of the pieces were identical: major corporations and banks which had entered the land business with bundles of surplus capital and high hopes of infusing into real estate the same management and control procedures which worked so marvelously in their other lines of investment, were mangled by "the highly speculative nature of real estate." In 1973 for example, Alcoa lost $7.4 million, American Cyanamid $5.5 million, ITT $14 million, and Bethlehem Steel $15.7 million on real estate and development activities. Similarly, in early 1974 the magazine cautioned investors against placing funds in Real Estate Investment Trusts because "An increasing amount of REIT construction and mortgage loans - $400 million worth (were) in default proceedings."[61] Like the big corporate builders, banks were caught in the credit crunch of 1969-1970 that both engendered and magnified all the other financial and technical problems of large scale development. The identical process of course, hit the builders of federally subsidized New Towns. By the last year of the Ford Administration, the Secretary of Urban Development was forced to request $18.9 million from Congress to make the interest payments builders could not meet.[62] Thus in 1975 an executive of CNA Financial Corporation, one of the conglomerates eager to rationalize homebuilding on a large scale announced that "We have come to the conclusion that

homebuilding is really a local business.[63]

One expert, recalling Veblen's "masterless man," ascribed the failure to a basic incompatibility between the risk-oriented psychology of the land business and the skeptical corporate mind. "Most homebuilders", he said, "are simply not the kind of characters who want to work for a corporation."[64] A stagnant economy, the Nixon administration's decision to eliminate low and middle income housing subsidies, more rigorous accounting rules and bad judgement also played substantial roles in the scattering of big business from land operations.[65] Moreover, under the gun of the "energy crisis", the utilities and oil companies which previously supported land use legislation began to lose interest when they sensed the possibilities improving for a separate plant-siting bill likely to be tailored more closely to their needs.[66]

The ability of the Chamber of Commerce to ignite the opposition of local capital to national land use legislation must be placed in the larger context of a reversion of the real estate business to its traditional form and its abandonment by precisely the centralizing capitalist forces which saw the need for large-scale planning in the first place. When the configuration of economic powers and interests which originally promoted land use planning disintegrated Udall was cut off from its most powerful base of support. He was left holding the legislative bag accompanied by environmentalists, planners, the League of

Women Voters, a handful of developers and the extremely tenuous backing of local government groups anxious for ratification of their power to exclude. The big corporate exit from real estate became a crucial material change in the politics of land use. Not only the level, but the peculiar form and character of business activity in the larger political economy was imprinted on the legislative process.

In all these ways the battle for land use planning emerged and developed within the larger structure of the political economy as a whole. Thus in addition to the play of personal conviction and luck, the progress of the land use bill both responded to and reflected long term changes in capitalism such as the increasing scale of development, short term cyclical changes in business activity expressive of capitalism's inherent instability, and of course, the dynamics of pressure group politics.[67]

One of the most perplexing illustrations of the latter is the curious failure of environmental groups to act more strenuously in support of planning. Perhaps they felt let down by the many "compromises" Udall was led to make with economic groups. Nevertheless, in the weeks before the Rules Committee reversed itself, they were criticized by some of their best friends for paying insufficient attention to the politics of persuasion. The New York Times, in one of three editorials published within a month after the Rules Committee vote, complained angrily of the "hysterical...exaggerated...and downright vicious...

drumfire of propaganda and imspired correspondence" launched against the bill, but noted also that "far too little of it was offset by word from the bill's supporters among the electorate, who appeared to take its passage for granted." The editorial concluded with a homily:

> Those who are skeptical about the platitudinous injunction to write their Congressmen have in the case of the land use bill a perfect illustration of what happens when one side does and the other does not. 68

A few weeks later, appearing in Denver before the National Wildlife Federation, Morris Udall assailed the conservation movement for acting only "to halt outrages" instead of participating consistently in the less titanic process of legislative persuasion: "There is one compelling fact that the conservation movement had better come to terms with: In this democracy the key to political success is organization..."[69]

Yet, even had the environmentalists exhibited more skill in the legislative process, it is doubtful whether the fading chances for a national land use policy would have brightened much by the spring of 1974. As desperate as Udall was for compromise and the give and take which is presumed to be the moral heart of politics in a democratic society, the fact is, his opponents did not want to bargain. Thus even as he called for a "floor fight" on HR 10294, Udall was unable to control the terms on which it would be held. Denning, Steiger and company had raised the land use debate into the hazy, non-rational

sphere of symbolic politics where the technical lnaguage of bargaining is useless. As Murray Edelman writes "The bargainer" unlike the purveyor of symbols "offers a deal, not an appeal." For him "A public reaction is to be avoided, not sought."[70] Yet the organized opposition to land use planning had worked almost exclusively in the realm of mass appeals, as well they should have since they possessed a near monopoly of potent symbols.

In the field of symbolic politics the proponents of land use were bound to lose, since it was one of those issues which in Gross' words, "almost defy application of a simple symbol to them."[71] The ooncept of land use planning could not be reduced to an image with emotional pull. Feelings would not be stirred by a plea for rational decisionmaking. Of course, its advocates could have identified the bill with the symbol of the "virgin land" but this tactic would have backfired since it would have associated the legislation exclusively with environmental and "no-growth" policies, alienating large as well as small business. Alternatively, by seeking to play up the tie between land and local autonomy, its sponsors would have ventured dangerously close to deception (a practice of which their opponents were not shy), or to angering the social forces driving toward large scale growth. There really was no popular banner behind which the proponents of land use planning could rally the emotions of the citizenry.

By defining the solution to the land question in terms of government reorganization they insured the absence of widespread interest in reform. The population of non-land owning citizens would not be aroused to defend their direct and intimate stake in the future of the landscape by a proposal for a new bureaucratic apparatus. Thus Henry Jackson's original and quite reasonable decision to work within the established boundaries of land use conflict precluded the incorporation of the general public within the land debate. Precisely to the degree it was defined as a matter for experts in protecting, selling, and paving the land the average citizen could not be excited about its outcome. Even if the bill passed after all, most of the landscape would stay in the private domain, guarded by the familiar injunction: "keep out", just as the structure of land politics since the mid-nineteenth century protected the social reality behind that sign. The definition of the question was itself the most powerful force working to keep the public out of the politics of land use. With little sensibility that the use of the community's space is a matter of genuinely common interest, the non-land owning citizenry refrained from participation. Hence there was no public force to balance the loss of corporate interest in prying open the municipal gates to land. The ghostly irony was that behind the surrogate corporate representation of diffuse public interests there was no public to speak for itself!

The traditional framework was saved by its historic success in keeping the public out.

In a battle of symbols, conservatives typically command the arsenal of prevailing cultural and social images to serve in their behalf. As long as the land use debate was restricted to the relatively reasonable forums of the Senate, the American Law Institute, a handful of elite journals, and the forces of conservation and big business, it could be justified with the strength of the dominant business logic of efficiency. However, once the Chamber of Commerce exported the issue to the hinterland of America's "country towns," to the numerous domains of vested small property where the desire for a quick dollar dictates when one should "take a bulldozer and scrape it off", the likelihood of rational debate, of give and take, bargaining and negotiation vanished. Udall admitted as much when he said "You know, I have never seen a piece of legislation where there has been so much fear; people are just frightened about it."[72]

Despite the organized magnification of fear, the Congressman from Arizona struggled to persuade his colleagues and anxious private interest groups that HR 10294 would not bring the federal bureaucracy crashing down on every landowning head in America. On June 11, 1974, the House prepared itself to vote on whether to accept the Rules Committee's recommendation favoring debate of the National Land Use Planning Act. Prior to its meeting Udall circulated

a message to all members asking them to see through what he called "the flood of misrepresentation on the Land Use Bill." He declared his intention to offer a series of amendments designed to "remove any possible interpretation that the Secretary of Interior or any other federal agency will have any authority over state and local land use decisions" or that the bill "will lead to any infringement of property rights."[73] Udall did not exaggerate his will to compromise. Among the new amendments were proposals restricting the Secretary of Interior from disapproving any state decision as a condition of eligibility under the Act; giving the states flexibility to weigh, according to their own desires, the considerations taken into account in planning for critical environmental areas; elimination of all mention of the Interior Secretary's authority to review state action toward areas of more than statewide significance; altering the definition of areas of critical environmental concern to allow states maximum flexibility in determining which areas will be so designated; assuring that nothing in the Act should be construed "to require or encourage States to interfere in...local decisions". These amendments, Udall concluded optimistically, will "answer any remaining concerns about this legislation."[74]

But the process had reached a point where amendments, clarification, negotiation, all of the run-of-the-mill techniques of the legislative process, were irrelevant. The situation had gotten so completely out of control that

when debate started Udall was assaulted with charges that the effort to add amendments at this late stage only reflected an earlier absence of careful bill drafting and a last minute stab at writing the "bill on the House floor today"![75] The democratic willingness to compromise was now reduced to a failure to think. Other Congressmen referred to the "fundamental constitutional wrongness" of the bill, its tendency to encourage "agrarian reform," and to the "collectivist theory" it embodied "that all land belongs to the common heritage of mandkind."[76] One Congressman insisted, despite the fact they had been removed in January, that sanctions were still included in the bill! There is no reason, Congressman Thone continued "why a Federal bureaucracy should have virtually 100% control over a matter that should be handled by a local zoning board."[77] Randall of Missouri added that "This legislation is so objectionable that it simply should not be debated."[78] Finally, when it was suggested that, in substance, Steiger's substitute, "contains the same essential idea" he replied sardonically, "I am willing to sacrifice that magnificent piece of legislation in the interest of time."[79] The argument had reached such a level of absurdity that it was no longer necessary to deny sham: "a vote against the Rule is responsible" said Steiger, "and besides that, it will let us go home early."[80]

Still, the final vote was tantalizingly close given the temper of the debate and the propaganda campaign which

preceded it; nevertheless, the House of Representatives chose by a margin of 211 to 204 not to debate land use policy in 1974. The substance of the matter was never considered. It was a classic demonstration of the central conservative argument against the bill: procedural decisions are invariably substantive decisions and procedural requirements are means of substantive power. The theory was no easier to refute than the final tally. Congressman Steiger pronounced the bill "dead." Its advocates were quite naturally, angry and disheartened. House Majority Leader "Tip" O'Neill insisted that "The Administration pulled the rug out from under the bill"and Udall damned "the shabby hypocrisy of the White House."[81] Less prone to let the House off the hook, Charles Clusen of the Sierra Club arguned that "once again the House had knuckled under the pressure of special economic 'interests' adding that its action "will mortgage America's future to haphazard and chaotic land development."[82]

Morris Udall however, remained convinced that the pressure tactics of the Chamber of Commerce would have fallen short had the House acted more speedily or the President stuck to his original commitment. In a news release issued the day after the House voted he lamented that,

> One of the great tragedies of yesterday's vote was that had it been taken a year, or even six years ago, it would have passed the House with ease....But then along came Watergate. 83

The Presidential crisis, he continued, affected the outcome of land use politics in three ways. First, it

explained Nixon's need to cultivate conservative support in anticipation of what appeared to be an almost certain impeachment vote. This "collapse" said Udall, "was the key signal to the selfish economic interests who opposed the bill, but had assumed it would pass, to unleash a campaign against the masure which ultimately resulted in its defeat."[84] While the President's change of mind was important, it must be remembered that Denning began organizing to stop the bill back in the fall of 1973, at least 2 months before Steiger and Rhodes went to the White House. They guessed than that the floodtide of legislation was running against environmentalism. Nixon's switch was part of the floodtide not its cause.

Udall also argued that "by consuming the news copy and deflecting attention" from the bill's progress, the press was hindered from covering adequately the Chamber's "campaign of lies and distortions," which he insisted, "could not have washed had the press given the bill more attention."[85] While this argument probably also held some truth, it should be remembered that the establishment press was not, in supporting the bill, averse to "distortions" of its own which in some ways paralleled remarkably those of the opposition. Furthermore, by late 1973, the legislation had been given a lot of play in several major journals of liberal and centrist opinion. And even after the first Rules Committee vote, faithful readers of the New York Times and Washington Post could have kept abreast

of the propaganda campaign waged against planning. Certainly environmentalists were aware of it and could have reached their membership through monthly newsletters and bulletins.

Udall's final arguement was perhaps most accurate:

> Finally because of Watergate and the cynicism in the land about the political process, incumbents are feeling less than secure this year, and insecure incumbents are more likely to pay attention to an intensive mail campaign from a small minority.[86]

Watergate distorted American politics by heightening public sensibility to the dangers of government power. This was a necessary alert to a real threat but it did have the effect of leavening fear of all government acts.

With scandal hanging miserably over the capital city and the citizenry uniformly suspicious, it was indeed a ripe moment to shout about dangerous expansions of federal power. Who could trust the wisdom of a complex experiment in federalism when the President himself found it incumbent to proclaim that "I am not a crook"? In this respect, Watergate amplified the normally cynical political outlook of the American people, helping conservatives exploit popular fear of government control to suit their own purposes. As a member of Udall's staff pointed out, despite four years of analysis by the Interior Committee most legislators knew practically nothing about land use planning leaving them extremely vulnerable to highly organized scare tactics.[87]

Given the disadvantages of the setting within which it was considered HR 10294 came rather close to pulling off

a major upset! It only lost by seven votes. Udall did amazingly well in holding his tenuous line of political allies together. Thus the "no" votes came largely from Republicans, and rural members regardless of party. According to Congressional Quarterly "A conservative coalition blocked the bill: 136 Republicans joined 54 Southern Democrats and 21 Northern Democrats, 20 of whom represented rural areas." One hundred fifty-eight Democrats allied with 46 Republicans in its favor. Ironically, in view of the original anti-suburban impetus of land use planning, 28 of the 46 Republicans voting for the rule came from predominantly suburban districts.[88] This is probably a testament to the legislative skill of James Martin, a conservative Republican from North Carolina and Udall's liaison with the local government lobby. Martin persuaded Udall to accept extra amendments protecting the local role in land use planning, thus maintaining their support in the face of charges that the bill would lead to federal zoning.[89] Hence when the end came, one of the few remaining sources of affection for land use planning stemmed from the group it was originally intended to discipline.

1975 A Ghostly Replay

In 1975 Henry Jackson and Morris Udall tried one final time to win passage of the land use planning bill, but with their eyes fixed squarely on the White House there was little hope that either would expend much energy on

the effort.[90] Jackson held hearings in the spring but warned that he would not go further until the House acted. He did add one innovation to the bill mainly to enhance its attractiveness to the energy companies, a provision encouraging the expeditious planning and siting of power plants as part of the land use program. Udall's bill was much the same as that which failed to reach the House floor a year earlier except the word "planning" was dropped completely from its title. It now was called simply the "Land Use and Resource Conservation Act of 1975." A more important difference however, and it occurred in the Jackson version too, was to change the "areas of critical environmental concern" to read what the American Law Institute suggested five years before, "areas of critical state concern." By lending states greater flexibility in defining the areas and functions deserving of special protection, Jackson and Udall took another step toward neutralization of land use planning as a means of environmental protection.[91]

The new President's attitude was not encouraging. Although Ford supported the principle of land use policy, he said the proposed program was incompatible with his desire to hold down federal spending, hence the administration could not support the bill. Secretary Morton formally repeated this position to the Congress but was obviously disgruntled with having to do so. Although certain about the need for land use planning, he seemed resigned to living with institutions which would not permit

it, "...I do not believe that there is any argument that we should have a much different approach. But on the other hand, to get that accomplished with the institutions we have just does not seem always to work."[92] He added, "that the states are capable of doing this, if you force them into doing it" but this apparently would not be accepted:

> I think that the proponents of this bill have got to understand to a much greater degree than they do in terms of who they get in here and who they get opinions from throughout the hinterlands of America, because all you have got to do is go to the country. You certainly hear the fear that the Federal government is invading. 93

Morton's sense of the country's skepticism about planning was not inaccurate. Even some environmentalists seemed to have lost their immunity to the Chamber's ideology. The Environmental Action Bulletin, for example, a popular little conservation newsletter, published an article in 1975 entitled "Leaving Land Use Plans to the Users." It admitted the need for national land use legislation, but could not resist voicing the doubts engendered by the bill's opponents. "What effect", it wondered,

> ...would national land use legislation have on an individual's right to move to the country, farm the land in his style, and build structures to reflect his individualism and free spirit?....One wonders whether the federal government has any right in this sphere? 94

If environmentalists now hesitated to assign legitimacy to a bill as weak as Udall's this was a sure sign that the concept was floundering beyond the reach of even the most astute political helmsmen. But Udall could not be faulted for neglecting to try.

As hearings on the bill ended, the anti-land use lobby revved up for a final drive against land use planning. Again it concentrated fire on members of the Interior Committee itself, hoping to deny the bill access to the Rules Committee. They focused on the constituencies of five Democratic Congressmen: James Weaver of Oregon, James Santini of Nevada, Allen Howe of Utah, Teno Roncalio of Wyoming and John Melcher of Montana. Weaver and Roncalio were lobbied by local unions apprehensive about jobs. Santini and Howe received mail from local right-wing groups. The former however, discounted much of the lobbying, in part because there is so little private land in Nevada to be invaded, and second, because the pressure had the earmarks of "an organized process" which probably did not reflect the views of his constituents: all his letter writers "misnumbered the bill." Finally, Melcher was under intense fire from Montana ranchers. It was touch and go inside the Interior Committee.[95]

On May 14 it voted down, 20-22, Sam Steiger's motion to table the bill. The committee would at least go ahead to markup. Melcher and Howe voted against Steiger. Interestingly, Committee Chairman James Haley of Florida, who until this point chose not to play an influential role with respect to land use, announced that if it came down to a tie he would vote against Steiger. Hinting at what Donald Mathews calls the "boomerang" effect of lobbying, he declared that "had these tactics not been used my

position might have been a little different from what it is now. I make up my mind without any help from the Chamber of Commerce, the Liberty Lobby or any other pressure group."[96] For the moment, land use was still alive, although far from full bloom and vigor. Melcher, for example, was not happy with the public lands provisions in the bill. Weak as they were, cattlemen in his district feared more regulation of grazing privileges. His vote could not be taken for granted. Nor could Howe's who remained non-committal. Still, after the Steiger motion failed, Representative Symms of Idaho could be heard to whisper "God, this makes me sick."[97]

Once again as the Committee met to markup the legislation it was confronted with a rush of amendments to weaken its control of development. Udall began to fear that the demands of the different economic interest groups were beginning to tilt the bill in a substantive direction against the environment. It was reaching the point where environmentalists might turn around and indict the land use legislation as a pro-development, anti-land bill! For example, the state's land use "advisory council" now would not only require the participation of local elected officials in policy formation, but also "representatives of property owners and general economic interests of concern to the state."[98] The regulator must himself be regulated.

Furthermore, environmental values were dropped one

rung lower on the list of considerations noted in the "findings" section, beneath "the general welfare", "planning for housing, urban growth and community development" and "a wise and balanced allocation of resources."[99]

On July 15, 1975 when the Interior Committee met to consider its draft, the President was no longer under fire. The press was liberated from the investigation of executive corruption and it was not an election year. None of the inhibiting factors at work in 1974 were present except of course, Steiger, and the Chamber of Commerce. In a vote of 19-23, the Interior Committee elected not to report out the bill. Five years work was done. The Committee ratified the House decision of the year before. Both Howe and Melcher voted with the majority, most of whom explained their votes by pointing to angry letters stacked high on their desks. One member observed that it drew more grassroots opposition than any legislation he had seen in fifteen years in the House.[100]

In an editorial three days later, the New York Times somewhat wistfully observed "This useful mild bill...has come a long, sad way - from endorsement by two Republican Presidents to the absurd allegation that it is a 'Marxist' proposal. That progression is a dubious tribute to the power, for the most part, of the Chamber of Commerce."[101]

The House effectively made its non-decision on land use planning in 1974. The effort to reignite the battle in 1975 was only a ghostly replay of the year before.

For the time being at least, environmentalism was on the wane, at least at the national level. In the short run land planning was being left to the states, or more accurately to their municipal subdivisions and what "Moon" Mullins called "an agreement worked out by neighbors."

Notes to Chapter Eight

[1]Public Land Law Review Commission, One Third of the Nation's Land (Washington: U.S. Government Printing Office, 1970), p. 1. Also see Chap. 5, pp. 261-266.

[2]U.S. Congress, House, Committee on Interior and Insular Affairs, National Land Policy, Planning and Management Act of 1972, H. Rept. 1306 on HR7211, 92nd Cong., 2nd sess., p. 41. It is interesting to note how bold the Committee was in its praise of planning: "...our nation has gone too long without an overall plan...there should be some policy, some direction to our growth." And like Jackson's, Representative Aspinall's approach did not preclude the stimulation of growth. Thus land planning on both federal and private lands is essential "to promote and secure the proper allocation of resources and to provide for the protection of the environment." (pp. 21,1). The priority list was not accidental.

[3]Business Week, "The land use battle that business faces," 26 August 1972, p. 44. The magazine called the struggle over the public lands no less "fierce" than that waged over access to private land in the suburbs.

[4]During hearings on the bill environmentalists were no less shy to state their criticism of Aspinall's brand of planning. Charles Stoddard of Friends of the Earth summarized the environmental viewpoint: The bill "continues to treat land as real estate property and its contents as raw materials, not giving sufficient attention to its environmental role in the life support system." A spokesman for the Sierra Club noted for special criticism Aspinall's intention to establish a complex of industrial-agricultural advisory committees at all levels of government in the public land states. He noted that "We have studied the composition of these boards, and you will be lucky if you have out of a dozen or fifteen members, two or three that represent non-economic interests." Aspinall was not impressed with this view:"I take it", he said to the environmentalists, "that you feel that organizations such as yours represent the public, and you just feel that you folks speak for the public more than anybody else." See U.S., Congress, House, Committee on Interior and Insular Affairs, Public Land Policy Act of 1971, Hearings before the Subcommittee on the Environment on HR7211, 92nd Cong., 1st sess., 1971, pp. 265,388,387.

[5]"The land use battle that business faces," Business Week, 20 August 1972.

[6]"Land Use Giveaway," New York Times, 1st May 1972, p. 30. The editorial concluded, "...the bill is far too great a threat to the public domain to be justified."

[7]"It Isn't Who's For You That Matters in '72; Its Who Hates you," Wall Street Journal, 28 September 1972.

[8]New York Times, 20 September 1972. "I am amused", said a staff counsel to the Public Works Committee, to hear of the need for a land use bill to combat pollution "because Congress has already taken this action. We have a land use act - it's Section 208 of the Federal Water Pollution Control Act" under which "a regulatory program must be developed which can regulate the location, modification, and construction of any facility that may have discharges." Quoted in American Enterprise Institute, Land Use Proposals (Washington: American Enterprise Institute for Public Policy Research, 1975), p. 13.

[9]New York Times, 20 September 1972, p. 27.

[10]H.R. 10294, 93d Cong., 2d sess., sec. 301(a).

[11]"Land Use Legislation: A Precarious Future," Congressional Quarterly Weekly Report, 1st March 1975, p. 430. The statement was made by Texas Republican Alan Steelman, in 1975 one of Udall's few Republican allies. This C.Q. Report is an excellent summary of the lobbying effort which defeated the land use bill and I have drawn from it extensively.

[12]Congressman Steelman suggests that "The fact that they supported the bill was purely the result of his (Ehrlichman's) presence." Ibid., p. 430 (parenthesis added).

[13]Business Week, 24 November 1973.

[14]By July of 1974 Business Week feared that "Inflation threatens to trigger widespread political and social unrest, reflected in spreading labor troubles in many countries....It is highly questionable whether nations can stick together in the face of raging inflation and an international oil bill that has quadrupled to $100 billion a year almost overnight.... No one seems able to restore balance, and the world is a powder keg." Indeed the entire issue of July 6, 1974 was devoted to "The World Economy." But the gloom was apparent as much as a year earlier when an unhappy answer was provided to the question "Why the dollar falls," Business Week, 28 July 1973. Also see the article in the issue of 19 January 1974 noting that "The job crunch is just beginning." Fears about the international banking collapse were heightened in January, 1974 when President Giscard D'Estaing of France permitted the franc to float downward. This move, the magazine warned, "might trigger a chain reaction of currency devaluations, trade barriers and aggressive export drives" adding up to the world economic system's "worst strains since WW II." 26 January 1974. For a radical analysis with a not dissimilar prognosis see: "Keynesian Chickens Come To Roost," Monthly Review, 25 (April 1974): 1-12.

[15]Bertram Gross, The Legislative Struggle (New York: McGraw Hill, 1953). pp. 193-194. Gross refers to the need to catch the "Flood Tide" of the underlying cyclical changes if success in the legislative struggle is to be achieved. This is particularly important "to a President, whose prestige may suffer from an untimely proposal." (p. 195). In the case of land use however, fatal damage to the President's "prestige" itself stiffened the anti-environmental "Flood Tide" that rose with the price of oil.

[16]Machiavelli, The Prince, intro. and trans. by George Bull (Baltimore: Penguin Books, 1961), p. 130.

[17]U.S., Congress, House, Committee on Interior and Insular Affairs, Land Use Planning Act of 1973, Hearings before the Subcommittee on the Environment on H.R. 4862 and related bills, 93d Cong., 1st sess., 1973, pp. 561-564. Also see for example, the testimony of Gene C. Brewer of the National Association of Manufacturers which likewise favored "balanced" planning including both preserving the environment and encouraging beneficial economic development." (pp. 446-447). Similarly, Howard L. Edwards of the Anaconda Company and the American Mining Congress desired a neutral planning framework, suggesting that it might be best if land use policy were separated from legislation designed to "regulate land use," such as strip mining restrictions, which then become subject to responsible negotiation. Unlike the Chamber of Commerce however, the mining industry was in agreement with big oil: action on federal lands should not be made "consistent" with state plans because these would be used as a device to halt development. (pp. 453-454). But the classic expression of the business position was left to Joseph McGrath of the National Forest Products Association. After making the expected bow to balanced planning, he went on to urge:

...private landowner participation on the advisory boards called for by the bill, both at the national level and at the Regional or Local planning level....If this planning process is to succeed, it must be supported by those who are regulated or those whose lands are being planned for.... This involvement, we believe, should be on a more formal basis than that afforded the general public...(pp. 514-515), (emphasis in this and previous quotation added).

[18]G.E. Harrington, Builders, Inc., Personal letter to the author, 11February 1977. Harrington is a former President of the San Antonio, Texas, Home Builders Association, until 1977, the largest chapter in the National Association of Home Builders. It was replaced by the Houston group. During the 1973 House Hearings, Thad S. Quik, spokesman for the National Association of Realtors was less blunt but no less clear in his opposition to a change in basic land use authority: "Each added level of government that developers and others in real estate must deal with increases costs and causes more waste and duplications, not to mention increasing housing costs."

(Emphasis added). Could the first reference to costs be to political ones? See House, Land Use Planning Act, 1973, Hearings, p. 544.

[19]"Land Use Legislation," Congressional Quarterly Weekly Report, 1 March 1975, p. 430.

[20]The Senate Interior Committee has several thick volumes of material on land use: Papers on Land Use Policy (1971); National Land Use Policy: Background Papers on Past and Pending Legislation and the Roles of the Executive Branch, Congress, and the States in Land Use Policy Planning (1972); National Land Use Policy Legislation, 93d Congress: An Analysis of Legislative Proposals and State Laws (1973); State Land Use Programs (1974); Readings on Land Use Policy (1975). See the bibliography for full publication information. None of this material was on the order of a "tract for our times."

[21]On the politics of the scope of conflict see E. E. Schattschneider, The Semi-Sovereign People (New York: Holt, Rinehart and Winston, 1960). Also see Roger W. Cobb and Charles P. Elder, Participation in American Politics, The Dynamics of Agenda Building (Baltimore: Johns Hopkins University Press, 1972).

[22]"Land Use Legislation," Congressional Quarterly Weekly Report, 1st March 1975, p. 430.

[23]Supra, note 17.

[24]Interview with a member of Representative Morris Udall's staff, 3 December 1976; name withheld upon request. Also see testimony of John Hart, Vice President and Treasurer of National Association of Homebuilders in U.S., Congress, House, Committee on Interior and Insular Affairs, Land Use Planning, Hearings before the Subcommittee on the Environment on H.R. 10294, 93d Cong., 2d sess., 1974, pp. 138-148. Hart said that "Urban development and an adequate supply of housing within a reasonable distance of employment centers would have to be considered in the State planning process, and so would the continuing development of expanding areas." To accomplish that goal he offered an amendment requiring "that the State land use planning process (e.g., Jackson's data gathering component) take into account the land needs for a full range of housing within the State." (pp.140-141) (parenthesis added). But compare Hart's testimony before the same committee one year later. Although the suggested amendment, and more, were incorporated in the bill to assuage developers, by 1975 the home builders still complained that the bill "is tilted heavily toward planning as a means of protecting the natural environment without, at the same time assuring that the other land needs of our still expanding national population will be accommodated." See U.S., Congress, House, Committee on Interior and Insular Affairs, Land Use and Resource Conservation, Hearings before the Subcommittee on Energy and the Environment on H.R. 3510 and related bills, 94th Cong., 1st sess, 1975. pp. 470-484.

[25]"Land Use Legislation," Congressional Quarterly Weekly Report, 1st March 1975, p. 430.

[26]Ibid.

[27]U.S., Congress, House, 93d Cong., 2d sess., 11 June 1974, Congressional Record 120:18806.

[28]"Senate Passes Strong Land Use Planning Bill," Congressional Quarterly Almanac 1973 (Washington: Congressional Quarterly, 1974), p. 660.

[29]"Land Use Legislation," Congressional Quarterly Weekly Report 1st March 1975, p. 431.

[30]"National Land Use Bill Threatens Rights of Property, States," Vermont Watchman, January 1974, p. 13. The article added that planning "would, worst of all, turn loose upon the hapless citizens of the various states a horde of planners and lawyers, paid by the taxpayers, whose advancement requires success in preventing those citizens from making normal use of their own property."

[31]H.R. 10294 sec. 104(9)(4). But buried in section 108(d)(2), was authority for the Secretary to cut off funds if he is not satisfied that the State has included in its program "areas of critical environmental concern which the Secretary has determined to be of more than statewide significance."

[32]Ibid., sec. 106(d)(1).

[33]Interview with member of Udall's staff, 3 December 1976.

[34]H.R. 10294, sec. 101(b)(11). The provision directly above this one made almost precisely the same point! Section 101(b)(10) read: "...poor and unwise restrictions upon the use of land can create undesirable housing conditions, can raise the cost of shelter, reduce competitition, adversely affect employment and business conditions, and impair Federal and local tax revenues, often leading to more Federal programs and greater Federal expenditures." This reinforcement of the peculiar needs of the building industry should be contrasted with the generality of the "findings" in S268, the 1973 Senate land use bill. There the only specific industrial function named as suffering from poorly structured land use decision processes is "the development, generation, and transmission of energy." Otherwise it referred only to "conflicts in patterns of land use" as justifying "a national land use policy which shall incorporate environmental, esthetic, economic, social and other appropriate factors." See S268, 93d Cong., 1st sess., secs. 101-102.

[35]H.R. 10294, sec. 106(c)(1); sec. 105(h).

[36]U.S., Congress, House, Committee on Interior and Insular Affairs, Land Use Planning Act of 1974, H. Rept. 798 to accompany H.R. 10294, 93d Cong., 2d sess., 1974, p. 35.

[37]H.R. 10294, sec. 101; sec. 102.

[38]Ibid., sec. 104.

[39]Ibid., sec. 104(g)(6);(i)(9).

[40]House, National Land Use Planning, Report, 1974, pp. 43, 44.

[41]Ibid., "Dissenting Views," p. 77.

[42]"House Rules Committee Sets Back Land Use Bill," Congressional Quarterly Weekly Report, 2 March 1974, p. 559.

[43]Ibid., I have not been able to determine who besides Steiger and Rhodes attended the meetings, nor even whether they actually spoke to the President. A Udall staff aide told me he doubted they met with the President. It was more likely they discussed the issue with an assistant such as Kenneth Cole, Ehrlichman's replacement as chief domestic advisor. A copy of the Steiger substitute, H.R. 11325, 93d. Cong., 1st sess., may be found in House, Land Use Planning Act, Report, 1974, pp. 82-96. With regard to implementation of the land use plans it says simply "States are encouraged to utilize general purpose local governments, including regional units, for planning, review, and coordination purposes as to the regional implications of local plans and implementation programs," sec. 105(a). Quarterly Weekly Report, 2 February 1974, pp. 239-242. (emphasis added).

[44]The only reference to environment came in connection with energy:"Just as 1970 was the year in which we began a full scale effort to protect the environment, 1974 must be the year in which we organize a full scale effort to provide for our energy needs...." President Richard M. Nixon, "State of the Union Message," January 30, 1974, reprinted in Congressional Quarterly Weekly Report, 2 February 1974, pp. 239-242.

[45]Ibid., 2 March 74, p. 559; 1st March 1975, pp. 429-430.

[46]New York Times, "Land Use Bill Knifed," 28 February 1974, p. 36. The paper also lashed out at the "heavy pressures from chambers of commerce, real estate interests and other lobbies for which local zoning powers are a sacred and often profitable fetish." For a sardonic examination of the "sacred and often profitable fetish(es)" of newspaper publishers see A.J. Liebling, The Press, with an introduction by Jean Stafford, 2d ed. rev. (New York: Ballantine Books, Random House, 1975).

[47]Congressional Quarterly Weekly Report, 1st March 1975, p. 430.

[48]See House, Land Use Planning Act of 1974, Hearings. Not all witnesses spoke against the bill however. Cf. the statement from Walter E. Hoadley, chief economist with the Bank of America, noted that H.R. 10294's "emphasis on process, rather than on plans, is practical and realistic." (pp. 420-421). Also see the testimony of Mark H. Freeman representing the League of New Community Developers (pp. 91ff); and Maxwell E. Rich of the National Rifle Association (p. 157).

[49]Ibid., p. 85.

[50]Ibid., pp. 9-10.

[51]Ibid., testimony of R.C. Longmire, p. 228.

[52]Ibid., p. 62.

[53]"Panel Releases Land Use Bill; Floor Fight Expected In House," New York Times, 15 May 1974, p. 16.

[54]Ibid.

[55]See the exchange between Steiger and Marston during the Interior subcommittee's 1975 Hearings on Land Use and Resource Conservation (p. 68). After badgering Marston about the time he spent lobbying for the bill in 1974, Steiger was told by Secretary Rogers Morton, "A whole lot of my time was spent trying to pass it, Sam. I am sorry I did not get it done." (p. 68).

[56]Congressional Quarterly Weekly Report, 1st March 1975, p. 429.

[57]House, Land Use Planning Act of 1974, Hearings, p. 206.

[58]"Home builders moan that nobody cares," Business Week, 25 May 1974. The article notes that the association's new President Lewis Cenker "is making no-growth his special concern during his year in office. Under the slogan 'sensible growth," he is urging builders to form 'coalitions' with groups that favor more housing to try to persuade local officials that growth can be good." See also: "Trouble in housing for years ahead," Business Week 13 July 1974, pp. 56-60. With land values rising at a rate of 15% annually, and growth restrictions mounting, "properly zoned land carrying all the necessary permits is at a premium." The Denning quote is from Congressional Quarterly Weekly Report, 1 March 1975, p. 431.

[59]Ibid.; see supra, note 48.

[60]Business Week, 16 February 1974; 20 April 1974.

[61]Ibid. The R.E.I.T. problem was so severe that by August 1974 some major regional banks were reporting up to 20 percent of their assets as "problem loans." "First Wisconsin's gloomy outlook," Business Week, 3 August 1974, p. 43. A year later the situation was not improved. Poor investment strategy battered by a stagnant economy led to a situation wherein no less than a third "of REIT loans are no longer paying interest." Yet at some of the biggest banks those shaky loans made up large percentages of "shareholder equity," that is, assets. At both Citicorp and Bank of America such loans equalled about a third of shareholder equity. And at Chemical they amounted to an astounding 100 percent of equity! In the deteriorating land economy of the mid-70s the big corporations left, the REITs folded, and the banks sent out "their own people...to examine REIT properties as the haggling over renegotiating credit lines goes on." "The damage REITs have done to bank lending," Business Week, 31 March 1975, pp.68-69.

[62]"The New Towns that haunt HUD," Business Week, 12 April 1976; "U.S. Reevaluating New Towns Programs," New York Times, 23 April 1976.

[63]"Ryan Homes: Stellar Performers In The Housing Slump," Business Week, 25 August 1975. Despite the desperate shape of the construction business, the magazine's "Wall Street" section maintained the undauntable speculative hope. In January of 1975 it fantasized about 'The housing starts pop': "The classic housing play has always been a gamble. Shares jump so fast that investers who wait for an upturn in housing starts or permits usually miss the boat. The canniest plungers buy S & Ls at the first hint of an interest rate decline, move into building materials and mobile homes as money begins to flow into the S & Ls and grab such groups as home furnishings and materials retailers soon after." Less canny "plungers" stopped building. Business Week 27 January 1975.

[64]Business Week, 16 February 1974, p. 96.

[65]See Business Week, 12 May 1973, 25 August 1973. The President's decision to suspend federal subsidies for low and moderate income housing incensed builders. Yet the widespread publication of inefficiency and corruption in the program left him little choice. By 1973 HUD was holder of title on no fewer than 250,000 houses and apartments with mortgages valued at $2.7 billion. Still, the President's tough rebuke to the builders was hardly likely to endear them to an administration sponsored land use policy which smacked of limiting access to private land as effectively as the subsidy suspension closed the door to public money. By the end of 1974 the number of bankruptcies in the industry jumped a full third over 1973. Business Week, 28 September 1974, pp. 86-87. For an angry critique of the speculative nature of real estate development in America see Leonard Downey, Jr., Mortgage on America (New York: Praeger, 1974).

[66]Interview with Udall staff member, 3 December 1976.

[67]This illustrates how neither the pluralist nor elite frameworks is alone capable of explaining the intricate texture of political reality. Students of public policy must be willing to explore the structural and historical shaping of group conflict not merely as a backdrop to policy making, but as a constellation of factors deeply implicated in the drift and waves of legislative politics.

[68]"Cultivated Grass Roots," New York Times, 15 March 1974.

[69]"Udall Accuses Nixon of Sacrificing the Environment to Politics," New York Times 31 March 1975, p. 47. Udall added the complaint that "Conservationists have no central policy institutions, no actual conventions, no place where they produce unified policy....In my opinion, this the conservation movement must do or perish as an effective agent of political change."

[70]Murray Edelman, The Symbolic Uses of Politics (Urbana: University of Illinois Press, 1964), p. 146.

[71]Gross, The Legislative Struggle, p. 251.

[72]House, Land Use Planning Act of 1974, Hearing, p. 25.

[73]Letter, 10 June 1974, Office of Representative Morris K. Udall, co-signed by ten other Representatives, four Democrats and six Republicans. It included a "summary of prepared amendments to H.R. 10294."

[74]Ibid.

[75]Congressional Record, 11 June 1974, 120:18801.

[76]Ibid., pp. 18801. 18804, 18805, 18819.

[77]Ibid., p. 18815.

[78]Ibid., p. 18805.

[79]Ibid., p. 18808.

[80]Ibid., p. 18808.

[81]"House Vote Kills Bill on Land Use," New York Times, 12 June 1974, pp. 1, 16. Interestingly the story described the bill as "seeking to halt runaway real estate development."

[82]Ibid.

[83]Press release from office of Representative Morris K. Udall, 12 June 1974.

[84]Ibid.

[85]Ibid.

[86]Ibid.

[87]Interview with Udall staff member, 3 December 1976.

[88]"House Kills Land Use Bill on Procedural Vote," Congressional Quarterly Weekly Report, 15 June 1974, p. 1570. According to CQ one key urban delegation was split due to the personal bickering of top state political leaders. In Illinois, fear that Governor Daniel Walker would use a state land use agency against the interests of Chicago led Mayor Richard Daly to persuade several of the city's representatives to switch their voted against the bill. In CQ's words, "If the Chicago delegation had been united in its support, the bill would have been approved for consideration - by one vote." Instead it split 4-3. Congressional Quarterly Weekly Report, 1st March 1975, p. 432.

[89]Ibid. Martin sardonically attacked the anti-land use forces during the brief floor debate:

Mr. Speaker, this is the year of the exorcism, which has proven to be great box-office. There is a demon here, the demon of a Federal powergrab, of the eradication of private property. The rhetoric has been amusing. So, let us don our ecceliastical vestments and prepare to shock our listeners with a four letter word descriptive of the demon - let us call its name: "sham."

Congressional Record, 11 June 1974, 120:18809.

[90]Congressional Quarterly, 1st March 1975, pp. 428-432.

[91]See the text of H.R. 3510 in House, Land Use and Resource Conservation, 1975 Hearings, pp. 6-43. Also see: U.S., Congress, Senate, Committee on Interior and Insular Affairs. Land Resource Planning Assistance Act and the Energy Facilities Planning and Development Act, Hearings before the Subcommittee on Environment and Land Resources on S984 and S619, 1975, 94th Cong., 1st sess. Jackson was trying to hold off an effort by President Gerald R. Ford to introduce a single purpose energy plant siting measure which included federal authority to preempt State and local regulations where they failed to meet nationally defined energy standards. See esp. the testimony of Eric Zausner of the Federal Energy Administration (pp. 232ff).

[92]House, Land Use and Resource Conservation, 1975 Hearings, p. 74.

[93]Ibid., p. 82. Compounding these difficulties was the active resistance of the newly appointed Director of the Office of Management and Budget James Lynn. Lynn had opposed centering authority over land use in Interior since his days as Secretary of Housing and Urban Development. As Budget Director he commanded more influence, strongly arguing that land use

legislation was not worth the expense in an anti-inflation budget. Arthur Lubow, "Gerald Ford and the Politics of Pollution," New Times, 26 December 1975, p. 25. Also see Congressional Quarterly Weekly Report, 1st March 1975, p. 429.

[94]James C. McCullagh, "Leaving Land Use Plans to the Users," Rodale's Environmental Action Bulletin, 6 September 1975, pp. 4-6.

[95]"Lobbying of Interior Members on Land Use Bill," Congressional Quarterly Weekly Report, 10 May 1975, p. 962.

[96]Ibid. Also see Donald Matthews, U.S. Senators and Their World with a new introduction by the author (New York: W. W. Norton & Co., Norton Library, 1976), pp. 194-195.

[97]"Land Use Bill Survives," Congressional Quarterly Weekly Report, 17 May 1975, pp. 1020-1021.

[98]H.R. 3510, 94th Cong., 1st sess., sec. 201(a)(2), (Committee Print as amended by the Committee on Interior and Insular Affairs, July 15, 1975).

[99]Ibid., sec. 105(a).

[100]"Land Use Bill Killed," Congressional Quarterly Weekly Report, 19 July 1975, p. 1520.

[101]"Propaganda vs. Land," New York Times, 18 July 1975.

CHAPTER NINE

LAND AND THE PUBLIC INTEREST

A Dead Issue

A close observer of the 1976 Presidential campaign might be excused for forgetting the politics of land. Though each of the bill's Congressional sponsors made a hard run for the Democratic nomination neither stressed his earlier interest in national land use policy legislation. It ventured closest to the surface when Governor Jimmy Carter, another earlier supporter of land use planning, stated his desire that America's neighborhoods maintain their "ethnic purity."[1] The implication was clear. National concern for the use of land had not advanced measurably beyond the framework legitimized in the Ambler decision of 1926. Environmentalists aside, it was still mainly a question of pigs and parlors, of keeping people out.

Little evidence of a revival in congressional interest exists today. Morris Udall has refused to introduce a new bill unless the Carter administration strongly commits itself first. Short of that he says "I don't think it's worth the time and energy to take on all these old turkeys again."[2] Meanwhile, President Jimmy Carter omitted land use planning from his first environmental message to Congress and Henry Jackson is busy with oil. Thus six years of legislative work failed to produce a change in the structure of public authority over land. Equally important, the politics of national

land use policy failed to excite public interest in the idea that the fate of land was a crucial national issue. Most Americans continue to accept uncritically the land use decisions of private owners, expert users, and a handful of government regulators. Few believe in the need to define a more general responsibility for the land. Yet it is undeniable that every citizen has a clear interest in the uses of land. Adequate provision of shelter, employment, food, transportation, fuel, education, leisure and health care all depend ultimately, on the public responsibility to assure a balanced distribution of land as well as a balance between those human functions and the land itself. Such a balance has not been provided by the restricted merchandising in land nor by the confusing layers of uneven, haphazard and privately dominated controls which persist in molding the social landscape.

The Factors That Made The Facts: A Summary

One point of this study has been to explore the political origins of America's land use controls. It would be useful here to summarize the results of that analysis. The main conclusion to be drawn is that the uncoordinated, inconsistent character of land policy in the United States has not been the result of bad decisions, poor judgement, inept planning or flawed institutions. Instead, it is the product of persistent conflicts within the structure of U.S. capitalism, reflected and refracted by the federal organization of political power. The complex distribution of public authority over land has

grown in response to the varying, often inconsistent needs of business for predictability and control in the availability of land and other natural resources. Historical analysis of land policy therefore, suggests distinctive stages in the growth of the American political economy as well as changes in the ideological justification of government's role in the economy. The key changes will now be retraced.

Land policy was a main concern for leaders of the early Republic. Eager to strengthen the central government, they used sales of public land to repay the nation's foreign debt, secure its international financial integrity, and demonstrate the government's command of the national territory. It was one element in a larger mercantilist strategy to unify the country under the power of a central public authority capable of channeling economic development in directions which reinforced the government's influence in society. The specific function of land policy was to slow down development of the West to coincide with the national government's consolidation of power. Private exploitation of resources was subordinated to the government's need to secure its grasp of the political organization of society. Unregulated settlement would have overextended its capacity to administer and protect the new areas, and thus have reduced its legitimacy in the eyes of the rest of the population. Given the primitive state of the productive forces of society, and the widespread fear of foreign domination, early national leaders such as Washington, the two Adamses, Madison, Jefferson and Monroe saw to it that the

accumulation of capital was not permitted to impede the accumulation of power. This suggests not only that the central government played a directive role in the economy from the beginning of the Republic, but that the purpose of this control was distinctively political. This is a crucial point. Students of government-business relations should inquire not only into the scope and substance of controls but also into the social functions they are meant to serve. It makes a big difference for an understanding of the meaning of policy to know that government channeled development to accelerate the growth of its own power over the nation rather than to augment the power of private corporations over the market. The use of the category of "mercantilism" to explain early land policy was intended precisely to make the point that land disposal was designed with political objectives in mind, specifically, the fashioning of an effective national state. Keeping this point squarely in mind is important to understanding the changes in these relationships during the middle and late nineteenth centuries.

The consolidation of national political power in the early nineteenth century occurred amidst the gathering of the forces of early capitalism. National political unity framed the next stage of development in the growth of land policy: the division within the economy between industrial capital and petty commodity production. Northern manufacturers wanted security for their domestic markets and an assured supply of inexpensive, disciplined workers. They also wanted public

investment in a commercial infrastructure linking the sea coasts into a single national market. Perpetuation of land sales even after repayment of the foreign debt would have helped achieve these goals. Land revenues spent on public improvements would have guaranteed the use of tariffs to defer all the other government expenses. High land prices would also have inhibited the mobility of eastern labor. In this drive to shift the old mercantilist land policy into the service of capitalist ends, the manufacturers pitted themselves against small farmers, speculators, frontier merchants, and Southern planters, each of whom sought cheap land as a means of resistance against absorption by the rising system of industrial wage labor. Cheap land, of course, was also attractive because of its profitability in the real estate and agricultural marketplace. Thus, in the years between 1820 and 1861, economic issues prevailed in U.S. politics.

One important ideological aspect of this shift was the increasing tendency to view the government and politics in instrumental ways. Each became merely another resource in the economic competition for markets and profits. Land policy was redefined, along with related questions such as tariffs and internal improvements, as a question of economic development, whose outcome would determine the mode of production which would take root in the United States, industrial capitalism or petty production. The battle between these forces for power over land is important, therefore, for two reasons. First, it shows that the status of capitalism in the United

States before the Civil War was tenuous. This was true not only because of the strength of the Southern plantation system, but also because of the political influence of Western speculation and petty production interests in the formation of land policy. The second point, however, is no less significant. Despite their differences, each of these interests agreed that the central government was no longer to be treated as the primary institution of society. In their efforts to use public policy as a tool of economic advancement, manufacturers, planters and farmers demonstrated that, henceforth, public policy would be subordinated to the market and its requirements. Society's estimation of the worth of politics was correspondingly reduced. Government was debased in favor of the market. Once the main object of mercantilist policy, it was now shunted aside to play a supportive role. Its main functions now were to devolve federal resources into private hands as rapidly as possible, and to maintain order. It was as if government had been transformed into a separate, almost alien, institution in society. An embittered Commissioner of the General Land Office summarized the dominant view in 1885, just about the time it was being replaced by a new more positive conception of public authority:

> It seems that the prevailing idea running through this office and those subordinate to it was that the government had no distinctive rights to be considered and no special rights to protect; hence, as between the government and spoilers of the public domain, the government usually had the worst of it. I am satisfied that thousands of claims without foundation in law or equity involving millions of acres of public land, have been

annually passed to patent upon the single proposition that nobody but the government had any adverse interest.3

The entrenchment of laissez-faire after the Civil War produced enormous social and environmental costs. It led not only to a basic change in the institutional landscape, the rise of the big corporation and obliteration of the free market in industrial goods, but also to the waste of human lives in unhealthy workplaces and to untrammeled exploitation of nature. Thus, in the 1880s, government was increasingly called upon by scientists, corporate leaders and environmental preservationists to manage more efficiently the complex relationships of industrial society. This included demands that government administer more intelligently its own resources. Corporate support for retention of public ownership of federal lands and its encouragement of national economic regulation confirmed the appearance of a new stage in the history of government-business relations. Increasingly,government was charged with managing national economic conditions and assuring the overall profitability of the private sector. This began with important changes in the distribution of public access rights to the federal lands, making it easier for large natural resource firms to plan investments in public wealth; it was also manifest in rationalization of the urban real estate market through zoning. National banking reform, legitimation of corporate concentration, establishment of federal regulatory agencies, invitations to participate in war planning in 1917, and the vast apparatus of the New Deal

controls accelerated these tendencies. In addition, government was charged with protecting the citizenry from the worst effects of capitalist production. Many of the policies and programs listed above were also designed to alleviate the social costs of private enterprise. Rationalizing the accumulation of capital and repairing the consequences of accumulation were not, it must be emphasized, discrete or separate functions. They were but different aspects of a single basic function of the state in advancing capitalist society: to control the most damaging effects of economic expansion in ways that sustain the formidable engines of growth.[4]

An ever larger administrative and regulatory apparatus emerged, organized along functional lines similar to the bureaucratic divisions of modern corporate industry. The machinery of government was gradually connected to the larger corporate system. However, whereas the functional units within the corporation were bound together by a single hierarchy and the goal of profitability, no such coordinated line of authority or planning tied together the sprawling arms of government. It was assumed that each public agency provided a direct, but limited, technical adjustment in a fundamentally effective and workable system of private enterprise. Thus, for example, there was no need consciously to relate national conservation policies with municipal land use arrangements. Each was a response to separate difficulties. Similarly, utility regulation, banking reform, pure food and drug regulation and dozens of other measures were given separate

institutional and legal foundations. That the range and mass of federal, state and local regulatory activity implied a fundamental flaw, if not a breakdown, in the private production and marketing systems was a hypothesis which went largely unexamined by policymakers. Indeed, it was precisely the narrowly defined, technocratic, incremental approach to a constant stream of economic failures that permitted the government to meet its problems without questioning the accumulation process itself. The assumption that profitmaking should go on explains much about the oft noted tendency for the regulators to be captured by the regulated. Who, after all, could offer a more informed judgement about the regulatory threat to growth than the expert representatives of industry?

American government was bureaucratized as its social activities proliferated. But while its tasks multiplied, the purpose of government action was not to strengthen public authority. After the destruction of laissez faire, the framework of public policy shifted away from the old mercantilist concern with the national interest and the big view. Henceforth, the object was a pragmatic concern for making capitalism work with a reduction in its painful effects on the general population.

It is essential to recognize that repairing the social costs of production and aiding investment in new production were generally perceived as completely consistent functions. The growing range of government activity looked progressive; it was labeled reform in the public interest. But by this

time the public interest referred less to the personal fates of citizens joined in a national community than it did to the smooth, unbroken operation of complex institutions. It was correlated with the efficiency of machinery rather than the ends of public life. The human symbol of public interest became the ideologically neutral engineer, not the partisan elected leader. Partisanship was identified with corruption, neutrality with truth and purity. Politics, it was thought, should become more like science, even as scientists found themselves in positions where the making of political decision became unavoidable.[5] The bureaucratization of access to the public domain is an example of this tendency.

Zoning and conservation were presented as perfectly rational responses to disorderly economic processes. If they brought more order they must be in the public interest. Control was itself a good. Yet, as was argued in Chapter Four, these reforms were defined in terms acceptable to established economic forces, large corporate users and urban commercial interests; and both made it more difficult for unorganized property owners and workers to gain access to land. The defense of land was connected to the defense of economic power. Physical resource policies could not be implemented without affecting the balance of social power over land.

This basic reality is the single most important clue to grasping the politics of land regulation in the United States. The effort to protect natural resources without stating the consequences for the allocation of social values is a basic

theme of land use regulation. The prevailing assumption is that land use questions are basically technical, therefore, separate from consideration of the human beings who make claims upon the land. The social power structures which determine why land shall be used are systematically extracted from analysis of how land shall be used. This separation of land use analysis from the question of which powers in society have the capital to direct the use of land in the first place, or which will have regular access to the new system of control, is both ideologically consistent with the technocratic character of politics which bloomed in the late nineteenth century and radically at odds with the really intimate association of these issues.

By avoiding the social implications of technocratic solutions policymakers were spared the obligation of overseeing the entire system of public controls. A central plan or scheme of control was unnecessary because the economy's problems were technical, unlinked and unrelated. Conversely, advocacy of centralized public planning would have constituted an indictment of the economic system as a whole, as if the system of responsibility enforced by the marketplace were no longer valid in the world of the big corporation. It would have been to deny that marginal reforms were adequate, that the economic system itself was basically unsound. Thus, the piecemeal, haphazard, uncoordinated structures of public policy, of which land policy is but one example, were developed precisely because they were in harmony with the continued and advancing

scheme of production, exchange and profits, both in the corporate sector and in the lower rungs of competitive business. Isolated responses to particular problems were fundamentally in keeping with the disjointed character of capitalism itself. The intricately dispersed structure of U.S. federalism was well suited to containing the conflicting interests within capitalism. It offered tens of thousand of governmental niches, at all levels, to accommodate the diverse needs of business, while providing a minimum degree of protection to society from the worst consequences of industrialism. Concentrated economic power was hardly inconsistent with disjointed, narrow, or incomplete solutions to basic social problems. These irregular patterns were probably essential to the maintenance of industrial capitalism.

The words "were probably essential" in the last sentence are meant to suggest the tenuousness of this solution in recent years; for since World War II, it has become apparent that lack of coordination in the performance of the accumulation and restoration functions is itself producing obstacles to further accumulation, and worse, provoking increased social conflict. The attempt for example, to protect urban air from industrial pollution directly raises the costs of numerous industrial products leading either to more unemployment or more inflation, or to corporate threats to abandon the community. Similarly, the usefulness of zoning as a means to insulate urban and suburban wealth from the ravages of poverty, slums and crime only accelerated deterioration of central cities producing more fear,

more"white flight" and increased urban sprawl; and the environmental and energy costs of sprawl have almost begun to match the social costs of long existent racial hostility. Indeed, as some corporate leaders began to argue in the 1960s, sprawl is no longer even consistent with capital expansion since it leads to a proliferation of local governments skeptical about growth, and to irrationalities in the availability of labor.

The appearance of the Jackson-Udall bill represented an attempt to extend the narrow logic of conservation and zoning to the level of state politics. It was hoped that a state land management agency might efficiently harness these conflicts in a forum which remained reasonably close to the area in question yet sufficiently broad to incorporate regional and even national interests. Not ironically, it became a hostage to the cleavages and conflicts which it was intended to mediate. The cross-cutting cleavages between large amd small capital, between business and the environmental movement, between absentee developers and suburban politicians, helped undo the bill. But even if it passed, and something like it will probably become law one day, a national land policy would not have resulted. At best there would be fifty state land agencies struggling to gain a hold over the thousands of municipal land policies which would still channel most private investment in land. In this sense the Jackson bill avoids dealing with the most serious problem. The fundamental question is not whether society has a more efficient

process to determine the outcome of land use battles brought about by the conflicting interests of private forces. This would only reinforce the tendency for private investment decisions to dominate the land use alternatives among which public planners choose. The basic question is whether the public has control of land,and the capital to develop land,in ways which conform to the environment's physical limits while meeting the population's diverse social needs. Rationalization of the land use decision system, apart from basic change in the structure of economic power, will only lead to a more faithful reproduction inside the new agency of existing powers over land and capital. Private controllers of each will still seek to invest only in profitable development, and to pass along the costs of resource depletion to society as a whole.

For this to change, the public must first gain direct control of land, either through ownership, or minimally, through control of land development rights. In either case, land remains a great untapped public resource. It is potentially the most vivid and concrete expression of the public's thing, of the "res publica," to which we have all pledged allegiance. It could be the main lever of social reconstruction, of society's effort to gether about itself in a democratic way the kind of environment it desires. As a preface to some suggestions about how this potential might be realized it would be useful to gauge the present shape of things.

Death Notices for the Landscape

Each day the papers carry stories of more battles over land. Across America municipalities struggle to keep out public housing, industry, nuclear power, blacks, highways and other "undesirables." Local controls still serve well in that negative capacity. In Westport, Connecticut, a new zoning law was defeated when the townspeople "panicked at the thought of apartments." Five suburban cities in New York rejected federal development grants lest they be compelled to modify their land use code to accept public housing. And Xerox Corporation recently announced plans to sell a 102 acre tract in the backwoods of Greenwich, Connecticut when it was refused permission to build its new corporate headquarters.[6] Recently though, optimism has waned somewhat about the potency of middle class government to exclude the distasteful. There is a reawakening in the strength of private contract. Thus citizens moving into so-called "new towns" discover that corporate consent is required before any alteration is made in the privately planned environment. Planting trees, putting up television antennas and painting one's house demand a corporate license. To angry citizens who bridled at private intervention in their civil liberties one corporate socialist snarled that "they shouldn't have moved into a planned community if they weren't prepared to live under the special conditions here....Most of the people wouldn't have it any way else because of what its done for their community and their property values."[7] In an even more blatant show of

faithlessness in the integrity of zoning Citibank of New York simply bought the buildings surrounding "its new $175 million headquarters, to eliminate massage parlors and prevent construction that might lessen the value of the building." [8] Planning can be potent, but wealth remains the strongest tool of exclusion.

The reversion to ancient methods of keeping people out stems, in part, from a growing ambiguity about the benefits of industrial exclusion during a period of economic stagnation. Recent editions of The New York Times for example, describe how a "Pulp Mill Plan Splits New Hampshire Town" and how a struggle of "Profit vs. the Land in Upper Michigan" is setting the region's citizens against one another.[9] And in Butte, Montana, the state's most prestigious resident, the Anaconda Corporation, has extended its open pit mine, "now a mile wide, more than a mile long, and deep enough to swallow the Empire State Building" directly under the city's business district. It had already munched over 20% of the city and forced the demolition of 1,000 homes. As Business Week sums it up, "The town needs Anaconda and the nation needs copper, but the residents are understandably reluctant to see their business district decay." [10] On the edge of so deep a precipice reluctance is a mild emotion indeed. More demonstrably reluctant were the land owners and builders of San Antonio, Texas. When the City Council proposed an 18 month moratorium on construction over the town's rich aquifer, its only source of drinking water, they scrambled immediately into the courts,

convincing the judges that even a temporary suspension of its development undermined their constitutional right to prosper in a sunny business climate.[11]

Each of these issues was decided by the unique configuration of local politics and internally applied economic power. The implications for wider constituencies and the future of the land itself rested on the luck of the municipal draw. Multiplied a hundredfold daily these angry little conflicts constitute the unpredictable interaction of local government and organized capital which largely determine the quality of America's development. The situation in land parallels Robert Engler's summary of the oil case: "Each of these issues is approached by the American people on a crisis basis, with the operative myth that they are separate economic or political considerations."[12] Yet land, like energy, does not represent a single policy question. Each is a fundamental resource around which have grown intricate vines of control weaving in and out of every corner of modern life. Each deserves integrated planning and control for the sake of society as a whole. In energy what planning there is, is done by the private government in oil. While this is irresponsible, at least it offers a point of attack for a public-centered strategy to regain control of energy planning. In land there is no single private power structure. But uncoordinated dispersal of power is no less an obstacle than its irresponsible concentration.

Land is blasted, mined, drilled, dug, gouged, defoliated,

filled, plowed, paved, fenced and sometimes spared by hundreds of governments, thousands of private enterprises and millions of individual owners. Though it is the irreplaceable setting for life in human society land lacks in the United States, a common structure of public responsibility and democratic planning to facilitate its use in ways which respect its integrity while assuring its satisfaction of human needs. Instead of guidance by the nation as a whole subdivided into reasonably comprehensive regional and local units, it is divided by a mass of public and private jurisdictions, each striving to monopolize pleasantness and profitability while excluding the noxious processes, material wastes and human leftovers of modern industrial capitalism. The battles between local political and economic interests and big government and capital have been decided in arenas distinguishable only by their lack of scope and sensibility. Each day the results are posted in newspapers like death notices for the landscape or someone else's opportunity. General social needs are warped into harmony with compromises arranged between the local protectorate of small business and the national powers of concentrated capital. Against the exclusionary attitude of local and state government the central government is deferential, leaving the national interest to surrogate representation by big corporate providers. Big developers stand for racial integration, the energy companies for national security and jobs, United States Steel for "realistic and effective" environmental protection through "littering fines

and extensive educational and training programs at the local level," and the timber companies for scientific conservation of natural resources.[13]

Since the debate over a national land use policy faltered and died nothing has changed to improve the chance for a comprehensive definition of social needs and resource tolerance. Admittedly, there are more controls today than seven years ago, and this does offer hope of increased resistance to unthinking spoliation of the land, but there is precious little democratic planning and only a trifle more representation of the general interest in land use.

Twigs of Hope

By 1977 only seven states have made any headway towards establishing comprehensive land use programs.[14] Hawaii, Vermont, Florida, Maine, Oregon, Colorado and Wyoming. Hawaii's statewide zoning law remains the only one in the nation. After a good start with its statewide regulatory apparatus and the formulation of two preliminary land use plans, Vermont's state legislature twice defeated attempts to pass the general classification system required under its Act 250. In 1973 however, the state did enact one of the toughest anti-speculation laws in the country: imposing a capital gains tax of 45 percent on profits of 100 to 200 percent made from the sale of land held one year or less. Florida is still the only state to apply successfully the A. L. I. model, although its law maintains a statutory

limit of five percent on the amount of land eligible for critical areas protection at any one time. No study of the act's implementation has been published, but some of the conflict it aroused breeds hope that a more general public interest can be introduced to the politics of land. In 1975 for example, the state went beyond the preservation of wilderness land to see if it could grasp a handle on the explosion of urbanization in the Keys. Water shortages and vastly overtaxed facilities - bridges to the mainland could no longer support fully loaded trucks for example - compelled the state planning agency to threaten a direct takeover of land use authority unless the community took steps to manage its own destiny. Until that point, "the county had not even hired a senior planner." [15]

Oregon and Colorado also sought to establish land use controls along the lines set out by the American Law Institute, but opposition from local property owners and resource interests forced a watering down of their laws. In Oregon the state's Land Conservation and Development Commission was authorized to adopt planning goals and guidelines for local implementation, and to control activities of statewide significance including transportation facilities, public sewage systems, water supply, solid waste disposal and public schools as well as lands associated with certain priority areas such as freeway interchanges, flood plains, and estuaries. The state also has separate laws regulating the coastal zone, scenic waterways and subdivisions as well as tax policies

favorable to preservation of agricultural lands and open spaces. Colorado's land use law is similar to Oregon's inasmuch as the basic direction is to support local planning rather than an integrated statewide program. Still, the state's Land Use Commission must be provided with a "major activity notice" like that supplied the county commissioners in connection with any development proposals involving five or more acres. It also has general authority to prohibit land uses which threaten the public health, safety and welfare. Maine continues to have among the most complete assemblage of controls found in any state, although these remain unintegrated. In 1971 a series of regulations was passed aimed at guiding large scale development and growth along shorelands, wetlands and in previously unzoned areas. This supplemented the 1970 Site Selection Act which provided authority over large scale commercial, industrial or residential development proposals. It has recently begun efforts to draft plans for its unorganized wilderness and mountainous areas where development pressure is increasing. Finally, in 1975 Wyoming passed a planning law to guide energy development. Again the emphasis was heavily weighted toward supporting local action in light of state defined goals, policies and guidelines.

Most states are actively involved now in formulating and implementing specific control procedures to meet specialized pressures. The most powerful have come in the area of wetlands, shorelands and coastal zone protection. Delaware and California have each passed tough coastal laws and both

have weathered the test of extremely powerful political resistance. The other 28 states eligible for funds under the federal coastal zone law are presently working on regulatory schemes of their own.[16] One key question however, is how to connect coastal protection with programs of inland planning and development when local property owners refuse to accept comprehensive controls. Thus in California, the successful passage of coastal regulation in 1976 was matched within the space of a few weeks by defeat of a bill to place farm land under "the guardianship of a state commission enjoined to preserve its pastoral state." Like the national land use policy, this effort "evoked strong opposition from real estate, farming and construction interests."[17]

Many other states have succeeded in introducing specialized controls, including wilderness protection, power plant siting, surface mining regulations, subdivision controls and special tax policies to support farmers in their attempts to keep their land under the plow instead of the bulldozer. Minnesota has gone furthest in fostering regional planning. Its Metropolitan Council not only functions as an areawide planning agency reviewing local grant requests to meet federal guidelines, but has in addition, substantive powers to control public utility investment in an "urban service area" covering 800 square miles of the Minneapolis-St. Paul region. Moreover, the state legislature recently passed a "Metropolitan Land Planning Act" authorizing the Council to "provide local towns with detailed plans for sewers, highways, parks and mass

transit until 1999, along with population projections." According to the agency's chief, "This will mean every owner will know everything about his plot; developers will know a certain plot of land will be used for a grade school in 1986. A lot of mystery will go away." The agency's first goal was to redirect development back to the central city. It has not been entirely successful in that effort. The locations of major suburban projects proposed by Prudential Insurance Company and the 3M Corporation were not changed despite the Council's urging.[18] Still, the Minnesota case illustrates the old hope of using the states as laboratories of social change.

Failure of the Land Use Planning Act only heightens the salience of a variety of other federal laws in guiding land use patterns in healthier, more socially responsive directions. The Water Pollution Control, Clear Air and Solid Waste Disposal Acts each have substantial land use implications and each could be used to corral industrial sprawl. The National Environmental Policy Act is still a useful tool for penning in the worst abuses of federal development activity. And protection of home buyers against construction in flood plains is afforded by the National Flood Insurance Program. In addition, the 1974 Community Development Act required local communities desirous of federal assistance to anticipate the housing requirements of low income citizens, a lefthanded slap at exclusionary zoning. These of course, represent only a sampling of the immense federal role in land use. A table

prepared by the Interior Department for the House Interior Committee in 1975 showing all the Federal land related programs runs ten pages of very tiny Government Printing Office type. It ranges from "fish restoration" under the control of the Bureau of Sport Fisheries and Wildlife to "small business loans" for construction and expansion under the aegis of the Small Business Administration.[19] But the very breadth of national influence, uncoordinated at the top and forced to work into a welter of differing local and state controls, each stretched by the land use demands of construction and corporate interests, does nothing to change, and may even worsen the effects of the federalism-capitalism dialectic. Looked at from a comprehensive national standpoint, one is forced to apply to the hundreds of fronts in the "Quiet Revolution in Land Use Control" Charles Abrams' summary of the New Deal land programs. They are "little more than a group of patchwork remedies, strung by nothing more definitive or substantial than a vague attitude; each maladjustment received the corresponding corrections and that (was) that."[20] Each policy symbolizes an effort to grasp a piece of the larger public interest in land, but as inherently discrete moves they can never succeed in doing more than holding back the worst abuses. The disjointed federal protectorate of local power remains intact.[21]

In the Driver's Seat

Needless to say, capitalism remains no less intact. But with the big corporate exit from real estate in the early

1970s some of the pressure on small business power has receded. A few of the corporate highflyers in land development now plot their next promotions behind bars.[22] Others have grudgingly returned to the mature corporate realization that assured profit stems from land use, not sales. A former aide to Henry Kissinger who went to work for Dart Industries, a pharmaceutical conglomerate with $75 million invested in land, explains that "The old land business of the 1960s is dead....Now it has to be the resort business." Similarly, an executive of the Sea Pines land sales project on Hilton Head Island in South Carolina laments that now "We perceive ourselves as innkeepers ....Its a severe adjustment."[23] Meanwhile, the optimistic plans to construct large scale multi-unit housing projects and whole "New Towns" are in disarray. By 1976 the entire federal loan guarantee of $21 million for the new town of Granada, near Rochester, New York, was written off as a loss and liquidation of several of the remaining thirteen projects is still possible. As it is H.U.D. has been making interest payments on eleven of these since July, 1976. Happily, the man placed in charge of protecting the federal interest in the "New Towns" debacle, Mr. James Dausche, was an expert in accepting the public loss. His previous assignment was to preside over the liquidation of Penn Central. Dausche insists, by the way, that one of the key factors behind the failure of the "New Towns" was the power of nearby communities to make vital decisions affecting their fate without suffering any of the financial consequences.[24]

Private development of other large-scale multi-unit projects has also slumped sharply. From a high of 45% of new housing starts in 1972, apartment construction (including condominiums) dropped to 33% in 1974 and only 23% in 1975, while single family homes continue to be built at a generally even pace.[25] According to one builder, existing rents would have to rise at least 25% to justify new investment.[26] The absence of a profitable apartment market has also slowed innovation of new industrial methods of production. A recent analysis of real estate trends in The New York Times stated that,

> Multi-family housing has not been supported at a level sufficient to support operations by all or even most of the industrialized systems. They seem to require a consistency, smoothness and high level of market demand to take greatest economic advantage of mass production techniques. 27

Builders have not been reticent about where the responsibility lies for assuring the desired "consistency, smoothness and high level of market demand." There is general agreement in the industry that "People will have to accept less housing unless the government is willing to pour in billions of dollars." [28] Others go even further in demanding the use of public authority to subsidize private profits in meeting social needs. In the view of master builder Edward Logue, "We must say that no matter what, we are going to insure against the decline of residential property values." [29]

While many builders favor corporate socialism at the top of the federal system, they continue to blast local growth controls for raising land costs and stopping multi-unit

construction. "Each town ups its requirements, making it impossible to build moderate housing," says a Massachusetts developer.[30] The scarcity of housing, reinforced by the speculation in land that is an integral feature of real estate development, has driven housing prices up to incredible heights. In California, homes have doubled in value in just four years and lotteries are now held just for the right to bid on a new one. Local real estate men estimate that up to 80% of the state's population, "have been shut out of the housing market." Ironically, many do not expect ever to get burned again in speculative activities, since "The bureaucratic, environmental and slow growth restrictions will brake runaway building."[31] This helps explain perhaps why the National Association of Home Builders was willing to scrap the national land use policy legislation. It may have been used after all, to undermine the "restrictions" on "runaway building." Nowhere is the irrationality of placing basic human needs at the disposal of a profit system more glaring. Those who have assigned themselves the task of providing the society with shelter manipulate the municipal sabotage of housing production to serve their own pocketbooks. Thus the local political economy of land use control continues to channel the flow of people to the land in response to wealth. The contradiction between asking for public money to build houses, while rejecting the public authority to make space available is a contradiction builders do not feel it is incumbent upon them to resolve. This sort of federal inconsistency

is businesslike.

Federalism may also aid the accumulation of capital when its various subunits can be played against one another to create a more hospitable political climate all around. When the national government wants to nationalize standards, it is pleasant to remember, advises The Wall Street Journal, that

> One of the really nice things about the United States is that it contains within it a multitude of political jurisdictions. People and companies can vote with their feet without having to leave the country. If the tax burden or crime rate becomes too unbearable in New York or Newark, people and businessmen will hike to Chicago or Stamford instead. 32

In an unstable economy the mobility of capital and therefore, the industrial pressure on land, is intensified by competition among job and tax hungry governments for business locations. Intergovernmental competition within the national political economy dampens the corporate interest in central planning. Thus Business Week sees, "The Second War Between the States" based on "bitter and divisive" interregional conflicts over "income, jobs, people and capital."[33] Some of the salvos include reductions in the priority given to environmental protection. For example, after adopting anti-pollution laws both New York and New Jersey have sought delays in their implementation as a means of encouraging business to stay put. Governor Hugh Carey of New York has even intervened in a local community decision refusing the Nestlé Company permission to site its new headquarters. This after a corporate Vice President proclaimed that "If we don't get this, we leave the state."[34] A more positive illustration

of the business advantages of federalism is New York City Mayor Abraham D. Beame's recent pilgrimage to the shrine of oil in Houston, Texas. The private barons of petroleum were told by the Mayor, "We want you, we need you....We will do everything possible to make it pleasant for you to locate in New York." [35]

The early nineteenth century mobility of labor is replaced by the late twentieth century mobility of capital. But there is no new "mercantile plan" for the northeast designed to restrict the movement of business the way Richard Rush hoped to use slow land sales as a reign on labor. More thoughtful representatives of established commercial thought are not entirely pleased by this result. One business journalist has warned recently that "it is clearly time for business to consider carefully the long run effects of its flight from the cities," particularly in terms of higher energy costs, the loss of countryside, and the danger that "The poor who are left behind may not accept their lot passively." [36] Similarly, The New York Times hints that the tumult of economic activity and local resistance may yet bring about a new central structure of land use decision:

> The nation appears to be approaching a point where somebody has to decide what should go where, in terms of feasibility, resource conservation and above all, fairness in distributing national burdens. [37]

Identical concerns were in the minds of Business Week editors when they scolded the real estate industry for opposing the land use bill back in 1974:

> Such opposition is likely to prove futile. Control over the land most certainly will tighten rather than weaken as economic growth and even modest population expansion put greater strains on scarce urban land.
>
> ...(a) checkerboard of state and local controls may only serve to exacerbate the problems it is meant to solve. A national approach setting up uniform guidelines is infinitely preferable. 38

The success of local and state environmental regulation may also contribute to a new corporate drive to tame the commercially irresponsible acts of federalism's subordinate units. An aide to the Senate Public Works Committee predicts for example, that "Within the next five years industry will be asking for national preemptive standards because it will be easier to deal with the insulated federal bureaucracy than with state and local officials."39

Capital retains an interest in disciplining what Max Weber called "firmly established local structures." It still needs the constant enlargement of government's administrative boundaries to conform with the scale of production. Federalism's tug of war with capitalism will persist. In this respect it is entirely consistent with the historic character of American development that major industrial corporations stood for society as a whole in defining the need for a national land use policy. Furthermore, corporate manipulation of public resource management illustrates that reliance on public ownership alone to assure equitable access or environmentally sound land use is simplistic. This is especially true because most Americans have never been invited to see the potential of the enormous domain they possess.

Public Land and Public Opportunity

The West as a still live public opportunity is for the average citizen a mysteriously concealed fact. For people living east of the Mississippi River, and that includes most of the population, the public domain is a non-issue. At best it is a myth replayed on the television screen. Otherwise it is neglected. As a second chance to recover democratic control of American development it goes unmentioned. It is yet to be recalled from the collective subconscious that much of "this land" still "is your land." The fact that giant corporations are willing to spend millions for the right of access to "your land" is not officially cited to illustrate a greater potential value that could be realized under collective control for democratic ends. The government instead acts as a lessor of capital assets and a not very shrewd one at that.[40] Attempts to do more are labeled socialism, the public appropriation of private opportunity. Yet the fact that between 1785 and 1880 the billions of acres "sold" off by the U.S. Government brought the sum of $208 million is rarely mentioned in respectable circles as the most charitable exercise of public welfare in human history.[41]

The single greatest irony of American development is that despite the nation's establishment as a republic, there has never been a persistently serious effort to tap the chance for collective development inherent in the "res publica," the public's thing, even though the immense social laboratory has always been ready at hand. For most citizens this remains an

historic secret of immense importance for our present and future. Public development on this land would not require expropriation, eminent domain, or a direct challenge to capitalism. Yet it is a still latent hope, because its realization would undermine the intricate relationships built over the last century between the national public land bureaucracies and the corporate structure. Public development is a hostage to corporate capitalism and its encouragement of public ignorance. Still, a challenge here, beginning with tiny steps such as getting a few Easterners on the Congressional Interior Committees, is a necessary prerequisite to gaining more effective regulatory authority over the private domain. The best way to become adept at discovering the national interest in land use outside the public realm is to gain substantive experience in developing directly, as well as preserving, the federal lands.

Minimally this should include startup of federal exploration and development of energy, mineral and timber resources. With the profits derived from these activities funds would be available to institute a national land trust embracing not only fragile lands requiring preservation but also higher quality lands amenable to community development. Truly public development of the western public domain could facilitate its expansion eastward to serve as a base for direct public planning and construction of new communities including controls on the siting of industry and other employment opportunities, an important omission of the New Towns program.

This should use the experience derived from past federal experiments in community construction such as the U.S. Shipping Board Communities built during World War I, the New Deal's Greenbelt Communities and the towns built in conjunction with the early power and reclamation projects such as Boulder City, Nevada and Norris, Tennessee. This tradition of public development bears closer analysis and revival.[42] And it should be broadened to take in socially oriented investment in the new wilderness of the decimated South Bronx and other abandoned urban cores. This should be integrated with efforts to re-establish the agricultural resettlement programs that began with Rexford Tugwell's Resettlement Administration back in the thirties.[43] These policies would not only provide immediate experience in managing "areas of critical environmental concern" and planning for the impact of large scale development, they would also be directly linked to the meeting of human needs, showing how through public control of land development, the intimate relation of man and land must not inevitably be subordinated to profitmaking. Finally, such a program would also strengthen the public hand in controlling the major corporate powers in resource development. The very struggle to achieve such policies would itself be helpful in portraying the dependence of corporate action on public welfare, focusing the question of responsibility to the public interest in much starker terms. In turn, this might encourage a populist drive for similar action in states with large domains of their own, such as Texas. Thus the public

domain as an indispensable private force of production remains an unemployed tool in the battle to limit corporate power. The point is that national land use planning will hardly escape capture by the surrogate representatives of the national interest if the latter cannot be disciplined first by democratically determined policies of land use in the public domain. Neither Exxon nor the Chamber of Commerce can demand compensation for what they do not own.

Collective action on the federal lands is essential because in America the public interest in land is still largely identified with government support for private ownership. Public controls are viewed as external restraints necessary to guard the community's health, safety, morals, and the steadily upward rise of real estate values. In questions of regulation the benefit of the doubt remains with the property owner. The courts continue to hold that where public control aims at more than prohibition of a harmful private use compensation must be paid. Such luxuries most communities cannot afford.[44] Planning remains an essentially negative tool. The Rockefeller Task Force recommendation that courts shift the benefit of the doubt to the physical environment is helpful, but this would not by itself enlarge the capacity to plan the built environment. We need a more balanced conception of the relation between society and land to serve as the guide for a national land policy. It does little good to call for public ownership or land trusts if our imagination fails to conceive of alternatives to the entrepreneurial attitude.

A starting point is recognition that the social interest in land, all land, is not indirect or limited to external limitations on the property system. Minimally it must be seen that society itself is the indispensable condition of individual appropriation. Without the respect of others for the individual's claim property is reduced to the impermanent unselfconscious possession of the animal. "An isolated individual," wrote Marx, "could no more possess property in land than he could speak." [45] Permanence of possession comes only in a social setting with the words and social power to define it. Thus property is a relation among people and only indirectly is it a relation between individuals and nature. Always the recognition and concent of the other comes between land and the person who claims it. Short of this, property is absent. This is much more than a legal or philosophical point. Its roots are in the history of community power.

The society's particular historic role in establishing the system of appropriation is decisive for the individual's relation to land. Imagine American society if the public domain was never apportioned to private owners, or was distributed only in leasehold. The central point of the detailed discussion of America's land disposal system was to illustrate how public policy was a prime factor determining the rate of growth of the West as a bundle of commodities. But this is hardly unique to America. Every society must to a greater or lesser extent, control the mobilization of its land in the production process, otherwise it would risk

destruction of the base of its own existence.[46] This elemental responsibility is only hesitantly accepted in America, but it is unavoidable.

Land is not a human product hence it is fundamentally wrong to treat it as if it were.[47] The commercialization of land is the opposite side of the idolatry of things scorned by philosophers from the ancient Hebrew prophets through Marx. Just as man debases himself by submitting to his own creations as if they had extra-human powers so he debases nature when he presumes to treat it as if it were merely another human product possessing the characteristics of reproducability and exchangeability. Polanyi calls it "the weirdest of all undertakings of our ancestors."[48] It is important to recognize however, that while primitive man was idolatrous from the start he lost his awe of nature only a few centuries ago. For the long span of time preceding the rise of modern capitalism the common human sensibility about land was marked by a humility before its immense variety, its beauty and its power to generate lifegiving food. It symbolized the mystery of existence. While they varied with the demands of the physical environment itself, pre-capitalist societies were stamped by a common sense that the appropriation and use of land must be consciously subjected to social organization and control in meeting the social needs. Patterns of land use were fabricated in harmony with the life of the community as a whole, not in obedience to the abstract and specialized laws of the marketplace. In no society preceding our own could even the

most enlightened among the population begin to understand the fantastic social ritual that occurred recently at the American Real Estate Exchange in San Francisco,

> At a typical AMREX session, details of the lots which have included 10,000 acres of recreational land in Northern California at $400 per acre and a package of Midwestern industrial properties for around $6 million - are flashed onto screens around the trading floor....If a buyer sees an interesting lot, he goes to a raised table in the center of the room, where an announcer pages the seller. After that, private negotiations begin. [49]

Merchandising has reached such an antiseptic stage of rationality that shrewd buyers no longer deem it essential to step on the land they desire before beginning "private negotiations." The crazy abstraction of earth from its physical and social ecology is impossible where it is understood that land belongs to no one and therefore to everyone. In the pre-capitalist history of man, the community, like the soil which enlivened it, was viewed as the precondition or antecedent of individual life and activity. Neither was viewed as created by man and neither was subject to his manipulation. Individuals appeared as intermediaries in the more enduring association of human community and landscape. This is the essential meaning of traditional society and shows its profound rationality with respect to nature. Modes of private appropriation, even private property existed of course. But always as an expression of social needs, definitions and roles. In Aristotle's justification of private property for example, there is an insistence that "social customs, mental

culture and legislation should be carefully applied by the polis to promote a proper spirit in the use of property." And he added that in an ideal polis, "the territory...should be divided into two parts, one of which will be public property while the other will belong to private owners."[50] This idea did not vanish with Greek city life. In the Roman Republic too, property was a laboratory for improving the public life. As Marx summarized the Republican attitude, its enquiry into property was "always about what kind of property creates the best citizens."[51] The "res privata" was not subverted by public obligation, it was nourished by it by playing a role in the making of civic virtue.

The Romans, like Aristotle, understood that the issue of privacy is inseparable from the public setting. The personal domain needs public institutions which are expressly designed to answer common yearnings after a separate peace. No less does the public life need citizens who are unafraid of freedom and true privacy. Here the value of privacy is not a hostage to the public order, but neither is the public a hostage to personal wealth and power. Each is part of a single social whole established so that, in Cicero's words, "all citizens might enjoy both common and private advantages."[52] Thus in a genuine republic land is at once a personal and collective possession of each and all the citizens.

Feudal society vastly multiplied the restrictions on land. Yet not only did land remain the symbolic, unexchangeable center of community but individuals found it both possible and

desirable to entertain an enormously complex array of mutually reinforcing and overlapping claims to the same ground. Marc Bloch's description of feudal possession is telling:

> The tenant who - from his father to son, as a rule - ploughs the land and gathers in the crops, his immediate lord, to whom he pays dues and who, in certain circumstances, can resume possession of the lands, the lord of the lord, and so on, right up the feudal scale - how many persons there are who can say, each with as much justification as the other, 'That is my field.' 53

Not until the appearance of modern capitalist attitudes, especially Locke's radical excision of society from the origins of property, did "the weirdest of all undertakings," the commercial treatment of land begin and the belief take root that land was a thing to be traded and discarded like the crops which it fed. We remain at this dangerously naive stage of human development.

The recovery of the public interest in land is the prerequisite to social change in the human environment as a complex and living whole. But efforts like that begun by Senator Henry Jackson are bound for corporate manipulation unless they are joined with a movement to reestablish and enlarge the public domain as a thriving center of public interest, a dynamic res publica. Collective ownership by itself of course is not the point. Essential is an awareness on the part of ever growing numbers of citizens in more and more states and cities that their land must be the basis on which to build a new democratic path for social change. For the democratic possibility ultimately means gaining control of the space to innovate, returning to the citizens their land as their public laboratory.

Notes to Chapter Nine, Conclusion

[1]For Carter's position see his testimony before Udall's subcommittee in 1974. U.S., Congress, House, Committee on Interior and Insular Affairs, Land Use Planning, Hearings before the Subcommittee on the Environment on H.R. 10294, 93rd Cong., 2d sess., 1974, pp. 333-335.

[2]"Morris Udall Assesses Legislative Outlook, Recalls the Campaign," Congressional Quarterly Weekly Report, 2 April 1977, p. 605.

[3]William A. J. Sparks, "Report of the Commissioner of the General Land Office," House Executive Documents, 49th Cong., 1st sess., XI, 155-156, 217-218. Reprinted in Ray Allen Billington, B.J. Loewenberg and Samuel H. Brockvnier, eds., The Making of American Democracy, Readings and Documents (New York: Rinehart & Co., 1950),pp.45-46.

[4]This distinction parallels the one drawn by James O'Connor between the accumulation and legitimation functions of the modern capitalist state. However, the use of the category "legitimization" in The Fiscal Crisis of the State (New York: St. Martin's Press, 1973) is misleading. To employ it as a means for explaining such basic policies as welfare or conservation implies that their most significant effect is symbolic. But repairing the destruction of the physical environment, or providing minimum levels of income to people the economy cannot absorb, is more than an exercise in image and promise making. While these policies are framed to fit within the logic of corporate expansion, and are monuments neither to the dignity of man nor nature, they do substantially modify the operations of the marketplace. Those who man the power institutions of American society would run a great risk if either of these needs were left completely unsatisfied. Thus legitimation is achieved only because the state does attempt a practical defense of diffuse public interests. That "social expenses" must be paid in order "to maintain social harmony" illustrates that "legitimization" involves social changes on a concrete as well as ideological level.

[5]For general discussions of the progressives, see Richard Hofstadter, The Age of Reform (New York: Alfred A. Knopf, 1956); Grant McConnell, Private Power and American Democracy (New York: Random House, Vintage Books, 1966), esp. chap. 2.

[6]See "Westport Defeats a Change in Zoning Laws That Would Allow Apartment Buildings for the First Time," New York Times, 25 September 1975; "Suffolk County Resists Public Housing," New York Times, 25 April 1977; "Xerox Plans to Sell Controversial Plot in Greenwich Area," New York Times, 14 April 1976. Today's newspaper would likely reveal more examples.

[7]"Conformity Is Made Law Under 'New Town' Codes," New York Times, 25 August 1975. The article adds that "The main impetus" behind the controls has been the discovery by developers that they can enhance profits on future home sales in a new development by placing restrictive covenants in deeds that require the first wave of residents to mow their lawns, maintain developers' concept of architectural style and conform to myriad other conditions. (pp. 1,24). Dependence on restrictive covenants as a means of protecting prestige and property values is not limited to the "New Towns." The city of Houston, Texas refuses to adopt an official zoning ordinance ,believing that publicly enforceable private contracts are a more effective means of defense for social and economic privilege. See "Booming Houston Puts It Faith in Unlimited Growth," New York Times, December 4, 1975.

[8]"Citibank Buying Buildings to Keep Sex Shops Away From Its Offices," New York Times, December 14, 1976. According to one bank official the new private zoning policy was inaugurated when Citibank's Chairman, Walter B. Wriston "pointed through the window of his present office at 399 Park Avenue two years ago and said "Get rid of those massage parlors." This was a clear expression of corporate impatience with the city's official effort to zone sex out of respectable places, a policy modeled on Detroit's porno zoning plan, upheld by the Supreme Court in 1976. See "Zoning Regulations to Curb Pornography Submitted by Beame," New York Times, November 12, 1976, pp. 1, B3.

[9]New York Times, 29 January 1976; 22 December 1975.

[10]"An open-pit dilemma for Butte, Mont.," Business Week, 1st December 1973. Also see "Inexorably a Copper Mine Is Eating Away Butte, Mont.," New York Times, 15 February 1973. According to the Times, "the company's lobbyists in Helena, the state capital, persuaded the state legislature in 1961 to give private mineral corporations the right to eminent domain, a power reserved everywhere else in the United States to governmental bodies, asserting the public interest. The Montana law says that mining is a "public use" and thus gives its practitioners governmental power." The Corporation and the State are one; public and private power indistinguishable.

[11]See the San Antonio Express, 17-18 June 1977.

[12]Robert Engler, The Politics of Oil (Chicago: University of Chicago Press, Phoenix Books, 1967), p. 483.

[13]See Chapter One, note 2.

[14]For general overviews of land use control efforts by the states see Natural Resources Defense Council, Inc., Land Use Controls in the United States, ed. Elaine Moss (New York: The Dial Press, 1977); U.S., Congress, Senate

Committee on Interior and Insular Affairs, State Land Use Programs, Summaries of Land Use Regulation in Eight States Prepared By The Environmental Quality Committee Of The Young Lawyers Section, The American Bar Association And A 50-State Survey of State Land Use Controls Prepared by 'Land Use Planning Reports,' 93d Cong., 2d sess., 1974.

[15]"A state crackdown scares the developers," Business Week, 11 August 1975.

[16]See "Officials Discuss Coastland's Use," New York Times, 2 June 1975; "A debate over Delaware's tough coastal-use law," Business Week, 2 March 1974; "The cost of coastal zoning," Business Week, 3 May 1976. The Wall Street Journal was outraged by passage of California's coastal regulatory program. It was, said the Journal, "naked class legislation which will serve to protect the enclaves of the prosperous already established on the coastline and block any further economic growth that might disturb the 'quality of life' of the affluent." The Journal would presumably favor "class legislation" to be dressed in finer, pro-growth garb. A classless society would, of course, be unthinkable. See "The Other Jerry," 14 September 1976.

[17]"Coast Bill to Save Farms Defeated," New York Times, 29 August 1976. California's earlier effort to protect farmlands, the Williamson Act passed in 1975, gave tax concessions for keeping land in agriculture under ten year contracts, a policy pursued by many other states. But as the Times notes, "this only delays the conversion of land, and the feeling has grown that the Act's main result has been windfall benefits to a few large landowners." Also see "1971 Law Is Halting Flight of Farmers in New York State," New York Times, 17 May 1976 and "Hunger for Land is Turning a Region of Choice Farms Into One of Homes," New York Times, 8 February 1976.

[18]"Move to Regional Planning Is Led By a Minneapolis-St. Paul Agency," New York Times, 8 March 1977. Also see "The Perils of Petaluma - Keeping the Lid on Growth," National Journal, 1st May 1976, p. 593. Many planners believe that indirect land use controls such as utility policy may be the most effective mode of consciously influencing growth. As one planner put it, "Zoning is not the naswer. It's an interesting but rather artificial exercise. The ballgame is in the capital improvements programs and through utility extension policies." "Land Use Regulations, Statewide Problem," San Antonio Light, 1 December 1976. Thus Governor Edmund G. Brown, Jr., of California has recently urged a new collection of policies aimed at curbing urban growth and revivifying existing cities by "new laws and administrative measures, radical revisions in tax structures and public expenditure policies and virtually compulsory urban renovation." This would include requiring suburbs to share sales

and property taxes with poorer cities on a regional basis, mandating cities and counties to adopt five year housing rehabilitation programs, and forcing landlords to keep up their properties or be superseded by court appointed receivers to manage rehabilitation. See "California Seeking Urban Growth Curb," New York Times, 1 June 1977.

[19]U.S., Congress, House, Committee on Interior and Insular Affairs, Land Use and Resource Conservation, Hearings before the Subcommittee on Energy and the Environment on H.R. 3510 and related bills, 94th Cong., 1st sess., 1975, pp. 51-60. Also see Natural Resources Defense Council, Land Use Controls in the United States, chapters 3-11.

[20]Charles Abrams, Revolution in Land (New York: Harper and Brothers, 1939), p. 233.

[21]The local political economy of land use control has been strengthened enormously by a series of recent Supreme Court decisions. In 1975, it ruled that inner city residents may not sue suburban governments over their tight zoning codes because the former's "inability to reside" in the suburb "is the consequence of the economics of the area housing market, rather than of respondents' assertedly illegal acts." A year later it held that it is constitutional for a city to require property owners who desire rezoning of their land to first get the approval of the city's voters in a referendum. This reinforces the power of narrowly defined majorities to exclude the land use needs of external majorities. This built on a precedent established in 1971 sustaining the right of a community majority to decide for itself whether to accept low-rent public housing. Finally, in perhaps its most stringent limitation on the anti-exclusionary alliance of builders and minorities, the Supreme Court held that it is not inherently unconstitutional for a suburb to refuse to modify its zoning ordinance even where its practical effect was to stop construction of low or moderate income or integrated housing. For a zoning law to be overturned, an "intent" or a"purpose" to discriminate must be shown. Indeed it added that even if the local government was "motivated in part by a racially discriminatory purpose", the policy would still not necessarily be unconstitutional. See "High Court Bars Zoning Challenge," New York Times, 26 June 1975; "Voters Approval in Zoning Upheld," New York Times, 22 June 1976; "Court Says Suburbs May Continue Zoning That Keeps Out Poor," New York Times, 12 January 1977. For an excellent discussion of the Court's attitude toward exclusionary land use policies see Michael Danielson, The Politics of Exclusion (New York: Columbia University Press, 1976). See also "The Perils of Petaluma - Keeping the Lid on Growth," National Journal, 1 May 1976. Attemptsto break suburban exclusion through the courts have not been entirely unsuccessful however. Suits brought under the anti-discrimination clauses of federal community

programs have been effective in disciplining some cash hungry suburbs. In 1976, for example, a Federal judge in Hartford, Connecticut enjoined the Department of Housing and Urban Development from dispersing up to $4 million in community development aid under the Community Development Act of 1974 to seven affluent towns surrounding that city. The suit was brought by Hartford on the ground that its need to service a poor population which was refused access to nearby communities precluded the latter's desire to make improvements in their parks and roads. In his decision, based specifically on a failure of HUD to press the suburbs to make projections about their future housing requirements for low-income people, Judge M. Joseph Blumenfeld noted that "The statute clearly has, as one of its objectives, the spacial deconcentration of lower income groups, particularly from the central cities." "Hartford Blocks Aid for Suburbs," New York Times 29 January 1976. As Business Week pointed out however, "suburbs do not have to worry about any sudden flood of low-income housing (since) Federal subsidies essential for building any substantial volume of such housing do not exist. And, of course, communities have the right to choose not to apply for HUD funds in the first place." "A victory over the suburbs," Business Week, 16 February 1976. Also see "Hartford's suburban crunch," Business Week, 10 May 1976. The Carter Administration has yet to manifest an interest in construction of low-income suburban housing. In response to a question about his interpretation of the Community Development Act's integration requirements, President Jimmy Carter replied that "This does not mean that every individual city block has to have all different kinds of housing in it. It does mean that the overall package as proposed to the Federal Government has to provide for a wide distribution of housing opportunities for those in minority groups or those who have a low income." "News Conference," New York Times, 10 March 1977. The administration has hinted at the possibility of a revised urban renewal or "city rebuilding" program based on increased revenue-sharing funds available to local elites to be spent as they see fit. "In New York City" for example, "the suggestion has been made that a grant from such a fund - augmented by loans from other sources - might well build a new convention center. Major projects of this sort are the goal of these 'action grants.'" "Washington Gives Little Housing Direction," New York Times, 1 April 1977 (emphasis added). Urban programs focused on rescuing downtown real estate and commerce may help in taking some of the heat off suburbs but their benefits for the ill-housed are nebulous.

[22]See "Rio Rancho Estates And Four Top Officers Convicted of Fraud," New York Times, 25 January 1977; "Land Concern Pleads Guilty to 19 Counts of Criminal Fraud," New York Times, 23 February 1977.

[23]"When the land boom backfires," Business Week, 8 September 1973; "Elegant Sea Pines - Offshore and All But Broke," New York Times, 4 April 1976.

[24]"U.S. Reevaluating 'New Towns' Programs," New York Times, 23 April 1976; "The New Towns That Haunt HUD," Business Week, 12 April 1976. See also the editorial on the "New Towns' Future" in the Times, 23 December 1976. In the editors' view "The crucial factor" in the debacle "was timing." The "federal new communities program got under way just as the bottom fell out of the real estate market." The fact that there might be something wrong with a "market" in "real estate" was not mentioned in the editorial. Furthermore, a recent report suggests that the new community failure may have been environmental as well as economic. In seven of nine privately planned Florida communities a New York Public Interest Research Group discovered serious environmental damage, including destruction of wetlands and woodlands, pollution of manmade canals, and construction in flood plains. See "Group Says Nine Planned Communities Tend to Hurt Florida Environment," New York Times, 17 April 1977. And of course, Florida does have a land use law!

[25]"Business Trends - Housing Recovery, but Questions Remain," New York Times, 7 May 1976.

[26]"The homebuilders clutch at hope," Business Week, 2 February 1976.

[27]"Housing Slide Damages Hope for 'Industrialized' Construction," New York Times, 28 April 1976.

[28]"Ryan Homes: Stellar Performer In The Housing Slump," Business Week, 25 August 1975.

[29]"Logue Asks U.S. Act on Housing," New York Times, 7 May 1976.

[30]"What gave housing the wobbles, Business Week, 28 June 1976.

[31]"Boom in the West," Wall Street Journal, 27 September 1976.

[32]"Voting With Your Feet," Wall Street Journal, 29 April 1976. The editorial came in response to the Easter sermon of the Rev. Paul Moore, Jr., Episcopal Bishop of New York who called "immoral" the decisions of business executives to take their firms from the city: "(S)uch appeals" said the Journal, while well intentioned, "are irrelevant. Bishop Moore could no more have stayed the exodus of Union Carbide to Connecticut than he could have talked Moses into keeping the Israelites in Egypt. People and corporations will always leave political

jurisdictions while costs exceed benefits as long as they believe the spot over the horizon is better." The felicitous calculus explains all. Moses must have owned a calculator.

[33]"The Second War Between The States," Business Week, 17 May 1976.

[34]See "Carey Bids the Legislature Delay Environmental Law," New York Times, 18 February 1976; "Clean Air Rules Easing for South Jersey," New York Times, 12 February 1976; "Labor Backs Byrne on Relaxing of Pollution Rules," 13 February 1976; "Carey Seeks Delay in Harrison Action on Nestlé Site Plan," New York Times, 9 June 1977.

[35]"Oilmen Urge 'Second Look' at City After Beame Vows 'New Attitude'", New York Times, 4 May 1977. Interestingly, during the 1976 Presidential campaign Representative Morris Udall was asked his opinion of the relaxation of environmental controls in the New York metropolitan area. His reply was not a model of firmness: "Well, I think we ought to constantly review the detailed implementation in any area. We ought not to be unreasonable." "Excerpts from Interview with Udall on Urban Crises and Other Domestic Issues," New York Times, 29 March 1976.

[36]Jack Patterson, "The prospect of a nation with no important cities," Business Week, 2 February 1976. Cf. the Wall Street Journal's editorial on the Business Roundtable's "Economic Growth Commissions, "The Roundtable's Mission," 6 October 1976:

The best run cities of this country invariably owe an important debt for their good condition to a strong core of local business executives. Cities can't live without commerce and businesses cannot live comfortably in badly managed cities. Business executives have not only a right but a responsibility to bring their influence to bear on local government and to stand up for sound, though perhaps unpopular, policies. Too many have shirked that responsibility in recent years.

[37]Gladwin Hill, "News Analysis: Siting Unpopular Plants," New York Times, 2 December 1974. Hill's opinion has not changed. See "Population Distribution an Issue for States," New York Times, 4 February 1977.

[38]"Everyone Loses," Business Week, 9 March 1974.

[39]"The states get super tough," Business Week, 8 March 1976.

[40]See Robert Engler, The Brotherhood of Oil (Chicago: University of Chicago Press, 1977), pp. 158-159.

[41]Marion Clawson and Burnell Held, The Federal Lands, Their Use and Management (Baltimore: Johns Hopkins University Press, 1957), p. 276.

[42]Advisory Commission on Intergovernmental Relations, Urban and Rural Growth: Policies for Future Growth (Washington: U.S. Government Printing Office, 1968), pp. 71-76.

[43]Otis Graham, Toward A Planned Society (New York: Oxford University Press, 1976), pp. 44-45.

[44]See Natural Resources Defense Council, Land Use Controls, pp. 7-11.

[45]Karl Marx, Pre-Capitalist Economic Formations, with an introduction by Eric J. Hobsbawm (New York: International Publishers, 1964), p. 81.

[46]See Karl Polanyi, The Great Transformation, with an introduction by R. M. MacIver (Boston: Beacon Press, 1957), esp. chap. 15.

[47]See E. F. Schumacher, Small is Beautiful (New York: Harper & Row, Colophon Books, 1973),pp. 100 et passim.

[48]Polanyi, The Great Transformation, p. 178.

[49]"Selling land as a commodity," Business Week, 6 December 1973. The sale of buildings on the land is subject to no less expert management. Fairfax, Inc., a New York firm specializes as a real estate advertising agency, with several large builders counted among its clients, including Tishman Realty and Development Corp., Starrett Housing Corp., and New York State's own Urban Development Corporation. As one of its promotions,

A ten foot, two-ton red ribbon was tied around the Charter Club in Biscayne Bay (Miami), a project of 446 high rise condominiums ranging in price from $40,000 to $180,000. The gift wrapping was the builder's symbol of presentation to the city. The ostentatious bow became such a part of the scene that when it was removed, people began asking about it. It went back on the side of the building. ("The hard sell in real estate," Business Week, 14 July 1975).

[50]Aristotle, The Politics, trans. and ed. by Ernest Barker (New York: Oxford University Press, 1958), pp. 51,305.

[51]Marx, Pre-Capitalist Economic Formations, p. 84. For an interesting discussion of the complex Roman land policies, including its system of public land leasings, see F. R. Cowell, Cicero and the Roman Republic, 5th ed. (Baltimore: Penguin Books, 1973), esp. chap. 3. Cowell points out that in Rome landowning "was one of the very few profitable investments open to the wealthy." By plebescite the citizenry elected to prohibit Senators from owning cargo ships engaging in international commerce and from accepting government contracts. Hence for men of wealth desirous of public prestige too, the Senate became a channeling force into agricultural enterprise. (p. 52).

[52]Marcus Tullius Cicero, On The Commonwealth, trans. and ed. by George Holland Sabine and Stanley Barney Smith (Indianapolis: Bobbs-Merrill Co., reprint of original edition published by Ohio State University Press, Columbus, 1929), p. 246.

[53]Marc Bloch, Feudal Society, 2 vols., trans. L. A. Manyon (Chicago: University of Chicago Press, 1961), 1:116.

BIBLIOGRAPHY

The bibliography is divided into three sections. Part I includes general and theoretical works which were of special value in formulating the framework of this study. Part II lists the historical sources used in Chapters 2 through 4. Finally, Part III includes the sources for the analysis of national land use policy, Chapters 5 through 8.

Although not specifically noted below, several magazines, journals, and newspapers were essential to the analysis of business trends and land policy. These were: The New York Times, Wall Street Journal, Christian Science Monitor, Congressional Quarterly, Business Week, National Journal and the Congressional Record.

PART I - General Works

Bachrach, Peter and Baratz, Morton. Power and Poverty, Theory & Practice. New York: Oxford University Press, 1970.

Baran, Paul. The Political Economy of Growth. New York: Monthly Review Press, 1957.

Barnett, Richard J. and Muller, Ronald E. Global Reach. New York: Simon & Schuster, 1974.

Bauer, Raymond A., De Sola Pool, Ithiel, and Dexter, Lewis A. American Business and Public Policy. 2d ed. Chicago: Aldine-Atherton Co., 1963, 1972.

Bell, Daniel. The Coming of Post-Industrial Society. New York: Basic Books, 1973.

Berle, Adolph. Power Without Property. New York: Harcourt Brace, 1959.

Berle, Adolph and Means, Gardner. The Modern Corporation & Private Property. New York: Harcourt Brace & World, 1968.

Berle, Adolph. The Twentieth Century Capitalist Revolution. New York: Harcourt, Brace & World, Harvest Books, 1954.

Bierstadt, Robert. "An Analysis of Social Power." In Sociological Theory: A Book of Readings, pp. 154-165. Edited by Lewis A. Coser and Bernard Rosenberg. London: The MacMillan Co., 1969.

Blair, John. Economic Concentration. New York: Harcourt Brace, Jovanovich, 1972.

Braverman, Harry. Labor and Monopoly Capital. New York: Monthly Review Press, 1974.

Brown, Harrison. The Challenge of Man's Future. New York: Viking Press, Compass Books, 1954, 1956.

Burnham, James. The Managerial Revolution. Bloomington: Indiana University Press, 1962, 1960.

Cicero, Marcus Tullius. On The Commonwealth. Translated with an introduction by George Holland Sabine and Stanley Barney Smith. Columbus: Ohio State University Press, 1929; reprint ed. Indianapolis: Bobbs-Merrill, Library of Liberal Arts, n.d.

Cobb, Roger W. and Elder, Charles P. Participation in American Politics, The Dynamics of Agenda Building. Baltimore: Johns Hopkins University Press, 1972.

Commons, John R. Legal Foundations of Capitalism. Madison: University of Wisconsin Press, 1968.

Cowell, F.R. Cicero and the Roman Republic. 5th ed. Baltimore; Penguin Books, 1973.

Cumming, Robert Denoon. Human Nature & History, 2 vols. Chicago: University of Chicago Press, 1969.

Edelman, Murray. The Symbolic Uses of Politics. Urbana: University of Illinois Press, 1964.

Engler, Robert. The Brotherhood of Oil. Chicago: University of Chicago Press, 1977.

_____, The Politics of Oil, Private Power and Democratic Directions. Chicago: University of Chicago Press, Phoenix Books, 1961, 1967.

Fainsod, Merle; Gordon, Lincoln; and Palamountain, Joseph C. Government and the American Economy. 3rd ed. New York: W. W. Norton, 1959.

Faulkner, Harold V. The Decline of Laissez-Faire, 1897-1917. New York: Harper & Row, Torchbooks, 1951.

Friedman, Milton. Capitalism and Freedom. Chicago: University of Chicago Press, Phoenix Books, 1962.

Galbraith, John Kenneth. The New Industrial State. Boston; Houghton Mifflin Co., Sentry edition, 1967.

George, Henry. Progress and Poverty. New York: Robert Schalkenbach Foundation, 1971.

Gerth, Hans and Mills, C. Wright. From Max Weber. New York: Oxford University Press, 1946, 1958.

Greenberg, Edward S. Serving The Few, Corporate Capitalism and the Bias of Government Policy. New York: John Wiley & Sons, 1974.

Grodzins, Morton. The American System, A New View of Government in the United States. Edited by Daniel K. Elazar. Chicago: Rand McNally & Co., 1966.

Gross, Bertram M. The Legislative Struggle, A Study in Social Combat. New York: McGraw Hill, 1953.

Hamilton, Alexander; Madison, James; and Jay, John. The Federalist Papers. Introduction by Clinton Rossiter. New York: New American Library, Mentor Books, 1961.

Hayek, Friedrich A. The Road to Serfdom. Chicago: University of Chicago Press, Phoenix Books, 1944.

Heilbroner, Robert. The Limits of American Capitalism. New York: Harper & Row, Torchbooks, 1966.

Hofstadter, Richard. The American Political Tradition. New York: Rabdom House, Vintage Books, 1948.

Kapp, K. William. The Social Costs of Business Enterprise, 2d ed. New York: Asia Publishing House, 1963.

Kariel, Henry S. The Decline of American Pluralism. Stanford: Stanford University Press, 1961.

Lawrence D.H. Studies in Classic American Literature. New York: The Viking Press, Compass Books, 1971.

Locke, John. Two Treatises of Government. Introduction and Notes by Peter Lasslett. New York: The New American Library, Mentor Books, 1963.

Lowi, Theodore, H. "Distribution, Regulation, Redistribution: The Functions of Government." In Readings in American Political Behavior, 2d ed., pp. 245-256. Edited by Raymond E. Wolfinger. Englewood Cliffs, N.J.: Prentice Hall, 1970.

_____ The End of Liberalism: Ideology, Policy and the Crisis of Public Authority. New York: W. W. Norton & Co., 1969.

Lynd, Robert S. "Power in American Society as Resource and Problem." In Problems of Power in American Democracy, pp. 1-45. Edited by Arthur Kornhauser. Detroit: Wayne State University Press, 1957.

McConnell, Grant. Private Power and American Democracy. New York: Knopf, Vintage Books, 1966.

Mannheim, Karl. Man and Society in An Age of Reconstruction. London: Routledge & Kegan Paul, 1950.

Marcuse, Herbert. One Dimensional Man. Boston: Beacon Press, 1964.

Marx, Karl. Capital. Vol I: The Process of Capitalist Production. Edited by Frederick Engels. Translated by Samuel Moore and Edward Aveling. New York: International Publishers, 1967.

_____, Grundrisse. Translated with a forward by Martin Nicolaus. New York: Random House, Vintage Books, 1973.

Marx, Karl and Engels, Frederick. Selected Works in One Volume. New York: International Publishers, 1970.

Marx, Leo. The Machine in the Garden, Technology and the Pastoral Ideal in America. New York: Oxford University Press, Galaxy Books, 1964.

Miller, John C. Alexander Hamilton and the Growth of the New Nation. New York: Harper & Row, Torchbooks, 1959.

Mills, C. Wright. The Power Elite. New York: Oxford University Press, Galaxy Books, 1956.

_____, The Sociological Imagination. New York: Oxford University Press, 1959.

_____, White Collar. New York: Oxford University Press, Galaxy Books, 1951.

Mumford, Lewis. The City in History. New York: Harcourt, Brace & World, Harbinger Books, 1961.

_____, The Culture of Cities. New York: Harcourt, Brace, Jovanovich, Harvest Books, 1970.

Neumann, Franz. The Democratic and Authoritarian State. Edited and with a Preface by Herbert Marcuse. New York: The Free Press, 1957.

O'Connor, James. Review of The Twisted Dream by Douglas Dowd. Monthly Review 26 (March 1975): 41-54.

_____, The Fiscal Crisis of the State. New York: St. Martin's Press, 1974.

Polanyi, Karl. The Great Transformation. Boston: Beacon Press, 1957.

Riker, William H. Federalism: Origin, Operation, Significance Boston: Little Brown, 1964.

Roll, Eric. A History of Economic Thought. 3d ed. Englewood Cliffs, N.J.: Prentice Hall , 1964.

Schattschneider, E.E. The Semi-Sovereign People, A Realistic View of Democracy in America. New York: Holt, Rinehart & Winston, 1960.

Schumpeter, Joseph. Capitalism, Socialism and Democracy. 3rd ed. New York: Harper & Row, Torchbooks, 1950, 1962.

Sherry, Robert. Comments On O'Connor's Review of The Twisted Dream: Independent Commodity Production Versus Petty Bourgois Production. Monthly Review 28 (May 1976): 52-60.

Smith, Adam. An Inquiry Into the Wealth of Nations. 2 vols. Introduction by M. Blaug. Homewood, Ill: Richard D. Irwin, 1963.

Stourzh, Gerald. Alexander Hamilton and the Idea of Republican Government. Stanford, CA.: Stanford University Press, 1970.

Sweezy, Paul M. The Theory of Capitalist Development. New York: Monthly Review Press, 1942, 1968.

Truman, David. The Governmental Process. New York: Alfred A. Knopf, 1951, 1962.

Veblen. Thorstein. Absentee Ownership, The Case of America. With an introduction by Robert Lekachman. Boston: Beacon Press, 1967.

Weinstein, James. The Corporate Ideal in the Liberal State, 1900-1918. Boston: Beacon Press, 1968.

PART II - Historical Sources

Abernethy, Thomas P. The Western Lands and the American Revolution. New York: D. Appleton Century Co., 1937.

Baldwin, Sidney. Poverty & Politics: The Rise & Decline of the Farm Security Administration. Chapel Hill, N.C.: University of North Carolina Press, 1971.

Bartlett, Richard A. The New Country, A Social History of the American Frontier. New York: Oxford University Press, 1974.

Benevolo, Leonardo. The Origins of Modern Town Planning. Translated by Judith Landry. Cambridge: The M.I.T. Press, 1971.

Bloch, Marc. Feudal Society: Vol. 1: The Growth of Ties of Dependence. Translated by L. A. Manyon. Chicago: University of Chicago Press, 1961.

Buck, Philip W. The Politics of Mercantilism. New York: Henry Holt & Co., 1942.

Carstensen, Vernon, ed. The Public Lands - Studies in The History of the Public Domain. Madison & Milwaukee. University of Wisconsin Press, 1968.

Clawson, Marion and Held, Burnell. The Federal Lands, Their Use and Management. Baltimore: Johns Hopkins University Press, 1957.

Cleveland, Frederick and Powell, Frederick. Railroad Promotion and Capitalization in the United States. New York: Longmans Green & Co., 1909.

Cochran, Thomas C. and Miller, William. The Age of Enterprise. rev. ed. New York: Harper & Row, Torchbooks, 1961.

Cole, Charles Woolsey. Colbert and a Century of French Mercantilism. 2 vols. New York: Columbia University Press, 1939.

_____, French Mercantilism, 1683 - 1700. New York: Columbia University Press, 1943.

Colean, Miles and Newcomb, Robinson. Stabilizing Construction: The Record and Potential. New York: McGraw Hill Book Co., 1952.

Coleman, D.C., ed. Revisions in Mercantilism. London: Methuen & CO., 1969.

Cunningham, W. The Growth of English Industry and Commerce. Vol. 2: In Modern Times. Cambridge: Cambridge University Press, n.d., reprint edition, New York: Augustus M. Kelley, 1968.

Dorfman, Joseph. The Economic Mind in American Civilization, Vol. 1-2: 1606-1865. New York: A. M. Kelley, 1966-1969.

Dowd, Douglas. The Twisted Dream, Capitalist Development in the United States Since 1776. Cambridge, Mass: Winthrop Publishers, 1974.

Eisinger, Chester E. "The Freehold Concept in Eighteenth Century American Letters." William and Mary Quarterly, Third Series, Vol. IV (January 1947): 42-59.

_____,"The Influence of Natural Rights and Physiocratic Doctrines on American Agrarian Thought during the Revolutionary Period." Agricultural History 21 (January 1947): 13-22.

Foner, Eric. Free Soil, Free Labor, Free Men: The Ideology of the RepublicanParty before the Civil War. New York: Oxford University Press, 1970.

Foner, Philip S. History of the Labor Movement in the United States. Vol. 1: From Colonital Times to the Founding of the American Federation of Labor. New York: International Publishers, 1947.

Furniss, Edgar S. The Position of the Laborer in a System of Nationalism, A Study in the Labor Theories of the Later English Mercantilists. New York: Augustus M. Kelley, 1965.

Gates, Paul Wallace, "Frontier Estate Builders and Farm Laborers." IN The Frontier in Perspective, pp. 143-163. Edited by Walker D. Wyman and Clifton B. Kroeber. Madison: University of Wisconsin Press, 1965.

_____. The Farmer's Age, 1815-1860. New York: Holt, Rinehart & Winston, 1960.

_____. The History of Public Land Law Development. Washington: U. S. Government Printing Office, 1968.

Goodrich, Carter. Government Promotion of American Canals & Railroads, 1800-1890. New York: Columbia University Press, 1960.

Graham, Frank. Man's Dominion, The Story of Conservation in America. New York: M. Evans, 1971.

Graham, Otis L. Toward A Planned Society, From Roosevelt to Nixon. New York: Oxford University Press, 1976.

Hacker, Louis M. The Triumph of American Capitalism. New York: Simon and Schuster, 1940.

Hancock, John L. "Planners in the Changing American City, 1900-1940." Journal of the American Institute of Planners 33 (September 1967): 290-304.

Haney, Lewis. A Congressional History of Railways in the United States to 1850. 2 vols. Madison, WI: Bulletin of the University of Wisconsin, No. 211, 1908.

Hartz, Louis. Economic Policy and Democratic Thought: Pennsylvania, 1776-1860. Cambridge: Harvard University Press, 1948.

Hays, Samuel P. Conservation and The Gospel of Efficiency, The Progressive Conservation Movement, 1890-1920. With a new preface by the author. New York: Atheneum, 1969.

Hecksher, E.F. Mercantilism, 2 vols. 2d rev. ed. Edited by E. F. Soderlund. Translated by Mendel Shapiro. New York: MacMillan Co., 1955.

Hibbard, Benjamin Horace. A History of the Public Land Policies. Forward by Paul W. Gates. Madison & Milwaukee, WI: University of Wisconsin Press, 1965.

Horrocks, J.W. A Short History of Mercantilism. London: Metheun & Co., 1924.

Hurst, James Willard. Law and the Conditions of Freedom in the Nineteenth Century United States. Madison: University of Wisconsin Press, 1956.

Jay, John. The Correspondence and Public Papers of John Jay. Vol. 3: 1782-1783. Edited by Henry C. Johnson. New York: Burt Franklin, 1970.

Jefferson, Thomas. The Portable Thomas Jefferson. Edited with an introduction by Merrill D. Patterson. New York: Viking Press, 1975.

Jensen, Merrill. The Articles of Confederation. Madison, WI: University of Wisconsin Press, 1940.

_____. The New Nation, A History of the United States During the Confederation, 1781-1789. New York: Alfred A. Knopf, 1940.

Kammen, Michael. Empire and Interest, The American Colonies and the Politics of Mercantilism. Philadelphia: J. B. Lippincott Co., 1970.

Kolko, Gabriel. The Triumph of Conservatism, A Reinterpretation of American History, 1900-1916. Chicago: Quadrangle Paperbacks, 1967.

Letwin, William, ed. A Documentary History of American Economic Policy Since 1789. Chicago: Aldine Publishing Co., 1961.

Livermore, Shaw. Early American Land Companies. New York: The Commonwealth Fund, 1939.

McGovern, George, ed. Agricultural Thought in the Twentieth Century. Indianapolis: Bobbs-Merrill Co., 1967.

Morris, Richard B., ed. Encyclopedia of American History: Bicentennial Edition. New York: Harper & Row, 1976.

Nash, Roderick, ed. The American Environment: Readings in the History of Conservation. Reading, MA: Addison-Wesley, 1968.

Nettles, C.P. "British Mercantilism and the Economic Development of the Thirteen Colonies." Journal of Economic History, XII (September 1952): 105-114.

_____. The Roots of American Civilization New York: Crofts, 1938.

North, Douglas C. "International Capital Flows and the Development of the American West." Journal of Economic History 16 (December 1956): 493-505.

Patterson, James T. The New Deal and The States: Federalism In Transition. Princeton: Princeton University Press, 1969.

Peffer, Louise E. The Closing of the Public Domain. Stanford, CA: Stanford University Press, 1951.

Richardson, Elmo R. The Politics of Conservation, Crusades & Controversies, 1897-1913. Berkeley, CA: University of California Publications in History, Vol. 70, 1962.

Robbins, Roy M. Our Landed Heritage, The Public Domain, 1776-1936. Lincoln, NE: University of Nebraska Press, Bison Books, 1942, 1962.

Rohrbough, Malcolm J. The Land Office Business: The Settlement and Administration of American Public Lands, 1789-1837. New York: Oxford University Press, 1968.

Rossiter, Clinton. The First American Revolution. Revised version of Part I of Seedtime of the Republic. New York: Harcourt, Brace & World, 1953, 1956.

Rothkrug, Lionel. Opposition to Louis XIV, The Political and Social Origins of the French Enlightenment. Princeton: Princeton University Press, 1965.

Sakolski, Aaron M. Land Tenure and Taxation in America. New York: Robert Schalkenbach Foundation, 1957.

_____. The Great American Land Bubble. New York: Harper and Row, 1932.

Saloutous, Theodore. "The Agricultural Problem and Nineteenth Century Industrialism." Agricultural History 22 (July 1948): 156-174.

Schlesinger, Arthur M. The Age of Jackson. Boston: Little, Brown & Co., 1945.

Scott, Mel. American City Planning. Berkeley: University of California Press, 1971.

Smith, Frank E. The Politics of Conservation. New York: Harper & Row, Colophon Books, 1971.

Smith, Henry Nash. Virgin Land, The American West as Symbol and Myth. New York: Random House, Vintage Books, 1950.

Stephenson, George. Political History of the Public Lands, 1840-1862. New York: Russell & Russell, 1917, 1927.

The New American State Papers, The Public Lands. 8 vols. Introduction by Margaret Beatty Bogue. esp. Vol. 3: Land Prices and Preemption Rights and Vol. 4: Bounty Lands, Revenues. Wilmington, Del.: Scholarly Resources, 1973.

Treat, P. J. The National Land System, 1785-1820. New York: E. B. Treat & Co., 1910.

Turner, Frederick Jackson. The Frontier in American History. With a forward by Ray Allen Billington. New York: Holt, Rinehart & Winston, 1920, 1947, 1962.

Van Alstyne, William. The Rising American Empire. Chicago: Quadrangle Paperbacks, 1965.

Wade, Richard C. The Urban Frontier: The Rise of Western Cities, 1790-1830. Cambridge: Harvard University Press, 1959.

Warner, Sam Bass. The Urban Wilderness. New York: Harper & Row, 1972.

Wellington, Raynor G. The Political & Sectional Influence of the Public Lands, 1828-1842. New York: Burt Franklin, 1914, 1970.

Welter, Rush. The Mind of America, 1820-1860. New York: Columbia University Press, 1975.

White, Morton & Lucretia. The Intellectual Versus The City. New York: The New American Library, Mentor Books, 1962.

Williams, William Appleton. "The Age of Mercantilism: An Interpretation of the American Political Economy, 1763-1828." William and Mary Quarterly. October, 1958, pp. 419-437.

_____. The Contours of American History. New York: New Viewpoints, A Div. of Franklin Watts, 1973.

Williams, William Appleton. The Roots of the Modern American Empire. New York: Random House, 1969.

Young, Mary E." Congress Looks West: Liberal Ideology and Public Land Policy in the Nineteenth Century." In The Frontier and American Development: Essays in Honor of Paul Wallace Gates, pp. 74-112. Edited by David M. Ellis, Ithaca: Cornell University Press, 1969.

Zahler, Helen. Eastern Workingmen & National Land Policy. New York: Columbia University Press, 1942.

PART III - Land Use Policy

"A New Land Rush - Government Stakes Its Claims." U.S. News and World Report, 7 December 1964, pp. 78-82.

Abrams, Charles. Man's Struggle For Shelter In An Urbanizing World Cambridge: M.I.T. Press, 1964.

_____. Revolution in Land. New York: Harper & Bros. 1939.

_____. The City Is The Frontier. New York: Harper & Row, Colophon Books, 1965.

Advisory Commission on Intergovernmental Relations. Urban & Rural America: Policies for Future Growth. Washington: U.S. Government Printing Office, 1968.

Allensworth, Don and Linowes, Robert. The Politics of Land Use. New York: Praeger Publishers, 1973.

Altschuler, Alan. The City Planning Process. Ithaca: Cornell University Press, 1965.

American Enterprise Institute. Land Use Proposals. Washington: American Enterprise Institute for Public Policy Research, 1975.

American Law Institute. A Model Land Development Code, Proposed Official Draft No. 1, Tentative Draft No. 6. Philadelphia: American Law Institute, 1974.

Anderson, Martin. The Federal Bulldozer. Cambridge; M.I.T. Press, 1964.

Aspinall, Wayne. "Turns and Curves on a Well-Traveled Road: The Vicissitudes of Establishing Land Use Planning Policy." pp. 1-16. In National Land Use Policy, The Proceedings of a Social Conference sponsored by the Soil Conservation Society of America. Ankeney, IA: Soil Conservation Society, 1973.

Aumonte, Jerome. "Domestic Land Reform." City, January-February 1971, pp. 56-57.

Babcock, Richard and Bosselman, Fred. P. Exclusionary Zoning, Land Use Regulation and Housing in the 1970s. New York: Praeger Publishers, 1973.

Babcock, Richard. "The Courts Enter the Land Development Marketplace." City, January-February 1971, pp. 58-64.

_____. The Zoning Game. Madison: University of Wisconsin Press, 1966.

Banfield, Edward. The Unheavenly City Revisited, A Revision of The Unheavenly City. Boston: Little, Brown & Co., 1974.

Banfield, Edward and Meyerson, Martin. Politics, Planning and the Public Interest. New York: Free Press, 1955.

Barnes, Peter. The People's Land, A Reader on Land Reform in the United States. Erasmus, PA: Rodale Press Book Div., 1975.

Barnett, Jonathan. "Beginning The Debate on a National Planning Policy." Architectural Record, May, 1971, pp. 117-118.

Bellush, Jewel and Hausknecht, Murray, eds. Urban Renewal: People, Politics and Planning. Garden City, NY: Anchor Books, Doubleday & Co., 1967.

Bosselman, Fred and Callies, David. The Quiet Revolution in Land Use Control. Washington: US Govt. Printing Office, 1971.

Caldwell, Lynton. Environment: A Challenge for Modern Society. New York: Natural History Press, 1970.

Caro, Robert. The Power Broker, Robert Moses & The Face of New York. New York: Random House, Vintage Books, 1975.

Clawson, Marion. Suburban Land Conversion in the United States: An Economic and Governmental Process. Baltimore: Resources for the Future, John Hopkins University Press, 1971.

Commoner, Barry. The Closing Circle. New York: Alfred A. Knopf, 1971.

Dahl, Robert. Who Governs. New Haven, CT: Yale University Press, 1961.

Danielson, Michael N. The Politics of Exclusion. New York: Columbia University Press, 1976.

Dasmann, Raymond. The Destruction of California. New York: Collier Books, The MacMillan Co., 1966.

Davis, Rod. "The Session's Worst Lobby." The Texas Observer, June 17, 1977, pp. 21-24.

Delafons, John. Land Use Controls. Cambridge, MA: M.I.T. Press, 1969.

Demkovitch, Linda E. "The Perils of Petaluma - Keeping the Lid on Growth," National Journal, May 1, 1976, pp. 588-596.

Downey, Leonard, Jr., Mortgage on America. New York: Praeger Publishers, 1974.

Downs, Anthony. Opening Up the Suburbs. An Urban Strategy for America. New Haven: Yale University Press, 1973.

Editors of Fortune. The Environment, A National Mission for the Seventies. New York: Harper & Row, Perennial Library, 1969, 1970.

Elkin, Stephen L. Politics and Land Use Planning, The London Experience. London: Cambridge University Press, 1974.

England, Richard and Bluestone, Barry. "Ecology and Social Conflict." In Toward A Steady-State Economy, pp. 190-214. Edited by Herman E. Daley. San Francisco, CA: W.H. Freeman and Co., 1973.

Farnham, Phil and Miller, Alan S. The Ecology and Politics Manual San Francisco, CA: The Bay Area Radical Education Project, 1970.

Fellmeth, Robert C. Politics of Land. Introduction by Ralph Nader. New York: Grossman Publishers, 1973.

Galbraith, John Kenneth. The Affluent Society, 2d ed. rev. New York: New American Library, Mentor Books, 1956, 1969.

_____. "The Poli-Pollutionists." Atlantic, January 1967, pp. 52-54.

Georgakas, Dan and Surkin, Marvin. Detroit: I Do Mind Dying. New York: St. Martin's Press, 1975.

Goodman, Robert. After The Planners. New York: Simon & Schuster, Touchstone Books, 1971.

Grebler, Leo. Large Scale Housing and Real Estate Farms, Analysis of a New Business Enterprise. New York: Praeger Publishers, 1973.

Harr, Charles M. Land Use Planning, A Casebook on the Use, Misuse and Re-Use of Urban Land, 3d ed. Boston: Little, Brown & Co., 1976.

Harrigan, John J. Political Change in the Metropolis. Boston: Little, Brown & Co., 1976.

Hoagland, Henry E. and Stone, Leo D. Real Estate Finance, 3d ed, Homewood, IL: Richard D. Irwin & Co., 1965.

Kain, John L. "Postwar Changes in Land Use in the American City." In Toward A National Growth Policy, pp. 74-80. Edited by Daniel P. Moynihan. New York: Basic Books, 1970.

Key, V.O. Southern Politics, In State and Nation, New York: Random House, Vintage Books, 1949.

"Land Use Legislation: A Precarious Future." Congressional Quarterly Weekly Report, 1st March 1975, pp. 428-432.

Levin, Melvin, R. Community and Regional Planning. Issues in Public Policy. New York: Frederick A. Praeger, 1969.

Lewis, Eugene. The Urban Political System. Hinsdale, IL: Dreyden Press, 1973.

Lilly, William. "Housing Report/Administration and Congress Follow Courts in Promoting Residential Segregation." National Journal 3 (November 12, 1971).

Long, Norton. The Unwalled City. New York: Basic Books, 1972.

Lubow, Arthur. "Gerald Ford and the Politics of Pollution." New Times, 26 December 1975, pp. 19-31.

McConnell, Grant. "Prologue, Environment and the Quality of Political Life." In Congress and the Environment, pp. 3-15. Edited by R. A. Colley and G. Wandesforde Smith. Seattle: University of Washington Press, 1970.

_____. "The Environmental Movement: Ambiguities and Meanings." In Environmental Policy, Concepts and International Implications, pp. 26-34. Edited by A. E. Utton and D. H. Henning. New York: Praeger Publishers, 1973.

McCullach, James C. "Leaving Land Use Plans to the Users." Environmental Action Bulletin, 6 September 1975, pp. 4-6.

Meyers, Phyllis. So Goes Vermont. Washington: Conservation Foundation, 1974.

Mollenkopf, John H. "The Post War Politics of Urban Development." Politics and Society 5 (May, 1975), pp. 247-295.

Natural Resources Defense Council, Inc. Land Use Controls in the United States, ed. by Elaine Moss. New York: Dial Press, 1977.

Pennsylvania Land Policy Project, A Land Use Strategy for Pennsylvania. Harrisburg; Pennsylvania Office of State Planning and Development, n.d.

Public Land Law Review Commission. One Third of the Nation's Land; A Report to the President and the Congress. Washington: U. S. Government Printing Office, 1970.

Reilly, William. "National Land Use Policy." In Federal Environmental Law, pp. 1414-1465. Edited by Erica Dolgin and Thomas Guilbert. St. Paul, MN: West Publishing Co., 1974.

Report of the National Advisory Commission on Civil Disorders. Special introduction by Tom Wicker. New York: Bantam Books, The New York Times Co., 1968.

Schumacher, E.F. Small is Beautiful. New York: Harper & Row, Colophon Books, 1973.

Stretton, Hugh. Capitalism, Socialism and the Environment. London: Cambridge University Press, 1976.

Task Force on Land Use and Urban Growth, The Rockefeller Bros. Fund, The Use of Land, A Citizen's Guide to Urban Growth. Edited by William K. Reilly. New York: Thomas Y. Crowell, 1973.

"The land use battle that business faces." Business Week, 26 August 1972, pp. 40-50.

"The New American Land Rush." Time, October 1973, pp. 80-97.

Toll, Seymour. Zoned American. New York: Grossman Publishers, 1969.

Tolo, Kenneth W., ed. The American City: Realities and Possibilities, A Symposium. Austin, TX: Lyndon B. Johnson School of Public Affairs, University of Texas, 1974.

U.S. Congress, House. Building The American City, Report of the National Commission on Urban Problems to the Congress and to the President of the United States. H. Doc. 91-34, 91st Congress, 1st sess., 1968.

U.S. Congress, House. Committee on Interior & Insular Affairs. Establishment of Public Land Law Review Commission. H. Rept. 1008, 88th Congress, 1st sess., 1964.

_____. National Land Use Planning, Hearings Before the Subcommittee on The Environment on HR 4332 and Related Bills, 92nd Cong., 1st sess., 1971.

U.S. Congress, House. Committee on Interior & Insular Affairs. National Land Policy, Planning & Management Act of 1972. H. Rept. 1306 to Accompany H.R. 7211, 92nd Cong., 2d sess. 1972.

Land Use Planning Act of 1973, Hearings Before the Subcommittee on the Environment on HR 4862 and Related Bills, 93rd Cong., 1st sess., 1973.

Land Use Planning, Hearings Before the Subcommittee on the Environment on HR 10294, 93rd Cong., 2d sess., 1974.

Land Use Planning Act of 1974, H. Rept. 798 to Accompany HR 10294, 93rd Cong., 2d sess., 1974.

Land Use & Resource Conservation. Hearings Before The Subcommittee on Energy & The Environment on H.R. 3510 and Related Bills, 94th Cong., 1st sess., 1975.

U.S. Congress, Senate. Committee on Interior & Insular Affairs. National Land Use Policy, Hearings Before the Subcommittee on Environment and Land Resources on S3354, 91st Cong. 2d sess., 1970.

National Land Use Policy Act, S. Rept. 1435 to Accompany S3354, 91st Cong., 2d sess., 1970.

National Land Use Policy, Hearings Before the Subcommittee on Environment & Land Resources on S632 and S992, 92nd Cong., 1st sess., 1971.

Papers on Land Use Policy, 92nd Cong., 1st sess., 1971.

Land Use Policy and Planning Assistance Act, S. Rept. 869 to Accompany S632, 92nd Cong., 2d sess., 1972.

U.S. Congress, Senate. Committee on Public Works and the Committee on Interior and Insular Affairs. The Operation of The National Environmental Policy Act of 1969, 92d Cong., 2nd sess., 1972.

U.S. Congress, Senate. Committee on Interior and Insular Affairs. National Land Use Policy Legislation, 93d Congress, An Analysis of Legislative Proposals and State Laws, Prepared by James W. Curlin and Robert K. Lane, Environmental Policy Division, Congressional Research Service, Library of Congress, 93rd Cong., 1st sess., 1973.

_____. National Land Use Policy: Background Papers on Past and Pending Legislation and The Roles of The Executive Branch, Congress, and the States In Land Use Policy Planning. 92nd Cong., 2d sess., 1972.

_____. Readings On Land Use Policy Prepared by the Environmental Policy Division, Congressional Research Service, Library of Congress, 94th Cong., 1st sess., 1975.

_____. Land Use Planning and Policy Assistance Act, Hearings before the Subcommittee on Environment and Land Resources ON S268, 93rd Cong., 1st sess., 1973.

_____. Land Use Policy and Planning Assistance Act, S. Rept. 197 to Accompany S268, 93rd Cong., 1st sess., 1973.

_____. State Land Use Programs. Summaries of Land Use Regulation in Eight States Prepared by the Environmental Quality Committee of the Young Lawyers Section, The American Bar Association and A 50-State Survey of State Land Use Controls Prepared by "Land Use Planning Reports," 93rd Cong., 2d sess, 1974.

_____. Land Resource Planning Assistance Act and the Energy Facilities Planning & Development Act, Hearings Before The Subcommittee on Environment and Land Resources on S984 and S619. 94th Cong., 1st sess., 1975.

U.S. Department of Commerce. A Standard City Planning Enabling Act, intro. by Secretary of Commerce, Herbert Hoover. Washington: U.S. Govt. Printing Office, 1928.

U.S. Committee on Community Development. The Domestic Council. The Changing Issues for National Growth, Third Biennial Report to the Congress. Submitted pursuant to Section 703(a) of Title VII, Housing & Urban Development Act of 1970.

U.S. Council on Environmental Quality. Environmental Quality, The First Annual Report. Washington: U.S. Govt. Printing Office, 1971.

Warner, Sam Bass, ed. Planning For a Nation of Cities. Cambridge: M.I.T. Press, 1966.

Whyte, William H. The Last Landscape. Garden City, NY: Doubleday, Anchor Books, 1970.

Wirt, Frederick, M. et al *On The City's Rim: Policy and Politics in Suburbia*. Lexington, MA.: D. C. Heath & Co., 1972.

Wolff, Anthony, *Unreal Estate.* San Francisco, CA.: Sierra Club, 1973.

Wolman, Harold. *The Politics of Federal Housing.* New York: Dodd, Mead & Co., 1971.

Zurhorst, Charles. *The Conservation Fraud*. New York: Cowles Book CO., 1970.