

number of official statements about Vietnam have led to a state of what seems to me legitimate skepticism on the part of the public. Did the various security forces involved mislead the Warren Commission? Did the immense and expensive apparatus of foreign intelligence somehow mislead Secretary McNamara into his manifestly erroneous estimates of the costs of Vietnam? Is our foreign policy now influenced by computer or other inadequacies in estimating hazards as well as simple costs?

These are related questions, and they may lead the observer to hope for future study of the problems created by the assassination of President Kennedy and the *Report* of the Warren Commission.

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The Zoning Game: Municipal Practices and Policies. RICHARD F. BABCOCK. University of Wisconsin Press, 1966. Pp. xvi, 202. \$5.75.

Mr. Babcock begins his book with a description of how the zoning game was and is now played. Next he describes the players—the layman as public and private decision-maker, the planner, the lawyer, the judge. They turn out, by and large, to be weak nonheros. Mr. Babcock then criticizes the purposes and principles of the game. The backers of the sport, who bet heavily on the players, are such interested parties as the landowner, the neighbor, the municipality, the metropolitan area. He concludes with recommendations on rule changes.

Mr. Babcock is entitled to write this book, he says, because he has written a law review article on zoning with 310 footnotes. He is also the pre-eminent land use planning and controls lawyer in private practice. He is a lawyer's lawyer; a planner's confidant; and, due to his interest in the esoteric, an academician's delight. *The Zoning Game* adds to Mr. Babcock's stature.

The book is witty, honest, and free from planners' and lawyers' jargon and euphemisms. The real world of zoning comes through. Not having read the book, most lawyers would not know, for example, why motels are excluded from zones in which hotels are permitted, or why it is easier to get a rezoning for a supermarket than for a discount store. He makes frequent use of the first person, without becoming

anecdotal and self-congratulatory. The book is quotable and constitutes a kind of zoning primer. Its index permits exploitation of both features.

I noted only two faults in style. First, Mr. Babcock writes better than the persons he too extensively quotes. Second, the footnotes are numbered within each chapter and are all at the end of the book. Reference is unduly difficult.

Mr. Babcock selects most of the discussion in his book to support his thesis relating to the restructuring of the zoning game. His thesis, in three parts, is that state zoning enabling acts ought to provide:

1. More detailed descriptions of the required administrative procedures at the local level.
2. Restatements of the major substantive criteria by which the reasonableness of local decision-making is measured.
3. Provisions creating a state-wide administrative agency to review the decisions of local authorities in land-use matters, with final appeal to an appellate court.

I would like to (a) comment on these suggestions individually, (b) discuss the wisdom of reducing the role of the courts, which is implicit in all of the suggestions, and (c) make some observations on other points raised by Mr. Babcock's discussion.

More Detailed Descriptions of Administrative Procedures

Mr. Babcock's first thesis is that enabling acts ought to provide more detailed descriptions of required administrative procedures at the local level. The enabling acts of many states already set forth detailed procedures to be followed. Many courts have been willing to reverse when proper procedure was not followed. Local bodies, particularly in smaller communities, still butcher procedure. Passing another statute is not going to upgrade Farmer Jones on the Elbowoods Township Board of Zoning Adjustment.

As long as due process tests are met, it is difficult to get too excited about procedural errors. Statewide uniformity of procedure would be nice, but uniformity has not yet been fully achieved even among local courts. In California, no error in zoning procedure will result in reversal unless the error is prejudicial, results in substantial injury, and causes a different result than would otherwise have been probable.¹

¹ Cal. Gov't C. § 65801, Stats. 1965, c. 1880, p. 4346. Even if procedural due process was violated, the petitioner still has to prove that a different result would have been probable. How do you do this? The drafters of the statute, who were largely allied with the League of California Cities, indicated that the statute was necessary to prevent the courts from reversing on technical procedural errors. That is rubbish, for the California

While California has gone too far, its example may illustrate a trend toward less rather than more focus on procedural requirements.

Restatement of Substantive Criteria

To support his thesis that there should be a statutory restatement of the major substantive criteria by which the reasonableness of local decision-making is measured, Mr. Babcock attempts to uncover major voids in judge-made law. I find no major voids. For example, he says there are hardly any cases on architectural controls. That is true, but cases on the closely related matters of historic districts, preservation of natural beauty, and aesthetics are numerous. Doubt about the validity of architectural controls is generated more by conflicting judicial views than by a void of law in the area.

Another example of a void in case law, Mr. Babcock says, is the small number of cases on the uncompensated elimination of nonconforming uses. He says the cases can be counted on your fingers. Yet California has eighteen such cases, including several landmark decisions.² Similar cases have occurred in other states and have been noted widely. If there are voids, Mr. Babcock has not chosen the right examples to convince me.

Are restatements of substantive criteria³ necessary to get local governmental bodies to show greater concern for larger regions? Mr. Babcock's point on the need for localities to have awareness of the needs of their regions is a valid one. Current literature accepts it. Courts have been slow to impose this broader viewpoint. Perhaps lawyers have not argued the matter; perhaps courts have been too respectful of local municipal judgments. At any rate, court-made law could evolve.⁴ Courts

courts have overlooked small errors. Perhaps the overreaching by municipal interests evident in this statute will backfire. Previously, the courts at least had the opportunity in some cases to reverse for procedural errors when they were really bothered by substantive matters. The courts may now be more likely to deal with the merits of cases.

² *Hadacheck v. Sebastian*, 239 U.S. 394 (1913); *Marblehead Land Co. v. City of Los Angeles*, 47 F.2d 528 (9th Cir. 1931); *Livingston Rock v. County of Los Angeles*, 43 Cal. 2d 121, 272 P.2d 4 (1954); *Jones v. City of Los Angeles*, 11 Cal. 304, 295 Pac. 14 (1930); *City of Los Angeles v. Gage*, 127 Cal. App. 2d 442, 274 P.2d 34 (1954).

³ Mr. Babcock's thesis that there should be statutory restatements of the major substantive criteria by which the reasonableness of zoning may be judged is in part directed to the cure of excessive municipal provincialism. This is not clear from the statement of the thesis, but the legislation Mr. Babcock proposes and the examples he uses show that the chief reason new criteria for judging reasonableness are needed is to force local authorities to give due regard to the consequences of land uses on regional development. For example, should a facility serving the region be excludable by a particular community?

⁴ For example, comprehensive plan requirements could be construed as requiring consideration of regional matters.

could use a little statutory inducement, but no grand restatement is required. A simple directive that the police power must be used to serve the welfare of the region ought to move the courts in the right direction.

Creation of a State-Wide Administrative Body

Vigorous opposition to Mr. Babcock's first two proposals is not warranted, so I have been content to make only a few observations about them. Vigorous opposition to the creation of a state-wide administrative body is warranted.

Much of Mr. Babcock's discussion of zoning is shaped to support his thesis that there ought to be a state-wide administrative review body for zoning cases. Some shaping of the facts is legitimate: the courts do it all the time. It is not particularly harmful when the reader knows of an earlier Babcock piece⁵ in which the thesis was set forth.

To support his thesis, Mr. Babcock indicates that the legal profession has not been very interested in land use controls as a specialty. Therefore, court resolution of land use planning disputes has not been adequate. Mr. Babcock gives reasons why lawyers have not specialized. One he omits is that lawyers generally like to practice law rather than lobbying. Practice in the area of land use controls requires lobbying before local zoning bodies. Lobbying is a difficult occupation for lawyers trained at working with the law rather than with local zoning bodies. These bodies have few rules, and whatever the law trappings, their decisions are overwhelmingly political.

In any event, specialty in land use controls is rapidly developing. Mr. Babcock does not fully credit the law schools. As he says, land use controls have not been taught in property or in constitutional law. Nevertheless, they are now taught as a separate course or seminar in approximately one hundred law schools, and approximately one hundred and fifteen law professors specialize in them.⁶ Those numbers have about quadrupled in five years. Six casebooks have been published.⁷ The classes are huge.

The number of separate courses may not increase substantially, for land use planning and controls are now coming to constitute up to a

⁵ Babcock, *The Unhappy State of Zoning Administration in Illinois*, 26 U. CHI. L. REV. 509 (1959).

⁶ Both figures are based on lists in WEST PUBLISHING CO., *DIRECTORY OF LAW TEACHERS* 223-25 (1967).

⁷ BEUSCHER, *LAND USE CONTROLS* (1964); GREEN, *PLANNING LAW AND ADMINISTRATION* (1962); HAAR, *LAND-USE PLANNING* (1959); HORACK & NOLAN, *LAND USE CONTROLS* (1955); MANDELKER, *MANAGING OUR URBAN ENVIRONMENT* (1966); MILNER, *COMMUNITY PLANNING* (1963).

third of the subject matter of first year property. This is due to rising interest in land use controls and to disenchantment with medievalism. Land use planning and controls have been and are a substantial part of municipal corporations. In short, recent law school graduates are now as well prepared in land use planning and controls as in most areas. A landowner can hire competent counsel; a smaller municipality can get help. Metropolitan, regional, and state planning agencies often are given the duty of providing such aid. They at least know where help can be obtained. A class action may be possible where an individual, as a practical matter, cannot alone engage a municipality in litigation.⁸

A specialized statewide review body would have many disadvantages. Some may be listed, though I do not want to discuss the subject in depth. There would be yet another set of reports. Whatever the subject matter jurisdiction given to the statewide body, there would be litigation to determine exactly what it is. The statewide body might become a place where specialists would talk to specialists. Zoning might become yet more technical. The landowners or the municipalities might take over the regulators, whereas courts are probably more neutral. The present "fads" of zoning might become crystalized. There might not be as much room for experimentation. The proliferation of specialized tribunals is ill advised, and, if they are valid for zoning, the arguments for separating out functions are equally valid for a hundred other areas.

Would there be any advantages to state-wide administrative review over court review? Zoning litigation, Mr. Babcock says, is too expensive to permit the bringing of the case with the important principle but the small economic consequence. That is true of all litigation. Would it be less expensive if the litigant had to go from the local administrative body to some far distant point in the state and then to the appellate court, rather than first to the local court, as he does now? In any event, zoning litigation is probably not that expensive. Mr. Babcock's statements that few can afford an appeal seems inconsistent with his statements that the appellate courts feel themselves swamped with zoning litigation. There is often a substantial economic consequence riding on a zoning controversy. If zoning cases are not being appealed to the courts in some states, it is probably due to the small chance of success.

Mr. Babcock indicates that some judges find zoning cases unsatisfying, frustrating, and dull, and that such judges should be shielded from so many zoning cases. If those were the tests, another automobile

⁸ Santa Clara County Contractors Assn. v. City of Santa Clara, 232 Cal. App. 2d 564, 43 Cal. Rptr. 86 (1965). A subdivider who alone litigates the validity of a municipal requirement may find it difficult to do business in the community again.

negligence case would never be heard on appeal. Besides, many judges do not feel judicial disengagement with zoning is desirable.⁹ If modern society is too complex for all of the judges of appellate courts of broad jurisdiction to be familiar with all of the kinds of technical litigation, the answer is not to shield the courts from all but the familiar. A better answer is specialization within the courts. One judge, surely, can equip himself to understand the special problems of land use—local police power litigation. He can be a resource for the other judges. Chances that he will be the sole decision maker are slight. The others will still see the big picture. The courts that do have a specialist are the leading zoning appeal courts of the country. Justice Hall of the New Jersey Supreme Court won Norman Williams's prize for the best zoning decision of the year so many times that the prize was finally given to the entire court.¹⁰ There are probably more judges of like talent to be discovered as soon as Norman Williams gets over his Jersey provincialism.

Should the Role of the Courts Be Reduced?

Despite his general willingness to reduce the role of the courts, Mr. Babcock makes a few suggestions for their guidance. That focus should have been the book. Mr. Babcock should have employed his prestige to tell the courts how zoning decisions ought to be made.

Many court decisions are wrong because the court's vested knowledge about Euclidian zoning (districting) blinds it to the validity of the newer "flexibility" devices, such as special use permits, floating zones, contract zoning, and planned unit developments. This type of court often leaves the impression that the new zoning is being rejected merely because it is a new idea.¹¹ I do not want to discuss wrong court decisions of this sort, but, if Mr. Babcock had, I would have agreed with him.

Other court decisions are wrong because the court is willing to ap-

⁹ "The time must never come when, because of frustration with concepts foreign to their legal training, courts abdicate their judicial responsibility to protect the constitutional rights of individual citizens." *National Land and Investment Company v. Kohn*, 419 Pa. 504, 522, 215 A.2d 597, 607 (1966). "I positively do not agree with . . . this court . . . which . . . has completely abdicated its judicial function in favor of the arbitrary and unreasonable action of city councils . . ." *Clemons v. City of Los Angeles*, 36 Cal. 2d 95, 114, 222 P.2d 439, 451 (1950) (dissent).

¹⁰ Williams, *Annual Judicial Review*, 31 J. AM. INST. OF PLANNERS 252 (1965). No prize was awarded in Williams, *Annual Judicial Review*, 32 J. AM. INST. OF PLANNERS 163 (1966).

¹¹ For example, many of the newer "flexibility" devices are struck because the courts do not recognize them as zoning. *McDonald v. Board of Commissioners*, 238 Md. 549, 210 A.2d 325 (1965), is a typical case in which a court overturned a municipal decision because the decision involved a "flexibility" device. The dissent is worth reading.

prove virtually anything the municipality wants to do. This is caused by overeagerness to appear modern and progressive, and inability to distinguish between (1) what should be approved because it is merely new and (2) what should be disapproved because it is bad zoning.

Since I am most familiar with the California Supreme Court, which approves virtually anything the municipality wants to do, I want to discuss some cases where that court has allowed a misuse of governmental power in zoning. In doing this, I want to add myself to the small but growing list of commentators who feel that local governmental decision makers are getting away with far too much. An affluent society should expect more justice as well as more services from its governments. The time has passed when the courts were well advised to take an obsequious, head in the sand, molly coddling attitude toward local governmental zoning decisions. It is a time for honesty. Zoning is now as tough as nails; it is not a tender plant to be carefully nurtured by the courts. The overturning of a few stupid or dishonest municipal decisions will not result in societal destruction. No crisis in our time demands that local zoning bodies be able to do anything they please.

Asserting the desirability of a larger role for the courts vis-à-vis the local decision makers is not fashionable. Better to sidestep the problem of court involvement with municipal stupidity and corruption through a statewide review body, an ombudsman, or some other device. Until recently it would have been considered equally stodgy to suggest a judicial role in segregation, malapportionment, or tax assessment.

The local sovereign is being stripped of its immunity; it should also be stripped of some of its regulatory omnipotence. In any event, overturning what the next lower body did is the name of the game in zoning. The local legislative body (wearing its administrative appeal hat) routinely overrules the board of appeals, which in turn frequently overrules the building inspector or zoning administrator. The local legislative body (wearing its legislative hat) routinely overrules the planning commission. The makers of the final decision in the municipality are probably surprised when the courts do not play the same game.

Examples of the misuse of governmental power in zoning are legion. They include:

1. Zoning for Improper Purpose. If large lot zoning is really being used to segregate races rather than preserve light and air, for example, the courts should be able to discover this fact. Courts which approve

virtually everything the municipality does ought to scrutinize the purpose of the zoning more carefully and be more willing to hold illegitimate purposes *ultra vires* the enabling act.

*Deerfield Park District v. Progress Development Corp.*¹² is an instructive case, although it is not a zoning case. The Deerfield Park District had condemned a subdivision for a public park to prevent the subdivider from selling lots to Negroes. Since the acquisition of land for public parks is a proper municipal purpose, the court upheld the condemnation. No doubt if the Park District had decided the next day that it did not need the land, the court would have upheld the transfer to a more cooperative subdivider. After all, it is a proper municipal purpose to sell unneeded public land.

Courts should realize that, if they deny redress of wrongs of the sort seen in the *Deerfield* case, these wrongs will go forever unredressed. It is dishonest for courts to deny relief and then to commiserate with the wronged parties by saying that municipal actions that serve no proper purpose will be struck: a proper purpose can almost always be found or manufactured. It is also dishonest for courts to decline to interfere in *Deerfield*-type situations on the ground that the voters will "throw the rascals out." More likely, the voters would have voted the governing body out of office if it had not misused its municipal powers.

Sometimes, where the legislative process is clearly incapable of redressing gross wrongs, the courts ought to interfere. This is not to carry a brief for wholesale second guessing by the courts of legislative decisions. But sometimes the courts might be able to do the legislature a favor. For example, in *DeSena v. Gulde*¹³ the village board had faced the alternative of staying with its decision to zone a Negro residential area for light industry—a decision that had allegedly been correct in terms of zoning considerations—or of confronting riots and boycotts. The board had chosen to rezone back to residential. The court considered the circumstances surrounding the rezoning and held that rezoning for the *de facto* purpose of avoiding riots and boycotts was improper. The court's decision enabled the board to reconsider the matter and to do so with greater freedom. This same purpose could have been accomplished in the *Deerfield* case, where there was evidence that the Park District had not wanted to condemn the land, but had wilted before the crass prejudice of its electorate.

¹² 22 Ill. 2d 132, 174 N.E.2d 850 (1961), *aff'd on rehearing*, 26 Ill. 2d 296, 186 N.E.2d 360 (1962).

¹³ 24 App. Div. 2d 165, 265 N.Y.S.2d 239 (1965).

2. Legislative Process. If there is an aldermanic courtesy system operating in a community (rezonings approved only if the alderman in the area gives his nod), the courts should know about it and strike the legislation. I know of no law authorizing the delegation of a legislative function to one legislator without any standards.

3. Bribery and Corruption. The courts should decide what is an intolerable level of corruption. In some communities the level is way too high. Hints of corruption should not lead the courts to look the other way as hard as they can, or to give relief to injured parties for spurious reasons. On any evidence, the matter should be remanded to the local governmental body for a redetermination. The publicity attendant on such remands will likely lower the level of corruption to an acceptable point.

4. Municipalities Ignoring Their Own Precedents. The courts seldom hold that one local zoning decision is precedent for another. A rezoning, variance, or special use permit for *X* does not entitle *Y* to one, even though *X*'s and *Y*'s circumstances are identical. Similarly, a denial of *X*'s request does not mean *Y*'s request will be denied. Need equal protection be so little observed in zoning? Courts should be more critical of local decisions that are indistinguishable from, and close in time to, other decisions. Some burden should be imposed on municipalities to give good reasons for their changes of position.

5. Municipal Disregard of Court Decisions. When a municipality zones for fifty acre minimums, a court may strike it. The municipality may then zone for 49 acre minimums, and the landowner must go to court again. Where it finds a pattern of knowing and gross disregard for judicially established standards, a court should order appropriate zoning for the property. There is precedent for this kind of court order.¹⁴ A court should also do the zoning where municipality *X* makes a landowner go to court to invalidate zoning that is like that invalidated in municipality *Y* by a well known high court decision in the same state.

6. Regulations that Constitute Takings. A municipality now risks nothing by passing irresponsibly unconstitutional legislation. The legislation is merely declared unconstitutional. When land regulation legislation is declared unconstitutional as constituting a taking, affected landowners should be able to demand compensation for the imposition of the regulation. The theory of inverse condemnation (that when land is taken without an eminent domain proceeding, the landowner can initiate proceedings) should apply. Courts would not

¹⁴ *Hamer v. Town of Ross*, 59 Cal. 2d 776, 31 Cal. Rptr. 335, 382 P.2d 375 (1963).

grant the remedy in most cases, but occasional application might make municipalities a good deal more responsible. Courts have not applied this theory,¹⁵ but commentators,¹⁶ including a member of Mr. Babcock's firm,¹⁷ have suggested its usefulness.

7. False Classification Cases. Annoying court opinions include those dealing with classification. In *Kelly v. Mahoney*¹⁸ the court upheld an ordinance permitting turkey ranches but not chicken ranches, on the ground some reason must have made the classification a sensible one. In fact, there probably was no such reason. Similarly, in *Snow v. City of Garden Grove*¹⁹ a landowner tried to secure a permit for a storage yard for moved houses. This use was not expressly permitted in the zone; indeed, probably no community in the United States has thought about including such a use in its ordinance. The zone was, however, available for similar kinds of obnoxious uses, and similar kinds of obnoxious uses already occupied the neighborhood. The court spent pages justifying the classification, when the simple fact was that the neighbors did not want the storage yard, and were in luck because the community had not thought about putting such a use in its ordinance. Where a classification arises by chance, courts ought to strike it.

8. Spurious Motives Given for Decision. The courts do zoning no good when they decide cases in the tradition of "we uphold the banning of billboards because of the immoral activities that go on behind them." Fear of immorality is not the real reason. Similarly, in *Bringle v. Board of Supervisors*²⁰ the court upheld a required street dedication as a condition on a variance on the ground that alleviating traffic congestion is a legitimate exercise of the police power. The real motive was that the community wanted to widen the road, and imposing the condition saved the purchase price of the right of way. The willingness of the court to focus on a spurious reason resulted in an unpalatable decision and a lost opportunity. Additional evidence as to the real reason should have been taken on appeal or on retrial.

¹⁵ But cf. *Smith v. County of Santa Barbara*, — Cal. App. 2d —, 52 Cal. Rptr. 292 (1966); *Hilltop Properties, Inc. v. State*, 233 Cal. App. 2d 349, 43 Cal. Rptr. 605 (1965); *Sneed v. County of Riverside*, 218 Cal. App. 2d 205, 32 Cal. Rptr. 318 (1963). The theory does apply where the governmental body decides that the regulation will remain and that therefore compensation will be paid.

¹⁶ Mandelker, *Inverse Condemnation: The Constitutional Limits of Public Responsibility*, 1966 Wis. L. Rev. 3, 47-48.

¹⁷ Bosselman, *The Third Alternative in Zoning Litigation* (pts. 1 & 2), 17 ZONING DIGEST 73, 113 (1965).

¹⁸ 185 Cal. App. 2d 799, 8 Cal. Rptr. 521 (1960).

¹⁹ 188 Cal. App. 2d 496, 10 Cal. Rptr. 480 (1961).

²⁰ 54 Cal. 2d 86, 4 Cal. Rptr. 493, 351 P.2d 765 (1960).

9. Test Cases. Finally, there are some "test" cases that bother my sense of justice. For example, in *City of Los Angeles v. Gage*,²¹ the court approved the termination of a nonconforming business use in a residential zone. Given this authority, one might suppose that there was a wholesale termination of such uses in Los Angeles. In fact, there were only a few other terminations. Defendant Gage was sacrificed to establish a principle; this principle was applied to no one else. In light of these subsequent developments (or lack thereof), Gage should now be able to bring an action for damages. Apparently the only reason for bringing the action against him was to establish a principle, which principle is now in the public domain, and the public ought to pay for the benefit. Alternatively, the original court should have required the city to state that, if successful, it intended to proceed against others similarly situated. A final alternative might have been to delay the date of the judgment until it could be determined whether the city planned to proceed against others.

Miscellaneous Observations on Mr. Babcock's Discussion

While an author probably should not be faulted for what he leaves out, there are at least two significant things Mr. Babcock failed to cover. First, he does not indicate why municipalities usually win zoning cases in the courts of California and New Jersey, and often as not lose these cases in such states as Ohio and Minnesota. He merely states the fact. (Actually, California and New Jersey are not in the same class. In California, the municipal batting average is probably around .950; in New Jersey, the second ranking planner's²² state, it is probably around .750. The jump from California to New Jersey is almost as great as that from New Jersey to Ohio and Minnesota, for in the latter two states municipal averages are probably around .500.) Does California's judicial climate differ from that of Minnesota because of size, rates of growth and change, professionalism, amount of place orientation in people, progressive or conservative judicial tradition, early precedents, nature of enabling act, amount of home rule, reputation for local governmental competence or corruption, amount of urbanization, or the fact that Minnesota once tried zoning by emi-

²¹ 127 Cal. App. 2d 442, 274 P.2d 34 (1954).

²² In Cunningham, *Zoning Law in Michigan and New Jersey: A Comparative Study*, 63 MICH. L. REV. 1171 (1965), the author describes New Jersey as having a "planner's" court (i.e., one where municipalities often win), and Michigan as having a "lawyer's" court (i.e., one where landowners often win). In his letter of August 12, 1965, responding to mine, Mr. Cunningham agreed that as a planner's court, California's represents the extreme.

ment domain (and statutes relating to this are still on the books²³)? I have long looked for a good study on this matter.

The second thing Mr. Babcock does not discuss is the role of corruption. Of course, he does not engage in it, but he does practice principally in Cook County, Illinois. Perhaps the existence of widespread corruption at the local zoning body level is a myth.²⁴ Mr. Babcock must know. No discussion of zoning is complete without indicating whether corruption exists, and, if it does, what can be done about it.

Mr. Babcock points to a number of myths of zoning and persuasively demolishes most of them. Unfortunately, he selects "zoning is negative" for demythologizing. He says, for example, that zoning compelled the development of Westchester County, N.Y., into a sea of single family homes on large lots. Of course, a negative regulation may have a positive effect; the zoning of an area only for the growing of aquatic plants²⁵ will cause that if anything. Relative to other land use tools, however, zoning is negative. It is negative as compared, for example, to public housing or urban renewal. Even subdivision controls are more positive than zoning, for their focus is more on shaping than on limiting kinds of development.

Finally, Mr. Babcock makes a number of statements which are erroneous in my view and not necessary to support his thesis.²⁶ For example, contract zoning is not a fairly recent "flexibility" device; it has been around for a rather long time.²⁷ Also, it is my impression that most courts are upholding requirements of park land dedications as conditions for subdivision approval.²⁸

²³ Minn. Stat. §§ 462.12-462.17 (1965) applies to first class cities Minneapolis, St. Paul, and Duluth.

²⁴ Dennis O'Harrow, executive director of the American Society of Planning Officials, is concerned enough about corruption in zoning to propose a National Zoning Crime Commission. *Planning* 1965, at 345.

²⁵ *Morris County Land Imp. Co. v. Township of Parsippany—Troy Hills*, 193 A.2d 232 (N.J. 1963).

²⁶ My experience has been that one's "feeling" for the law of zoning is considerably shaped by the law of the state with which one is most familiar. In writing the earlier chapters of a work on California zoning, I was forever fighting the California cases and trying to force them into the "feeling" for zoning that I had acquired from writing on Wisconsin zoning. On the basis of my current "feeling" for zoning, I think Mr. Babcock has inaccurately stated some aspects of zoning law.

²⁷ Until 1960 San Francisco's zoning ordinance authorized contract zoning. The device turns up in California cases at least as far back as *Acker v. Baldwin*, 18 Cal. 2d 341, 115 P.2d 455 (1941).

²⁸ Heyman & Gilhool, *The Constitutionality of Imposing Increased Community Costs on New Suburban Residents through Subdivision Exactions*, 73 *YALE L.J.* 1119 (1964).

CONCLUSION

At the beginning of this review I praised Mr. Babcock's book. That now seems somewhat inconsistent with my subsequent criticism. The inconsistency is due in part to the fact that Mr. Babcock caused me to think. In criticizing his book I am in part thrashing those courts that presume too much in the way of municipal responsibility. Mr. Babcock's suggestions are not the full answer, I am sure, and some are wrong. Nevertheless, I know of no book that is as likely to cause lawyers and others to search their souls for some better answers in zoning.

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The Securities Markets, Operations and Issues. SIDNEY ROBBINS. The Free Press, New York: Collier-Macmillan Limited, London, 1966. Pp. xvi, 303. \$7.95.

A book written for as heterogeneous an audience as lawyers, economists, and students, and written about as complex a subject as the securities markets, is not likely to satisfy many readers. Professor Robbins' book is no exception. A book directed to persons of such diverse interests should either break new ground or demonstrate the usefulness of an interdisciplinary approach. Professor Robbins appears to be trying to do the latter, but without much success.

The author does attend to the legal history of the Securities and Exchange Commission's regulation of the securities markets. He does discuss some economics of the securities markets. And he does provide some knowledge of the mechanics of trading. What is lacking is an integration of these three elements into an analysis of the securities markets. Failing to achieve this, the book promises to disappoint lawyers, who will desire a much more detailed and careful treatment of cases and legislation than is presented; economists, who will find the standards of economic analysis and evidence unsatisfying; and students, who will not feel that they have gained an intimate knowledge of the mechanics of trading.

The book will be useful to those who wish to acquaint themselves with the way in which the SEC approaches the problem of regulation. The author reveals that historically the SEC has looked to several criteria to guide its activities. Among these are the protection of in-