

AN INQUIRY INTO THE  
PHILOSOPHICAL SCHOOLS OF THOUGHT  
IN PLANNING AND IN LAW

BY

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A thesis submitted to the Faculty of Graduate Studies of  
the University of Manitoba in partial fulfillment of the requirements  
of the degree of

MASTER OF CITY PLANNING

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## ABSTRACT

City planning practice has passed through a variety of historical periods in which the intentions and guiding principles have shifted, away from a sole concentration on beauty and efficiency in the spatial ordering of the city, towards the increasingly prevalent concerns with justice, equity, and fairness in planning actions. This inquiry into the parallel philosophical schools of thought in planning and in law, namely, the positivist, the normative, and the activist schools, shows a coincidence of guiding principles and prevailing concerns between the two disciplines. Indeed, many of the traditions and movements within the respective theoretical schools are common to both disciplines. The yet prevailing influence of the doctrine of logical positivism is clearly manifested in both planning and legal practice. The influence of the normative and activist schools in raising questions of "what ought to be," versus the scientific considerations of "what is," as the positivist school has stressed, has placed planning in a precarious position. In approaching the normative "ought," and in recognizing the political and often ethical nature of planning, there has been an increasing recognition that the scientific, rational basis for evaluation may no longer be relevant to this often subjective and value-laden approach. The legal consideration of the "ought," by contrast, is considered to be evaluative by the very nature and history of the legal process. The set of evaluative criteria in law, which is argued to be missing in the more recent approaches to planning, is directly linked to concepts of morals, justice, and ethics. This inquiry pursues knowledge in the parallel philosophical schools of thought in planning and in law, to allow an improved understanding in one's approach to these new and shifting intentions in the planning discipline.

CHAPTER 1

INTRODUCTION

CHAPTER 1.1

INITIAL PROPOSITION

## INITIAL PROPOSITION

The initial proposition is one which states that many of the theoretical principles and traditions that govern city planning thought are related to legal philosophical thought.

This inquiry will thus pursue knowledge in the parallel philosophical schools of thought common to both the planning and the legal disciplines. The shifting intentions in planning will be pursued within an historical context, revealing a new and evolving set of concerns in planning which coincide with the prevailing concern in legal philosophy and legal practice. The knowledge of commonality between the planning and legal philosophical traditions will contribute to an improved understanding in approaching the prevailing concerns and intentions of city planning practice.



## CHAPTER 1.2

### RESEARCH DESIGN

## RESEARCH DESIGN

This pursuit of knowledge will be through logical deduction. The research has largely been a survey of books, periodicals, and scholarly journals within the legal and jurisprudential field and within the planning field. From this body of knowledge, key principles have been deduced which exist within the philosophical schools of thought in planning and in law. Discussions have been engaged in with certain lawyers and legal philosophers to further this basis of knowledge. The discussions engaged in at the Planning-Law Symposium at Chapel Hill, North Carolina, in the Spring of 1979, have also contributed to this inquiry.

CHAPTER 1.3

INTRODUCTORY REMARKS

## INTRODUCTORY REMARKS

For the purposes of this inquiry, it is important to appreciate the major divisions which exist within planning and legal thought. The task is, therefore, to discuss the theoretical parameters of the various schools of planning and legal philosophy. This is achieved by the division and discussion of the three leading and most influential schools of thought in planning and in law. These are: the positivist school, the normative school, and the activist school of thought. \*

It is important to recognize, at the outset, that the three philosophical schools here discussed are by no means the only schools of significance. There are other schools and movements in both planning and law which are equally legitimate.

In addition, there are many variants in each school; the school of legal activism, for example, has numerous interpretations, and there is no one absolute school of natural law. The choice of these three particular schools of thought has been made, however, because they are the major, leading schools of thought in both planning and law, and they are fundamental to an understanding of the various

forces, movements, and modes of practice within each discipline.

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\* The choice of the three schools of thought for this inquiry has been arrived at after much debate and discussion with Professor Mario Carvalho as well as through a series of Planning Theory class lectures in the Department of City Planning at the University of Manitoba.

CHAPTER 2

THE CONTEXT:  
A SHIFTING EMPHASIS IN PLANNING

## THE CONTEXT:

### A SHIFTING EMPHASIS IN PLANNING

The contextual element in which planning thought has developed is characteristic of a shifting set of intentions. Historically, planning has passed through various stages of development, each with a differing set of theoretical principles which have governed planning practice.

This shifting set of intentions will be discussed within three historical stages, which begin with the emphasis in planning on the aesthetic considerations of beauty and civic design and the concerns with order and efficiency. The second stage is one characteristic of socially oriented intentions in planning, highly influenced by the Chicago School and the social problems which had become evident by the 1960's. The final stage to be discussed is the most recent period of the 1970's, a stage in which terms such as equity, fairness, and justice have revealed a new set of intentions within planning thought.

CHAPTER 2.1

THE EMPHASIS ON BEAUTY AND EFFICIENCY



## THE EMPHASIS ON BEAUTY AND EFFICIENCY

Historically, planning was governed by the principles of physical order, efficiency, beauty, and other design considerations. These concerns became central by the mid-nineteenth century, at a time when the major industrial cities of England, Europe, and North America were marked by inefficiency, congestion, poverty, and overcrowded living conditions.

The reform movement which arose in reaction to these urban conditions was characteristic of benevolent planning undertaken by civic and religious leaders (predominantly Protestant upper-middle-class citizens), seeking a restoration of order and improved living conditions. The major planning responses in the mid-nineteenth century were slum clearance and reconstruction of model housing; the expansion of park and open space; and the construction of wider, more accessible streets. The governing principles in this period were clearly based on a belief in architectural and environmental determinism, that is, a belief that the social and economic ills could be cured by better design and living spaces.

In the latter part of the century, this reformist movement was joined by other groups, particularly architects, who introduced the two additional principles of beauty and civic design.

One of the classic contributions to this "artistic" movement in planning was the work of Camillo Sitte (1843 - 1903). His conviction that the artistic problems of the city are as important as the technical problems, led him to write the now classic planning text of the nineteenth century, entitled City Planning According to Artistic Principles. Sitte's concern with open-air squares, civic centres, apartment gardens and courtyards, and other beautifying civic measures leaves him open to the same criticism as that levelled at his contemporaries. Such measures were merely palliatives in approaching the severe problems of the nineteenth-century city. These were superficial reforms directed at the pressing urban problems and ills of rapid industrialization.

Baron Haussmann's reconstruction of Paris was one key example of planning for beauty, besides the other military considerations. The City Beautiful movement in the United States followed this and other European initiatives in creating grand civic vistas and avenues, and providing for the perception of open space, sunshine, and fresh air, clearly a reaction to the dense industrial cities and urban ills of the nineteenth century.

This reaction to crowded living conditions, narrow streets, and unhealthy urbanism was also evident in the British "new towns" development. Sir Patrick Geddes, both a natural scientist and planner, was a strong supporter of this movement. Based on the garden city ideas of Ebenezer Howard, the emphasis was on

low-density residential communities marked by such amenities as ample open space, social facilities grouped away from traffic, an encircling green belt, and the planned containment of population.<sup>1</sup>

The culmination of the City Beautiful movement in North America was reached at the Chicago World's Fair of 1893, an exhibition of the leading design features of planning and architecture. The Fair was considered to be a splendid re-creation of "the White City," and was heralded by Frank Lloyd Wright as the noble and dignified "Classics" on a grand scale from which all of America could be constructed.<sup>2</sup>

The concern with beauty and design in planning is also clearly represented in the organization of the American Planning and Civic Association in Washington in 1935. The purpose of this association, as stated in its original announcement, was

the advancing of higher ideals of civic life and beauty in America.<sup>3</sup>

The technical, design orientation of planning in the early part of the twentieth century in the United States and in Britain is clearly stated in one of the earliest publications of the Journal of the American Institute of Planners. A history of the shifting intentions in planning is revealed by merely surveying the journals chronologically. An article by Thomas Adams, the English town planner of the period, is representative of this emphasis on the technical and physical features of planning design. As stated here:

It is of special importance for technical men to keep planning related to physical features (i.e. planning in its true sense as "design") separate from what somewhat erroneously is called planned economy or political planning.<sup>4</sup>

According to Adams, planners were to be the masters of the physical field, and planning was to be considered as no more than the design of physical features.

After World War I, municipal planning commissions were gradually established, and were staffed predominantly by civil engineers and architects - referred to as city planners. These planners, like the nineteenth-century reformers, believed that urban problems and people's lives were directly affected by their physical environment. Physical site planning, the arrangement of buildings and streets, and land uses thus became central to the planning profession. This belief in physical determinism was the

main force behind the urban renewal schemes of the early 1950's. The removal of slums and replacement with, or relocation to, more "decent" housing caused such upheaval and expense that, by the 1960's, experiments commenced in the area of neighbourhood rehabilitation.

The emphasis in planning for the greater part of its history has thus been highly design-oriented. From the mid-nineteenth century until the mid-twentieth century, the intentions in planning have been centered on aesthetic and efficiency considerations, guided by the key planning principles of beauty and order.

Notes

1. Park Dixon Goist, "Patrick Geddes and the City," Journal of the American Institute of Planners Vol. 40, No. 1 (January 1974): 33.
2. Sigfried Giedion, Space, Time, and Architecture: The Growth of a New Tradition (Cambridge: Harvard University Press, 1967): 396.
3. American Planning and Civic Association, an announcement of its organization in Journal of the American Institute of Planners Vol. 1 (1935): 33.
4. Thomas Adams, "Town and Country Planning in Old and New England," Journal of the American Institute of Planners Vol. 3 (1937): 91.

CHAPTER 2.2

THE EMPHASIS ON SOCIAL CONCERNS

## THE EMPHASIS ON SOCIAL CONCERNS

The guiding principles of beauty, efficiency, and order were replaced with a more socially oriented approach in the 1950's and 1960's, especially after the unanticipated consequences of, and the political opposition to, urban renewal.

The entrance of social scientists into the planning arena was one significant factor in a shifting emphasis in planning. Until the 1930's, the emphasis on physical design and land-use site planning was due to the influence of engineering and architectural members of the city planning profession. Some social science influence revealed itself in the 1930's, when large national and regional planning studies were commissioned by the federal government. However, it was only after World War II that social science became a prevalent influence in city planning. This was a direct result of the establishment in this period of the University of Chicago planning school, which emphasized social science technique over architectural, design technique.

According to Herbert Gans, the Chicago School "approached planning as a method of rational programming,"



arguing that

the essence of planning was the deliberate choice of ends and the analytic determination of the most effective means to achieve these ends.<sup>1</sup>

The Chicago School emphasized empirical analysis and sociological surveys which best determined the means to the desired ends.

Measurement, observation, and social surveys of the population, determining both behaviour and the present and future wants, were carried out, and the emphasis on data led planners to develop a methods and techniques approach to their practice. Simulation models and systems analysis were a necessary part of this practice to interpret and handle the large volumes of data being gathered. Planners in this capacity were also viewed as advisers to the politicians, because of their ability to provide technical information for political decisions.

Throughout the 1960's, planning was criticized for its past emphasis on design and its concern with beauty and efficiency. The shift toward the more social, core issues of poverty, housing, transportation, and segregation was thus a direct response to this criticism and to the pressing problems of social and racial unrest in the cities. The new socially oriented intentions were directing planning activities towards an improvement in the supply of public housing; alleviating segregation through legal advocacy

planning and such transportation-oriented programs as  
busing; and implementing vast housing and transportation  
programs.

Notes

1. Herbert J. Gans, People and Plans: Essays on Urban Problems and Solutions (New York: Basic Books Inc., 1968).

CHAPTER 2.3

THE NEW CONCERNS OF THE LATE SEVENTIES

## THE NEW CONCERNS OF THE LATE SEVENTIES

The most contemporary shift in planning thought has occurred within the past decade, particularly within the last five years, and follows a period of reconciling the planning approach since the turbulence of the sixties. The principles of "fairness," "justice," and "equity," along with "quality of life" concerns, have arisen in planning documents and are being introduced in the planning literature of the late seventies. Attempts are being made to connect the spatial or three-dimensional to these concerns with justice and fairness. Two key attempts in this regard have been David Harvey's Social Justice and the City and Manuel Castell's The Urban Question.

Planning journals are also beginning to reflect these concerns, with articles now appearing such as "Working Towards Redistributive Justice," "Planning for Declining and Poor Cities," and "The Concept of Justice in Regional Planning: Justice as Fairness." The latter article appeared in the Journal of the American Institute of Planners and addressed planning decisions as being distributional. The article explores the concept of fairness as a strategy in reaching an "equitable resolution of conflicts." It is argued that, where interest groups have objectives

which conflict, fairness as a decision criterion is more suitable than, for example, the "greatest good for the greatest number or other optimization principles."<sup>1</sup>

These current concerns in planning are also raised by the critical theorists and the "new humanists" in planning. The main concern, or intention, of the critical theorists is, quite simply, the abolition of social injustice. They, and the new humanist school theorists, argue for a reunification of knowledge and interests--in other words, for active political struggle and heightened human interaction. This emphasis on knowledge and human interaction is most characteristic of the theories of Edgar Dunn and John Friedmann. Friedmann, in Retracking America: A Theory of Transactive Planning, views the processes of mutual learning and societal guidance as basic to the transactive planning approach.<sup>2</sup>

The notions of the "just" and the "fair" decision in planning have also raised questions and concerns. The concept of the "right" decision has challenged the pre-existing notion of the "best," and naturally ethical and moral theory is now being related to this current level of planning thought.

The shifting intentions in planning, from the beauty and order considerations, through the more socially oriented concerns, to these current notions of justice as fairness, equity, and "goodness," are basic to this inquiry into the

planning philosophies which govern planning thought and practice.

Notes

1. Brian Berry and Gene Steiker, "The Concept of Justice in Regional Planning: Justice as Fairness," Journal of the American Institute of Planners Vol. 40, No. 1 (January 1974): 415.
2. John Friedmann, Retracking America: A Theory of Transactive Planning (New York: Anchor Press, 1973).



CHAPTER 3

THE PHILOSOPHICAL SCHOOLS OF THOUGHT  
IN PLANNING AND IN LAW

THE PHILOSOPHICAL SCHOOLS OF THOUGHT  
IN PLANNING AND IN LAW

As an inquiry into the analogous principles within the various philosophical schools of thought common to both planning and law, the shifting intentions and principles explored contextually above may be said to have arisen within, and indeed are guided by, three schools of thought. These are, the logical positivist school, the normative school, and the activist school.

The proceedings of this inquiry, for the purpose of clarity in organization, will be to first look at the respective schools of thought as they have developed historically, with a view to the origins, the founders, and the key contributors thereafter. From this descriptive basis, the core of the discussion will follow, centering on the ways in which the respective schools of thought are manifested, firstly in planning and secondly in law, as continuing philosophical traditions.

## CHAPTER 3.1

### THE POSITIVIST SCHOOL

A positivist is one who, when confronted by a problem, acts in the manner in which a scientist deals with a problem of research. Positivism thus has to do with procedure, a procedure based on systematic observations from which conclusions are drawn.

- Richard Von Mises

Positivism: A  
Study in Human  
Understanding

## THE POSITIVIST SCHOOL

The term "positivism" is used with many different meanings, and the sense in which it is to be used here requires explanation. However, any single definition of the word initially would detract from its overall meaning as a school of thought which is gradually developed below.

Positivism has its roots in post-revolutionary France, arising in an age when the ideals of liberty, equality, and fraternity were still alive, though unfulfilled. Social reform was considered to be evolutionary once the system of human rights was enacted, a philosophy held by Saint-Simon (1760-1825) and developed by him as a new "science of society" to end inequality of property and power through the sources of experience and scientific method. The principal founder of the positivist philosophy, however, was Auguste Comte (1798-1857), a follower of Saint-Simon in France in this period. The scientific method was offered as the principle to be followed in the reform of society. Knowledge was to be positive knowledge; that is, verified by positive science and grounded in natural laws (constant relations between facts), observation and experience. In accordance with this developing school of thought, it was stated that only positive knowledge

could be successfully applied in the various fields of human practice.

Comte, in his early years, believed in the supremacy of science as the guide to social reform. Much of his later writings (post-1850), however, were caught up in mysticism and religion. Between 1830 and 1842, his efforts were directed at positivist thought with regard to social phenomena. Rejecting the theological and metaphysical methods of investigation into social concerns, he set out to complete the realm of positivist thought by adding social science, or "sociology," as he coined the term, to the system of scientific philosophy already in existence in the fields of mathematics, astronomy, physics, chemistry, and biology. In social concerns, positive philosophy dictates the subordination of imagination to observation, which raises the scientific spirit of the period above the theological or metaphysical spirit still of significance at that time.

The emphasis on facts within the positivist school is derived from the empiricist tradition which accepts only experience as the source and norm of knowledge. It is in this way that empiricism is traditionally classified as distinct from rationalism, since rationalism accepts reason (ratio) as the source and norm of knowledge.

The early nineteenth century thus marked the progress of the natural sciences and a new awareness of the relevance of this expanding field to social and political phenomena. In both the French positivist school (St. Simon and Comte) and the English empiricist school (John Stuart Mill, Hume, Bentham, etc.), the relevance of the scientific methods to other sciences, such as politics, history, economics, and psychology, was suggested. The question of whether the study of political and social life could be scientific, particularly within the current reformist context, was prevalent in both schools of thought. It was generally believed that the phenomena of society were like the phenomena of nature and, so, must also conform to a set of fixed laws, and that, indeed, all phenomena of society are phenomena of nature.

This link of the scientific to the social has been one of the greatest movements in the history of philosophical thought and, inevitably, has been manifested in the pure idea of social science in the fields of psychology, sociology, anthropology, political science, economics, and all forms of planning. In fact, it remains one of the strongest guiding principles in most fields of social science despite the critical periods of idealism, mysticism, and romanticism which followed the positivist era, claiming the incapacity of science to penetrate ultimate reality.

### Positivism in Planning

The linkage of social concerns to the methods of scientific inquiry originally pursued by Auguste Comte firmly established a tradition in the social science disciplines. As a result, the most widely held view of city planning currently is one which is positivist in nature. One may argue, in fact, that positivism remains the ruling theory in the planning discipline, despite various opponents to this view. There are, indeed, continuing and yet prevailing "traditions" in city planning which present themselves as clear manifestations of the positivist doctrine. These traditions in planning may be viewed in a continuing emphasis on such concepts as the means/ends conception of rationality, the rational-comprehensive model itself, and planning for a "public interest." Evidence of positivism generally reveals itself in most planning methods and techniques and in the core emphasis within the planning educational curriculum.

The most enlightening indicator of current planning thought is the prevailing emphasis found in planning journals and articles. The "state of the art" of planning remains scientific and positivist in nature, although various systems of thought are redirecting this mainstream practice.

A number of the more recent planning articles have both directly and indirectly addressed the subject of positivism in planning. Lawrence Mann reviewed<sup>1</sup> the influence and impact of the positivist approach in planning between 1900 and 1965, and focussed on the most significant period of impact, between 1956 and 1965, when the degree of empiricism and quantification in planning method reached its highest point of influence. Literature in the planning field, in general, reflects this period and the shifting emphasis after 1965. Lawrence Mann states in this article that planning has become an applied social science. In other words, the scientific approach to social questions is still a prevalent mode of inquiry despite the continuing criticisms of positivism. Although the sixties brought an awareness of the dubious standards for social knowledge associated with the empirical method, Mann states that this belief in positivism still exists for planning and that advances in the body of knowledge continue to occur.

Planning method generally is a tradition of scientific application in technique and measurement. The relevance of the positivist school of thought to planning is nowhere more clearly manifested than in the tradition of planning method. Mann's discussion in the article cited above is focussed upon the Deutsch-Platt-Senghass 1970 analysis of social science advances, which summarizes such techniques as factor analysis, who created it, the years