LAND IN A FREE SOCIETY

Donald Denman

Foreword by Sir Desmond Heap

Centre for Policy Studies

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FOREWORD

by SIR DESMOND HEAP, LL.M., HON. LL.D.,*

I want to commend to all those interested in the land of our country this short (but highly concentrated) paper, *Land in a Free Society,* by the Land Policy Committee of the Centre for Policy Studies presided over by Donald Denman, who, until his recent retirement, was Professor of Land Economy at Cambridge University.

Years ago, when I was a lad in the 1920s, I read Vita Sackville-West's great (and very long) poem bluntly entitled, "The Land". It is a dominating piece of work compelling the reader's attention to the land and all that it is and that it means (and *must* mean) to each and all of us in our everyday lives. We may not own any of it but we do have to live with it and on it. It is not a manufacturable commodity; it cannot be made; but it is *there* and such of it as *is* there is all that we have (or can have) of it. As Mark Twain said 'Young Man, get hold of a piece of land whenever you can – they're not making any more of it, you know'. In short, the land is important.

So is this paper because it is all about the land. It concentrates on four cardinal aspects of the land – its ownership, its use, its marketing and its taxation. Members of the Land Policy Committee seem to have been saddened by their restrictive terms of reference which precluded them from considering "the land question" from a greater number of associated angles. For myself I am glad the Committee was restrained in this fashion because, instead of dissipating their expert and scholastic energies on a host of the will-o-the-wisps

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which beset (as is well known) the land and its "question", the Committee have been driven into a concentrated and wholly thought-provoking dissertation on the land as approached from but four angles – four angles only but each one of paramount importance.

Approaching the land in this fashion, and bearing in mind at all times that this country still rejoices in a free – or reasonably free – society, the Report roundly declares:

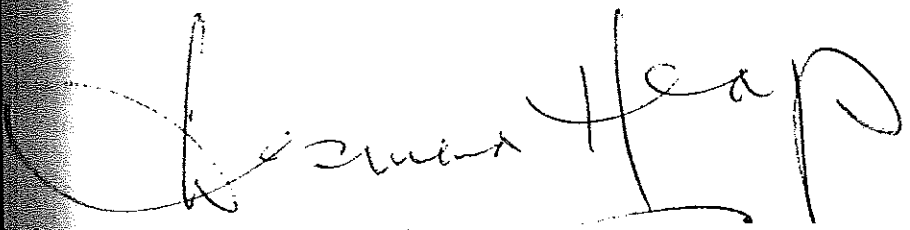
> 'Any government concerned for the liberty of the individual citizen, for social justice and the integrity of national sovereignty, cannot avoid these fundamentals' . . . (such as the place of private property in the social and economic order of things) . . . 'and needs to understand, bear them in mind and act upon them. The purpose of this memorandum is to identify the fundamentals and their relationship to politics'.

This paper achieves its purpose. It is not necessary to agree with all that it says for the reader to come away from its perusal a disturbed and sadder (but wiser) man. The efforts to control the development of land without need to compensate for restrictions necessarily imposed in so doing; the compulsory purchase of land and the payment of compensation to a dispossessed owner; the recoupment of betterment alleged to accrue to land by virtue of public works or, indeed, its own particular development; and the taxation of increased value erupting in land after (but not necessarily because of) the grant of planning permissions – all these intricate and interlocking matters have been the subject of one parliamentary effort after another ever since the Lloyd George effort of 1909. This went west in 1921 but in 1932, and particularly in the post-war period – in 1947 (development charges), in 1967 (the Land Commission betterment levy), and in 1975 and 1976 (under the Community Land Act and its complementary twin the Development Land Tax Act) – further efforts have been made by the politicians to settle the "Land Question" once and for all. Most of these were miserable failures and none was (or is) totally satisfactory. Why is this so? What is the difficulty about doing these things *in a free society*? There is probably no totally single answer; indeed, there must be many answers to these teasing questions. In this Report the reader will find some

fascinating argument in the presentation of some of the more important answers.

The paper is dated April 1980 at Cambridge. Thus, when it gives a hammering to the Community Land Act 1975 (calling for its repeal) and when it says strong things about development land tax 'at 80 per cent rising to 100 per cent', it will be remembered that the Government of Today has already committed itself to the repeal of the one and the lowering of the other in its endeavours to encourage private sector development in general and particularly in derelict inner-city areas.

As an annexe there is included some lively rethinking on the present relevance and continuing validity of many of the declarations (hitherto taken almost for granted) in the three great State Papers – the Barlow Royal Commission Report and the Scott and the Uthwatt Reports – on which so much post-war legislative effort to deal with the Land Question has been based. How have these great papers stood that test of all tests – the Test of Time? Will the Reader please read on?



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Introduction

THE Land Policy Committee of the Centre for Policy Studies was convened late in 1977 under my chairmanship and given a wide brief. The land question and its associated issues, including land use control and taxation, is complex and far reaching, all the more so since the Labour government brought in radical land measures. The Local Government Planning and Land Bill 1980, tabled after this paper was written but not due to be enacted until after it is published, does go some way to curing some of the mischiefs noted. We would have liked to have dealt with housing, transport, agriculture and the building industry, and their close affinities with land policy. Time would not allow this. This report, therefore, is concerned solely with the ownership, use, marketing and taxation of land, as the fundamentals of policy. We have kept to these fundamentals, but in a manner which, we hope, will provide a framework for specific and detailed policies. On matters of detail we were not always unanimous. Differences were, however, superficial. What are here presented are the thoughts, opinions and proposals common and acceptable to the members of the Committee in the gloss of the chairman's interpretation of them.

I would like to take this opportunity to thank my colleagues on the Committee and the staff of the Centre for their unstinted support and help in all that has been done.

Cambridge
April 1980

D. R. Denman

1 Four Fundamentals

LAND is one of the prime factors in economic production and a basic resource on which all economic activity depends. Policies primarily concerned with economic and social matters can, and invariably do, ultimately affect the ownership and use of land; conversely state policies to control the use and ownership of land cannot but affect the economy and the social ordering of society. These interactions are seldom recognised, acknowledged and taken into account in policy making. Nonetheless, they work away under the surface, often to the confounding of policies. So what in the early 1940s had started out as a policy to control land use and to plan it locally and nationally has, over the years, become indirectly a planning process involved with economic development and social reforms. The resulting complexity has impaired the planning process and brought it into disrepute. Because of the universal and radical nature of land, land policies as such can lead to extreme state interference with economic and social affairs. This is more obvious where the objective of land policy is open, such as the nationalisation of superior interests in the land. Where policies are indirect and affect land use and land tenure, the ramifying factors over the long term are not so apparent. Yet the chain reactions run on through the body social and the economy. No specific policy, whether for housing, industrial development, mining, agriculture and so on, can avoid raising land questions which go to the fundamentals such as the place of private property in the social and economic order of things. Any government concerned for the liberty of the individual citizen, for social justice and the integrity of national sovereignty cannot avoid these fundamentals and needs to understand, bear them in mind and

act upon them. The purpose of this paper is to identify the fundamentals and their relationship to policies.

Government policy directly or indirectly affects land fundamentally in four different ways – its ownership, its use, its marketing and its taxation. The policy does not have to be a land policy for land to be affected. Consider the adjustment of the Bank of England minimum lending rate, a policy of general impact. Adjustment in the short term could increase mortgage rates and hence land burdens; in the medium term it would affect the land market; and in the long term the land proprietary structure. A direct land policy concerned with one of the fundamentals can affect the others. Thus a policy to impose the public control of land use will affect the marketing and the ownership of land. The two-way reciprocal movement of influence from the land to people and policies and back again to the land is so complex that attempts to deal with specific issues in the land context can quickly become ravelled and confused and lose the land point. This happens on the stage of every day affairs. A concern of the moment is debated, disposed of and legislated for. The concern may be with housing, roads, fiscal matters or something else. The policy decided upon ultimately affects land and society's relationship to it. But at the superficial level on which debate and action take place the land side is not understood or is disregarded as of no consequence.

In order that we can see our way clearly in respect of land policies, focus should be on the land and not on issues incidental to it. We are concerned here with land and land policies, hence we have arranged our thinking around four fundamentals: ownership, use, marketing and taxation. Each, in the first instance, will be looked at as an aspect of the land scene. So understood, its place as the subject of land policies will be considered in the light of past experience and anticipated future goals. What seems to us to be undesirable will be exposed and the broad lines of what appears to be sound policy indicated.

2 *Land Ownership*

Protecting property rights

THE Universal Declaration of Human Rights which the United Nations approved in 1948 states that everyone has the right to own property alone as well as in association with others. Now, a right to have is not the same thing as having. The Declaration does not say everyone shall have property, let alone property in land. But it does go on in the second paragraph of Article 17 to declare that no one who has property shall be arbitrarily deprived of it. These principles are part of the fabric of a free society where the freedom of the individual is of first importance. Freedom to do what he will with his own, his body, his time and his talents, is the prerogative of the free man; these attributes are all his property, along with such property rights as he may hold in land. Admittedly checks are necessary. Absolute freedom to act, wantonly and wilfully, is the ensign of anarchy. A just and ordered society will have a framework of laws. These curtail, in some measure, the property right but freedom and justice require that the citizen should be able to know what the law is that binds him. The rule of law requires the law to be patent to the governed and not left to the arbitrarily dictat of officialdom. Furthermore the law should secure and protect the property rights of individuals, and this protection should be an objective of equal status to restraining the misuse of rights. In Britain we are in danger of lifting the community above the individual. Powers are given to ministers and officials to act in the name of the community with an arbitrariness which disregards the rule of law and the property rights of citizens – especially in land. Too many government policies are directed towards abstractions – planning, wealth distribution,

environmental protection and so on. The techniques of these abstractions determine what is done. A citizen's property rights are a matter of indifference or ignorance. There is an imbalance here which needs to be redressed. Wherever government policy touches land, directly or indirectly, the protection of the private property right of the citizen in the land should be paramount among its first considerations.

Public acquisition

In earlier days, debates to champion private property against communal property were conducted solely under the ambient canopy of natural right or divine revelation. There was no technological ground for the public ownership of land as we know it today. The innovations of the industrial revolution invaded the realms of private property with a pragmatic insistence. Statutory undertakings, admittedly the embodiment of private enterprise, were given powers of acquisition over the land to build railways and provide services. The sheer magnitude of these and similar undertakings and their needs for capital investment and land lead eventually to government departments, central and local, and public utility authorities and corporations taking over from private enterprise undertakings. The change introduced a new and technological reason for government to acquire the public ownership of land. The case for the public ownership of land for these purposes is logical and accepted in the modern context. But, if such power is not used with care and circumspection it can obscure a government's respect for private property. Compulsory acquisition of private land by government has been condoned and legislated for, here and elsewhere, on the ground that it is necessary to control land prices, to appropriate to the public coffers unearned increments in land values, to achieve economic and social equality and to implement a political philosophy of ownership of the land by the state. Not one of these objectives and their associated wholesale public acquisition of private land can be endorsed on the grounds of technological necessity. In one way

or another they amount to taking land into public ownership for the taking's sake. They lay seige to our liberties. Public compulsory acquisition of land should therefore be limited to achieving the benefits of technological advance which private ownership and enterprise cannot provide.

Compensation for private property

An acute sense of right dealing towards private property in land has influenced public acquisition policy from the mid-nineteenth century until recently. Although statutory undertakings were given novel powers to compel owners to sell land to them, the operation of the power was conditional upon the purchasers compensating the land-owners. The landowner was regarded as the unwilling seller, a logical enough postulation. He was compensated on the loss of the value to him of the interest acquired and for all damage resulting to the value of other land retained by him after the land taken had been severed from it. Compensation on these grounds was all in favour of the vendor. In those days, so strong was the feeling for the citizen's right of property that it seemed just to regard the vendor as a wronged party, as someone who had been moved against. He had not sought to sell his land; besides which, the land was usually being acquired for commercial gain by the purchasers.

From the turn of the century and beyond, the government became the dominant operator in the field of compulsory purchase, and attitudes to compensation changed. It was argued that one whose land had been taken for public purposes should not be in a position any more advantageous than he would have been had he sold his interest on an unbiased free market. The vendor was regarded as a willing party to a bargain in the open market. From 1919, therefore, the basis of compensation changed to the formula of a price between a willing seller and a willing buyer – that was for the land actually taken. This continues to be the basis at the present time. It is, however, a formula that is threatened. It is threatened by the theory that development value in land is some kind of property

in itself, generated by the community at large. This idea is more thoroughly examined later on. In the realm of compensation for land publicly acquired, the theory makes plausible the policy introduced by the Community Land Act 1975 with its provisions for a future day. The Act provided that, when that time came, the proper compensation for an interest in land compulsorily acquired by government should be based upon the *current use* value in land on the open market and *not* the value of the land *for other uses*. In the early-1950s, compensation was limited to a similar measure on the grounds that the government had already acquired development value under the tendentious philosophy and provisions of the Town and Country Planning Act 1947. It was the manifest injustice of this compensation formula which forced the government of the day back upon the open market value of the interest in land taken, at the time of acquisition, with all its potentialities; although nothing was to be allowed for the fact that the land had been selected as specially suitable for the purpose for which it was compulsorily acquired. The return to a current use value basis under the Community Land Act 1975, as from what under the Act was called the Second Appointed Day, was in the opinion of its supporters not a return to the two-tier system. Had it occurred it would have been introduced universally because all development land would, under the Act, have been saleable only to a public authority in the first instance. There would have been no occasion for private deals and prices beyond what a public authority would pay. There is a logic in this argument which should not deceive us and which stems from the fact that it stands upon a policy to nationalise all land suitable for development. This policy is undesirable and untenable in a free society. There is little point in objecting to the compensation formula which is simply a consequence of the policy.

The present formula for determining compensation seems fair where there had been a definite acquisition of land. The value of the land taken on the open market has added to it the diminution in value of land retained by the vendor where the diminution is the consequence of the injurious affection through severance or the use of the land taken; this sum is reduced by setting off any enhanced value of the land retained.

Problems arise for a society which is sensitive to the just deserts of private property when government action controls the exercise of property rights in land by imposing land use controls. Here no land is taken by the government by way of public acquistion. Inhibitions are imposed on the use of private land. In places like America, where obligations towards private property are written into the national Constitution, the problem arises in an even more acute form than it does in the United Kingdom. Here, under the authority of court judgments, it is maintained that a statutory imposition restraining the use of land is not an act of expropriation and thus does not warrant compensation. Even so there are a few exceptions in current statute law to this austere outlook. The exceptions in no way alter the general pattern. The no-compensation principle was an expedient, briskly acted upon when the operation to acquire all development rights under the Town and Country Planning Act 1947 proved abortive. It is as if we had said that because it is impractical to acquire, universally, the development rights in private land, we will assume that those rights are not property and because only the taking of property, expropriation, gives rise to compensation there can be no compensation where development right is prohibited. This subject more properly belongs in the context of land use. It is mentioned here, however, because it bears upon the integrity of private property in land. It is cogent to argue that denial of the right to development should be the subject of adequate compensation because if planning authorities had to pay compensation for denying permission to develop, they would be more careful in withholding permission and the public at large, who would have to foot the bill for compensation, would have a monetary yardstick by which to measure the cost of government intervention in private affairs.

The limits to public acquisition

THE public acquisition of land within a free society should only be countenanced within strict limits of purpose. The limits are all important. Properly defined, they should protect the owner

of private property from arbitrary and unjust expropriation. Ideally there should be a convention of principles to which specific compulsory purchase legislation should conform. The principles should be clearly enunciated as Party policy to a public invited to accept them.

The convention should be seen as a shield to private property in land wherever compulsory purchase is justified. The first principle should be voluntary purchase above compulsory acquisition. Land sold by the voluntary acquiescence of the owner as vendor in negotiation with a public authority is normally an expression of the free use of the property right and, as such, does no violence to private property. But there are circumstances in which what appears to be a voluntary sale is in fact the outcome of state coercion. We are in danger of suffering in this way. The National Executive Committee of the Labour Party has recently promulgated a scheme for the gradual nationalisation of rural land. It is proposed to set up a Rural Land Authority. Simultaneously with this institution, capital taxes, transfer tax and wealth tax are to be imposed on the rural landowner and so to straiten him financially and force him to sell land "voluntarily" to the Rural Land Authority as the only course he has to discharge his financial obligations to the Treasury. A policy of this kind is abhorrent to a free and just society.

Secondly, compulsory acquisition powers should not be given to Ministers and public authorities except for purposes which are clearly defined by Parliament. The compulsory purchase order saves time and facilitates procedure, but a Minister's authority to issue a compulsory purchase order needs to be limited in such a manner as will enable the citizen to seize quickly and unequivocably upon any *ultra vires* use of it. Each and every use of a compulsory purchase order would then be conditional upon the Minister issuing it stating the purpose for which it is given, and the reasons for which it is necessary to use compulsion. This requirement is not new. It has been embodied in statutory codes for the exercise of compulsory purchase powers from earliest times. There have, however, of recent years been dangerous departures from it; first under the provisions of the Land Commission Act 1967 and subsequently under the unprecedented powers of land

acquisition given to the Minister and local authorities under the Community Land Act 1975.

The clearer the purpose and the definition of it at law, the greater will the safeguard be. In general the purpose should, as stated earlier, be to provide public utilities and services which private ownership and enterprise cannot provide easily and willingly. This is the technological criterion. Sometimes there is a natural affinity between the nature of the acquiring body and the purpose for which it requires land – as with the British Rail Board. With general purpose authorities like city and county councils there is no such inherent limit and the purposes for which they are granted compulsory purchase powers need to be most narrowly and carefully defined. There are occasions when compulsory purchase of land is warranted more on economic grounds than strictly technological ones. Land settlement and housing policies have provided examples where what government wanted was economically imprudent for the private sector and an element of subsidy was inherent in the acquisition and development policy. In these cases the purpose for which land needs to be publicly acquired can and should be even more carefully defined.

The third principle is a derivation of the second. It requires that the statutory definition of the purpose for which land is compulsorily purchased should be objectively defined. Government, embarrassed by its obvious attempts to disregard the "purpose and reason" safeguards, have honoured them in a manner which virtually destroys them. The statutorily defined purpose has been made subjective. A glaring example occurred in the provisions of the Community Land Act 1975. Local authorities were given powers of compulsory purchase over any and all land which they thought suitable for development, re-development and improvement. Compulsory purchase could be justified, therefore, on the grounds that the local authority, irrespective of any other opinion, thought the land suitable for development and that they needed it for that purpose. Purpose and reason are given, but are essentially subjective and, therefore, beyond challenge.

The fourth principle safeguards against what is technically called appropriation. Numerous Acts giving local authorities and other public bodies of a general nature compulsory

purchase powers for defined purposes, for example housing, provide further that if the land is not needed for the purpose for which it is overtly and statutorily acquired it can be appropriated by the authorities for some other purpose. By this means land can be acquired and retained by public bodies in a manner which again denies occasion for challenge and redress to the aggrieved and dispossessed landowner.

The fifth principle is a corollary of the fourth. Time alters circumstances. A public authority given powers to acquire land compulsorily for a stated purpose and at a given time may, after acquisition, have cause to change its mind. This is not blameworthy; rather the reverse. If, however, the land is no longer wanted for the purpose for which it was compulsorily taken, it should not be appropriated to other unspecified uses but returned to private ownership. A return flow on these lines would reduce the risk of a slow and silent build-up of municipalised and publicly owned land. There is reason to think that if such integrity of action had been practiced by city authorities over the past years, the vast stretches of publicly owned land now neglected and wasted in the heart of our cities would have been in hands better purposed and able to make use of it. Be that as it may, returning land to the market is a just, prudent and logical counterpart of compulsory purchase policy. The terms and manner of disposal could well be left flexible. There might be a case in certain circumstances for giving the right of pre-emption to the landowners from whom the land was compulsorily acquired. Disposal should be, nonetheless, a bona fide open market act. Public authorities should not be required to hand back land at less than its market value at the time of disposal; nor should they be permitted to give preferential treatment to selected would-be purchasers. Disposal would not always mean transferring the exact interest of the estate in the land as it was first acquired. Joint ownership with developers, as suggested later on, could be advantageous to both parties and to the public in the interests of urban renewal.

Approaches to land nationalisation

PRIVATE property in land can be seriously threatened when the compulsory transfer of land to public ownership is made cardinal to the fulfilment of a national policy which apparently has no immediate relationship to the land issue. By such stealth the land nationalisers work. Land nationalisation is advocated as a means and not as an end in itself. The ends appeal, and the means are overlooked or made light of. Thus it has been for over a hundred years and is so today. Yesterday land was to be nationalised in order to give free access to it or to achieve political reform or secure tenants in their tenancies. Today is no different. The government in 1974 argued that it was essential to have a community land scheme under which all land suitable for relevant development would pass into the hands of either local or central government because by so doing the planning authorities would be given positive powers of decision and execution over land use and development; and furthermore, increments in land value could accrue to the community at large. The National Executive Committee of the Labour Party some two years ago published a strong polemic for the transfer to public ownership of all rural land. All the old excuses were dragged out and paraded as the desirable consequences of this action. Land nationalisation would mean the redistribution of wealth in equity and social justice; farming stability; efficient land management; greater capital liquidity to agriculture; security of tenancy and all the benefits that flow from a benign and affluent landlord. Experience and history have shown that where the advocated ends are truly worthy there are other means than land nationalisation to achieve them. Where the ends are doubtful, undesirable or untenable, then the nation has been saved from calamity by eschewing land nationalisation. Present day experience parallels the past. Desirable though positive planning may be, it can be achieved without universal transfer of land to public ownership. And the community's claim to proprietorship in land increments is spurious as explained later on. Pursuit of social equality has proved a will o' the wisp for 300 years in capitalist and socialist countries alike. Land nationalisation cannot achieve it. As for the other aims of the Labour Party's

rural land nationalisation policy, there is not one of them which is at the same time desirable that cannot be had by some other more liberal means. An example of the undesirable which we can well do without is the intention of the universal state landlord to write provisions for industrial democracy into the farm tenancy agreements throughout the length and breadth of the land.

In short, there appears to be no cogent case for land nationalisation either urban or rural, if by land nationalisation is meant the ultimate transfer to public ownership of the supreme title to land everywhere. The people at large can own the supreme title to land in theory only; a theory without a practical counterpart. An amorphous mass of folk cannot act as owners to execute the practical powers of land management dependent upon ownership. Commissioners and executive officials perform these functions as nominees and, in reality, are the new landowners. If officials are answerable to committees, councils or soviets, these must be given near or complete powers of ownership if effective decisions are to be made. In that event we are back to a form of private corporate ownership of land, and land nationalisation in the full doctrinaire sense is lost to sight.

Land nationalisation is the extreme danger because it puts into the absolute monopolistic hands of the state the supreme title to land to which in a free market economy and liberal social economy the market needs access. The free market and land nationalisation are incompatible. Land nationalisation is the way to a totalitarian and fully politicised economy. A society is free in the measure in which its land is free and privately owned. Under the Community Land Scheme, for instance, the day would relentlessly have come when there would be no commercial freeholds anywhere. The monopolistic public landlord, through its bureaucrats would determine which firms and factories should have leases and hence be permitted to operate. Officialdom would dictate the conditions, the rent, the land uses, the making of improvements and capital investment. Commerce and industry would have been nationalised in a back door manner through the land. The full implications of land nationalisation need to be spelt out to and understood by the public. There is an important educational job here which should be part of the policy.

Schedule of action

If the ideals and principles adumbrated above are followed, action will be required to:

a) alert the public to the dangers of land nationalisation whether approached directly or indirectly;

b) repeal the Community Land Act 1975 with its power to bring all development land into public ownership;

c) repeal all provisions and enactments which give authorities the right to appropriate land for purposes other than those for which it was compulsorily acquired;

d) repeal all provisions and enactments which enable public authorities to acquire land compulsorily for no specific purpose;

e) repeal all provisions and enactments which allow public authorities compulsorily to acquire land without stating the purpose for which it is wanted;

f) repeal all provisions and enactments which give public authorities power to acquire land compulsorily on a subjective judgement of their own;

g) require all government departments and public authorities to keep a public record of the interest in land owned by them and the reasons for and time of their compulsory acquisition;

h) legislate to require all government departments and public authorities who had acquired land compulsorily which has proved surplus to the purpose for which it was acquired to make provision for passing it back on to the market either by way of public auction or private treaty.

3 *Land Use*

Two radical questions

PUBLIC control over the use of land in the United Kingdom is an aspect of policy which more or less came in with the twentieth century. It could hardly be called radical until after the Second World War and the passing of the Town and Country Planning Act 1947. Its antecedents were building bye-laws and housing policy. Prompted by the designations of relevant enactments and for the sake of convenience the process has become known as "planning".

Land has been in short supply in the United Kingdom relative to a sustained demand from an expanding population, technological advance and economic growth. There is some cogency in the argument that land use uncoordinated and undirected could from the national angle lead to misuse and wastage. The first comprehensive thinking on the subject has been recorded in the war-time reports of Barlow, Scott and Uthwatt. What the writers of these historical documents did not know, we now know from the experience of 40 years. Attempts to plan the use of land from a government angle and with government power raised two radical questions: what is the purpose of the plan and what are the consequences of implementing it for private property rights in land? It is under these two questions and aspects that we have considered the principles for a future policy.

Planning and plans

LAND use planning in the United Kingdom has become a process without a purpose. Confusion reigns. There are many reasons for this, but the most provocative is probably the ignorance of the full significance of land in economic and social affairs. Economic thinking and policy making seem never to accept that land is a primary resource whose use affects every aspect of the economy and social order. Decisions for the use of land, however made, will eventually affect the use and distribution of capital and labour in all their manifold forms. The experience of state-directed economic activities during the Second World War and the new Keynesian theories of the time which were to lead to macro-economic thinking and aided in no small measure by radical political outlooks set going state economic planning at various levels. Because of the fundamental nature of land, land use planning and economic planning have now coalesced. The planning process has become more and more complex and long-winded. Because of the comprehensive range of planning it was found necessary to review and revise the process in 1968, and we saw the introduction of structure plans, local plans and action plans. Structure plans were meant to be broad policy programmes at county level but in the hands of officials they have become detailed statements and designs, varying in complexity and form, taking up an inordinate amount of time and making the entire planning process the more confused and confounded. We have come to the point where planning the use of resources in land from the national angle has become so demanding of time and money in both the public and the private sectors as to call in question the benefits and to ask whether they are not far outweighed by the burdens. And there is a graver malady. We seem to have lost all knowledge of why we plan the use of land. Planning legislation, complicated though it is, never did other than set up machinery. It failed to state what the machinery was for. Recent enquiries among those engaged in planning have produced forty different statements on the aims and purposes of planning. The foundation documents, notably the 1941 Scott Report*, were primarily concerned to check urban

* See appendix

sprawl. Today, after all the years, we have urban sprawl and urban decay. Manifestly a land use control policy must now as a first priority review its own credentials. Barlow, Scott and Uthwatt need to be re-read and their fundamental assessments, especially those of Uthwatt, re-examined in the light of experience. The examination should be speedy, thorough and should in its brief consider:

a) the purpose of public land use control;
b) whether it could and should be detached from economic planning;
c) whether its aims should be to safeguard declared and defined amenities and to manifest the cost and benefits of doing so;
d) whether it would be possible or practical to reintroduce zoning control in a manner which would give greater freedom to the play of land market forces;
e) to find ways and means of bringing the positive powers of decision making over land use which are inherent in property rights into the planning debate without passing the title to the land into public ownership;
f) the extent to which attempts at public participation have unnecessarily clogged the planning machinery.

In the meantime the planning process as it now is could be modified without prejudicing the outcome of an exhaustive review. Structure plans could be replaced with general purpose policy programmes for councils. Local and action plans would in the meantime be the main focal points of activity but with a difference. Positive planning related to the exercise of the property right and the land market should be a dominant feature of the action plans. Proprietary structure surveys should be made of the action areas. These structure surveys would be followed by land use and development plans prepared by the planning authorities and their proposals submitted to a consensus of the holders of property rights in the areas to ascertain who would be able and willing to develop their land in accordance with the proposals and what inducements would be required to get them to do so and how the market would react. Such positive planning schemes could be linked in with taxation concessions, as suggested later. They could also give opportunities for a continued testing and

monitoring of market values which, in itself, would be of great benefit to planning, especially in a day when public acquisition policies would follow the market and not the reverse.

Land values and planning

WHATEVER form the public control of land use may take apart from the ownership of all rights in the land by the planning authority, it must mean the imposition of a prohibiting sanction curtailing the range of property rights otherwise enjoyed by the holders of interests and estates in the land. The question of compensation naturally follows. Should a landowner be compensated when the state imposes a control sanction on the use of his land? Mention has already been made of the views in this country taken by the law courts and incorporated in the general run of planning law; and of the associated and counter notion that individual landowners can benefit from planning controls and should be required to pay for the betterment so gained.

Thinking in the Labour Party has taken the latter idea to the point where the increments in land values are claimed to be created by the operation of the government's planning controls; an act of creation which gives the community the right to appropriate the development value of the land. The two radical policies of 1967 with its Land Commission, and 1975 with its Community Land Scheme stand firmly on this conviction. Admittedly, if the premise is sound it is logical to impose a levy as an act of appropriation, but not as a tax. The distinction is of the utmost importance. If the contention is unsound there is no compelling moral obligation on government to recoup for the community the development value of the land. Whether or not the development value is taxed is another question, and one which concerns us later. The idea that value can be created is surely untenable, whoever the alleged creator may be. Value is a quality not a quantity. Value is apportioned by supply and demand and they impinge upon price; supply can be created, demand can be created, but not value. Value is a consequence. Value can

change as supply changes and as demand changes. Value does not float about as a detached thing in itself, as the Uthwatt Report maintained. Planning control alters the rights over land; it decreases the supply of land with development rights while not affecting demand. The simple operation of the market will raise the price for such land. The community has created nothing – neither supply nor demand nor value. That the action has curtailed supply is true enough, but curtailment is not a creative act. Controls which shorten supply of goods and even of money to a market are imposed by government in numerous ways and have many purposes, but it is not contended that by so doing government has created value in a manner which gives it a moral right of appropriation. The contention that the community creates development value in land through the public control of land use is untenable. There is no justification in the general case for betterment levies or analogous imposts.

Where government truly creates wealth, as with the construction of new roads, the case can be different. Even so, a road which opens up back land and makes it more accessible alters the physical characteristics of the land, a fact which may make it more desirable on the market than was the land in its former state. The act is creative of physical character of the land, but it does not create value. Whether or not the altering of the physical characteristics of a parcel of land in this way justifies claiming payment from the benefiting landowners is a valid but contendable question; but in any event it should not be confused with the wholly untenable notion that the mere imposition of planning controls creates land value increments. If a government by providing a road or some other public utility can be shown to have altered the character beneficially of adjoining or nearby land parcels and the case for payment can be justified, then the corollary follows that when private landowners, as often happens, develop their land in a manner which alters beneficially the character of their neighbours' plots, the improving landowners should have legitimate claims against those neighbours for payments. Either event is fortuitous for the landowner, as, indeed, are the consequences of many other economic and social actions. It is surely inequitable to demand payment for alleged benefit which was

not asked for. Public improvements can however be deliberately made to benefit certain specific lands from the start, as when a local authority takes over a private road or provides sewers or other public services to the plots. In these cases tangible benefits have been requested and provided and payment is justified. Again all these forms of incremental benefits should be distinguished from issues that arise when government acquires land compulsorily for a stated purpose. The present compensation code with its requirement to pay the open market value for the land taken and compensation for injurious affection to other land retained by the landowner or severed from the land taken and to set off against such compensation the value by which the remaining land might be appreciated by the altering of its character consequent upon the government acquisition and development appears to be sound, balanced and acceptable. But the occasions which impose it are different again from the actions of government which, being fortuitous, would bring fortuitous benefits or damage to land not taken. When the government acquires land compulsorily it puts itself into the position of one party to a market transaction. The compensation code attempts to reflect those aspects of the bargaining which freely negotiating parties would be aware of. The government and the landowner are parties to a land transfer bargain in which damage and benefits are taken into account. The compensation code for compulsory acquisition should remain, but should not be confused with the specious claims for betterment arising from planning controls or from government improvement schemes of a kind whose specific benefits are incidental to the main action.

4 Marketing Land

THERE are a number of ways in which the state can and has intervened in the land market, in its transactions and the conduct of its business. Looking at policies here and elsewhere we can distinguish seven different main objectives. A brief review of these will help to put in perspective the role of the state in relation to the land market.

Middle dealer transactions

OVER the last ten years we have in Britain seen two attempts to equip and sanction the government to act as a middle dealer in the land market; in 1967 with the establishment of the Land Commission with powers to acquire land in the market and dispose of it as the Commission saw fit and to do so deliberately to make a gain on the transaction; and then later under the Community Land Scheme where local authorities were empowered to buy in land for subsequent disposal and after the Second Appointed Day be compelled by law to do so in respect of all land suitable for relevant development. Ironically, one of the main justifications advanced for this interference was to check land speculation on the land market. It was also imagined that by passing the land through the hands of the government as a broker a check could be imposed on rising land prices. A third objective was to enable the government to cream off betterment levy or development land tax between purchase and resale. Both activities have proved ineffective. No one can say exactly what will happen should the local authorities ever be compelled under a community land

act to acquire all development land. In the very nature of things they could completely distort the land market by the imposition of absolute monopolistic pressure. At the intermediate stages which we have experienced in some measure, public acquisition of land for the taking's sake has stimulated an already over-heated demand. Far from easing land prices, the government as purchaser has advanced them and sharpened the speculative aspect of the market to itself and to the private sector. It had been supposed in 1966 that the Land Commission could supply the smaller operators in the building industry with land and make price concessions to them in certain directions. Both actions would have led to discrimination of purchasers and would be unacceptable on that count. The further transactions are done at arm's length the less will be the degree of influence over the market and its prices. Both in the Land Commission days and then under the Community Land Scheme the supply of land voluntarily put on the market shortened and in places dried up as landowners wait for a more enlightened land policy. Where through the exercise of compulsory purchase powers land has been forced on to the market (as with certain activities of the Welsh Land Authority) and disposed of to builders, it has given the impression to them that government interference is benign and helpful. The light however is a false one. But for the restrictive consequences of government policy there would not have been cause to force land on to the market – the market would have worked effectively and effortlessly of its own accord.

Adjudicating land sales

THE Agriculture Act 1967 provided for the first time in this country the establishment of rural development boards. Only one such board was set up and that in the north before the Act was repealed in 1970. Among other powers the Rural Development Boards could require transactions in rural land to be vetoed by them. The policy was based on a practice well known in Sweden. The main objective of this policy was to try and stop the fragmentation of holdings, where smallholdings

were divided and the portions sold to build up larger ones. In Sweden, the control went further, to ensure that only buyers able and willing to improve the land according to government wishes should buy it. As an alternative to land nationalisation this practice is to be preferred. Like other radical reforms on paper and at first glance there appears to be a persuasive sense behind government adjudicating upon land deals in this way. This impression arises from certain false assumptions. One is the assumption that there is some ideal proprietary structure pattern for agriculture, forestry and the countryside to which holding structure should conform when in fact there is no such criterion. Another supposes that where a purchaser is able and initially willing to develop the holding in a declared way, he will do so after purchase. A third assumption gives a wisdom to bureaucrats they do not possess. It assumes that they can tell better than can parties to a full transaction what is best for local farming and the general well-being of the countryside. Besides these questionable assumptions, a bureaucratic veto on a land sale disregards the private circumstances of the vendor who wishes to sell his land. On balance there seems little merit in policies of this kind.

Limiting types of land

In certain countries, but not yet here in Britain, government interferes with the land market to limit the type of land that can be brought to market. Farming land in Denmark, for example, can be sold only in a market of qualified farmers. There is a recognisable cogency behind policies of this kind; they help to ensure that those who are best qualified to use land for a specified purpose have access to it, but like so many other policies of interference they suppose that an arbitrary definition of the "right" kind of purchasers (farmers for farming land) from an economic or other angle is sound. The policy principally supposes that land can and should be used for one purpose only and that the government knows who the people are who are best qualified for the purpose. The assumptions are questionable. Men of wealth and enterprise

can often bring new knowledge and new money to agriculture and forestry; and occasions occur where just because land was in the hands of a man of vision and purpose who looked beyond the current use, it was put to another use, more profitable and socially acceptable than the present one which would have remained static under the "right" qualified man as the government saw and defined him. Attempts to interfere with the land market by linking land use to types of purchaser are more restrictive than helpful, and should be avoided.

Limiting the type of buyer

Most countries have laws to prevent the acquisition of land and buildings by aliens. The laws in effect limit the market by excluding a certain class of purchaser. The policy in numerous places is operated on a racial basis. It was common practice in our colonies to prohibit aliens from acquiring land from native peoples in the interests of the indigenous race. In Britain there is no question of racial restriction. Acquisition of land and an interest in land by aliens is becoming more and more a matter of public concern. Objections raised are not to aliens *qua* aliens but to the effects their inordinate demands have upon land and house prices to the exclusion from the land market of nationals who cannot compete.

The problem is acute in places like Kensington. Aliens are accused of buying reversions, jacking up the rents of sitting tenants to levels they cannot pay, gaining possession and reletting to other aliens at grossly inflated rents. A Bill was recently before Parliament ostensibly designed to check this practice by giving tenants rights to purchase the reversions. A tenant so emancipated would be a freeholder in possession, faced with all the temptations of a market stimulated by aliens for just such interests. This is no way to tackle the problem of alien acquisition; it was a squeamish, back-door, ineffectual policy. If there is a case to contain alien acquisition of land and houses it should be handled by an open policy deliberately designed and known to be designed to check operations by aliens, as happens in many developed and developing countries

–i.e. Switzerland and Nigeria. There is a cogent case to be made out especially on the grounds of a threat to sovereignty. An alien buying land for commercial development can have a wide ramifying effect in many directions for the economy and society. But it must be remembered that aliens can buy through nominees and even when they are restricted from acquiring absolute interests in land can sometimes get round these policies by advancing money as mortgage or loan to enable a national to buy the actual interest. Also aliens bring in money to the country and are tax-worthy. The state of affairs should be carefully looked into, but it would appear that on present evidence there is no fully persuasive case for a policy to check the acquisition of all interests in land by aliens.

Limiting type of interest.

IMPORTANT variations on the two last policies limit the types of interest in land which can be acquired by particular classes of buyers. This is a policy widely practised in developing countries where it is not economically prudent to bar aliens from acquiring interests in land. By prescribing the type of interest procurable, aliens can be permitted to obtain only limited interests in land, such as leaseholds, and thereby prevented from holding land absolutely or in respect of any larger estate in law than the limit permitted. The policy has defects where by limiting the type of interest permitted to aliens foreign capital is estranged from a country that needs it. It has merit, however, for this country where there is no desire to prevent aliens acquiring interests in land as aliens but some point in preventing them acquiring interests in perpetuity, especially in concentrated enclaves. Other forms of this type of land policy restrict the form of proprietary land unit procurable by imposing limits on the physical size of holding permitted or the number of units to be held by any one person or company. There seems no case to support a policy along these lines at present in Britain. Policies which impose maxima frustrate enterprise and investment in a full capitalistic economy. The case for minima might be more convincing if it were possible to

define the criteria by which to establish minimum sizes - acreage, capital investment per acre, standard man days of labour employed – are all parameters which have been toyed with to no convincing purpose.

Inter-party relationship

SINCE under the common law property rests in rights and not in the land itself, it is possible for more than one set of rights – interest or estate – to subsist in a given parcel of land simultaneously. Where this happens, the law recognises a privity of contract and a privity of estate between the parties. The contract, lease or tenancy agreement or other title diploma creates the interest and binds the parties to specified terms upon which the title is conditional. The nature of the interest created and the terms of contract are freely negotiated, including the premium or rent to be paid by way of consideration. The parties are bargainers in the land market. Under what is technically referred to as tenancy reform, governments intervene to impose statutory terms to bind the parties irrespective of their wishes. A common form imposes a bar on rent levels beyond which rents are not permitted to go; not infrequently rent restriction goes hand in hand with provisions which secure a tenant or limited interest holder in his interest beyond the duration of the term agreed to under contract. A particular advanced form allows one party to force the other to terminate the contract on terms wholly to the advantage of the party empowered to act. The provisions of the Leasehold Reform Act 1967 under which leaseholders can compel their reversioners to sell reversions to them at sub-market prices is an example of this kind of reform policy currently with us. In principle, intervention by Government forcing the alteration of the terms of a contract freely and honourably negotiated and to do so to the marked advantage of one of the parties is ethically unsound and should not be countenanced.

There may be occasions when grave, unforeseen and unforeseeable contingencies occur to alter circumstances in a

manner which makes the terms of a contract exceedingly onerous on one of the parties and in a way which if known at the time when the contract was made would have affected its terms. The onset of war in 1915 had such an effect for the tenants of houses in a market where supplies suddenly dried up and the rent restriction legislation that followed at that time was justified. But the present policies of rent restriction and leasehold reform are policies of intervention between landlord and tenant and are pursued for little more than doctrinaire purposes. There may be a case for giving tenants the right to purchase the freehold reversions in certain special individual areas such as the Talbot Estate in South Wales, but not on grounds which are manifestly one-sided and unjust to the landlord. These policies disrupt the market and usually do more harm than good, especially over the long term.
Leasehold reform has put a brake on the use of leaseholds as a development facility. There is an exception, however, where a right of leasehold redemption vested in the tenant would mean justice restored. The exception is where owners of industrial and commercial freeholds who seeking planning permission to develop their enterprises had, under the terms of the Community Land Act 1975, been forced to exchange their freeholds for leaseholds held from the Government or a local authority. These leaseholders should be given rights of enforceable redemption against their public reversioners and on the easiest of terms. Rent restriction has notoriously disturbed the market and in the private sector has drained it of supplies of houses to rent. In this respect, Britain falls far behind other countries, especially in Europe where government has helped the people and itself by subsidising the provision of houses to let provided by private landlords. The entire range and functioning of the Rent Restriction Acts needs to be fearlessly and critically re-examined. There is a case to be made for the restoration of the let house to the private market. Such a policy would in no way run counter to the excellent policy of disposing of council houses to their tenants at the instance of the local housing authorities. It would run as a parallel policy to widen choice.

Disposal control

A thoroughly disturbing intervention into the working of a free land market was made by one of the more novel devices of the Community Land Act 1975. The Act provided for the setting up of what were called "disposal notification areas". Whenever within a disposal notification area the owner of an interest in land, vacant or developed, proposed to dispose of it, he had to notify the local authority who were thereby given a right of pre-emption. A policy which required a landowner wishing to sell his interest to offer it first to the local authority would have been bad enough, but it did enable the landowner to know where he stood before he approached the general market. Disposal notification in that form makes nonsense. No one can tell with certainty whether or not he proposes to sell until he is signing or has signed the disposal contract. If the parties have then to wait upon the local authority to declare its intentions uncertainty will ensue. Neither party can know where it stands; the purchaser cannot know if he has bought nor the vendor know if he has sold. The purchaser may well seek a more certain transaction; and the vendor could not commit himself to buying a substitute property. Disposal notification linked to a right of pre-emption cannot be justified on any grounds save a desire to interfere in the affairs of the land market, to rig it in favour of the local authority.

Actions

It should in general be the aim of a land policy in this country to ensure the unfettered working of a free land market. The Local Government, Housing & Planning Bill when enacted will go some way to help. Action is required to repeal those enactments which today intervene in the market in undesirable ways: notably the Community Land Act 1975 with its provisions compelling local authorities to buy up all land suitable for relevant development and to set up disposal notification areas and the provisions which give the Secretary of State for the Environment all power of disposal policy for

interest in land acquired under the Act by local authorities; such provisions of the Leasehold Reform Act 1967 and of the various rent restriction acts as cannot be justified on the grounds of special and proven hardship to tenants. Leasehold redemption should be made available to tenants holding leaseholds of industrial and commercial land forced upon them under the Community Land Act 1975. The case for limiting the acquisition of interests in land by aliens to specific types of interests should be investigated with a view to bringing in an appropriate control of acquisition policy.

5 *Land Taxation*

No case for special taxation

FROM early modern times there has been something special about the taxation of land. The landed interests, until recent times, successfully resisted heavy capital levies on land wealth. In Tudor and Cromwellian days a man's wealth in goods and land was a basis on which estimates of income were made for levies and taxes. Land emerged as something special because in those days it proved to be the only form of wealth for which assessments to income could consistently be made. From the past, we still have local taxes – rates – levied on estimates of rental income or value. The sophistication of tax assessment and collection and the close-knit mesh of the tax net have overcome the earlier weaknesses and land today has no special advantage to the tax gatherer. Even so, there are modern schools of thought who continue to regard land as a special form of wealth which justifies taxes peculiar to itself – hence, the Development Land Tax. The case today for treating land exceptionally is largely a political one and is not sustained from economic or fiscal considerations. Here in Britain, it is coloured by the obsession to collect development value for the State and by a desire on the part of politicians to be seen to be doing something about what appear to some to be windfall fortunes made from rapidly rising and immoderately high land prices.

A levy to apprehend development value for the state on the contention that it belongs there *de jure* should be distinguished from a tax proper. A levy to that purpose obviously pertains to land in a special way. A tax proper which appears to be doing the same thing, such as the development gains tax of 1973, can

be mistaken for an endorsement of the claims of the community to development value as of right. Unless development value is accepted as a form of wealth created by the community and having a substantive identity of its own, there is no case for imposing a levy especially related to it. A gain in capital derived from land development is no different from any other capital gain. A development gain or land tax is a misnomer. It is not a tax on development, as the term implies, but a tax on land whose value on the market has risen as a result of or in anticipation of its development. Paradoxically, a tax on development can be a positive disincentive to development. If within our fiscal pattern of things taxes are imposed on capital gains, land should be no exception, either by way of exemptions or special taxes of its own.

Uncertain and impractical taxation

TAXES in the mode of development land tax and development gains tax are unjustified. More than that, they breach the canons of sound taxation by being uncertain and impractical, for the following reasons. Land to a developer is a factor in the construction and production process. To tax away all development value robs the builder of part of the just reward due for risking capital, labour and time in the construction enterprise. This is why the imposition of 80 per cent DLT and a threat of 100 per cent levy made it so difficult in the late 1970s for local authorities to find developers able and willing to undertake construction and risk development. The whole or a substantial part of the increased value of land from development should be secured to the developer. Developers make losses as well as gains; if the gains in some special way belong to the state, by the same token, so do the losses; but those who would so readily claim the gains say nothing of shouldering the losses.

Development value is an abstract concept. Laws that attempt to define it inevitably call in aid other abstractions, such as current use value. The legal definitions are vague

enough. Actual assessment compounds the uncertainty. Assessment cannot but be based on imaginings that can never meet the test of reality – for development value is not a concrete magnitude demonstrable and declared by the land market. The land market deals only in whole interests in land – a fee simple, a lease and so on. There is no trade in development values. Consequently, taxes based on development value are imposts which the taxpayer cannot be certain of until the assessments have been made and agreed, or adjudicated upon. Such uncertainty is bad taxation and bad economics. Developers liable to a tax but not able to ascertain its weight will cover themselves, and in the past have done so, by putting up the price of the houses or premises they build and doing so so as to cover all eventualities. Thus these taxes give the land prices and the prices of the houses and shops built on the land another push upwards. A further serious defect in all types of tax or levy on development value is the necessity to employ armies of expert valuers in and out of government offices to make assessments and agree them. The taxpayer is at the mercy of the professionals and their arcana which he does not understand. This also is bad taxation.

No less a disadvantage of a tax on development value is the sheer impracticality of raising a tax that is not going to contradict the theory that justifies it. Shylock faced the impractical when he tried to take his pound of flesh. If we accept the theory that the community in a general way substantially creates increments in land values in a manner peculiar to land, how can we sever these particular increments from those which are the consequence of a landowner's and developer's foresight, planning and investment? In practice the distinction is impossible to make.

Virtue of capital gains tax

TAXATION of development value in land is bad taxation. This truth is no ground for allowing land, a form of capital wealth, to go free of tax. Transactions in land which reap gains for the

vendor should be taxed along with all similar gains, if a capital gains tax is part of the fiscal order of things. Strictly from a taxation viewpoint, a capital gains tax is perfectly adequate to tax the gains from land deals. A capital gains tax, in most instances, deals either in market values or realised prices and not in hypotheses and abstractions. But uncertainty and the need to wait upon assessments made by official valuers and their opponents is encountered where land titles run back to beyond 6 April 1965 and also where what is sold, leased or otherwise disposed of is not the same proprietary land unit as one originally bought. Calculation of capital gains tax can be exceedingly speculative when buildings are demolished, the site divided and the new buildings sold off in stages. Even so, the uncertainty attending the levying of a capital gains tax on land is far less than that which conditions taxes on development values.

Subject to such modifications as may be necessary to make room for a proceeds tax on the lines suggested below, it seems wise policy to leave land deals to yield tax under the present capital gains tax and corporation tax. This is not to say that the present lines are beyond improvement. There is cause to think that the incidence of the taxes on land needs to be the subject of a special review. A tax could be used in ways which could stimulate development where required. Modification could be made, for instance, so as to encourage development in the inner cities and elsewhere in areas of urgent need. Developers liable to capital gains tax and corporation tax could be encouraged to go for the inner cities and other market-shy places by using a form of the roll-over principle. Gains would be exempt from tax or from a substantial proportion of it, if what would have been payable as tax were used by the developer to finance further development in the special areas.

A suggested proceeds tax

IF for political reasons it is expedient to have a special tax on land deals there is much to be said for imposing a proceeds tax on the realised proceeds from the sales of interests in land. A proceeds tax is a kind of VAT which avoids the undesirable features of a tax on development value and a capital gains tax on land deals. A proceeds tax would only tax the actual proceeds from sales of land bought for development or with development in view. It would tax actual monies not hypothetical values. Where capital gains were made outside the range of a proceeds tax, these would be subject to normal capital gains tax. It should be clear that a proceeds tax would only be imposed to satisfy a public demand for an overt taxing of land deals. A proceeds tax would be a simple way of giving satisfaction.

Principal features of a proceeds tax

THE first claim of a proceeds tax to an advantage over the other two is the downright certainty of the tax indebtedness. The amount is unequivocal. To a developer it will always be a past cost, not a future speculation. In the main, however, the incidence of the tax will not fall on a developer. A developer will pay the tax only if the vendor from whom he buys the land fails to do so, or should the developer himself sell the land instead of developing it. A proceeds tax would be levied on the principle of no sale, no tax. Landowners who develop their land or join with builders, developers or local authorities in partnership or through company formation would not be liable for the tax. The imposition, therefore, would be a definite incentive to development. A landowner turned developer would be able to exert a competitive influence on the house market, as he would have no taxes to pass on to the retail selling prices of the houses, shops and other properties he erected. Any corporation tax lurking in the shadows to catch increments in asset valuations of a landowner's development company would be suitably muzzled, although the company would be liable for income tax as a development company.

Evidence that proceeds tax had been paid would be franked on the title deeds of the interest in the land at the time of the sale which generated the taxable proceeds. A purchaser in his own interest would see to it that the vendor, who at law would

be liable for the tax in the first instance, had actually paid it and the franking of the title deeds by the Inland Revenue would be a collateral act in the procedure of conveyancing undertaken simultaneously with the completion of the purchase.

When a landowner sought planning permission, the planning authority would demand a sight of the title deeds to the interest in the land. If these had not been franked showing that proceeds tax had been paid on the proceeds of sale at the time when the landowner bought the interest in the land, planning permission would be withheld until the tax had been paid. The tax would only be raised on the proceeds of land sold for development. A vendor would have no need to enquire specifically whether the purchaser was buying with intent to develop. It would be in the best interests of the purchaser to declare his hand. A purchaser buying and intending to develop would know that if he did not get the vendor to pay the proceeds tax at the time of sale, he, the purchaser, would be liable to discharge the tax when eventually he sought planning permission. Land sold with planning permission would by definition and patently be land sold for development and proceeds tax would be payable. It would be up to the purchaser-developer to see that tax would be payable. It would be up to the purchaser-developer to see that tax was discharged by the vendor and the title deeds duly franked; obviously the sale would not be completed until the vendor was in a position to hand over franked title deeds. A farmer who bought a farm with a genuine intention of farming it and subsequently sought planning permission to develop the whole or part of it would have to satisfy the planning authorities that at the time of purchase he had no intention of using the land for development. Proof should not be very difficult. The price paid would be of cardinal importance; if it were more or less in step with the prices prevailing at the time for farm land, it should be taken as *prima facie* evidence that the purchase was not a transaction in land for development.

Once paid, proceeds tax would stand to the credit of future vendors who on subsequent sales would become liable. Where, for example, proceeds tax was 15 per cent, the sale of ten acres of freehold land for development at £20,000 per acre would yield £30,000 tax. Should the land be subsequently resold and

not developed and change hands at £30,000 per acre, the proceeds tax would be £15,000. From a gross yield of £45,000, the £30,000 previously paid would be deducted. From this simple illustration, it should be apparent that a proceeds tax would in the long run achieve all that a capital gains tax and a tax on development value do, but without all the uncertainty, administrative expenditure and unnecessary employment of scarce professional skills.

An inherent difficulty in the proceeds tax idea is the need to frame clear definitions so as to draw a line between development in the sense of the material development of the planning statutes and development as a criterion of proceeds tax. Development for the purpose of proceeds tax would have to be distinguished from re-development. Re-development of existing developed lands would be taxed to capital gains tax, but not to proceeds tax.

Rates and Site Values

LOCAL rates levied on estimated rental values of rated premises are, if the valuation lists are kept up to date, a well tried and tolerably satisfactory means of taxing rising values of all manner of interest in land and the structures upon it. It is to be preferred to site value rating, as practised in some places. Site value rating uses the capital value of a site as the tax base. Periodic assessments are made which purport to reflect the development potential of the site on the land market. Assessments of capital value have much of the uncertainty and obstruseness of assessments to development value about them. The taxpayer has difficulty in knowing his future liabilities. He is at the mercy of tax assessors who make assumptions of how they think he should develop his land, assumptions which could run quite contrary to what is best for the landowner and which could impose so great a burden upon him as to cause an involuntary sale of the taxed land. There is a perversity about site value rating. It is not recommended.

Concessions for landowning

WHILE there is little to support the case for special taxes on land, it has to be acknowledged that heavy capital levies, such as capital transfer tax and wealth tax, on land can have far reaching effects whose ramifications are out of all proportion to the effect of similar taxes on other forms of wealth. A proprietary land unit is often the physical base for a commercial or industrial enterprise or farm. If it has to be disposed of or fragmented to pay capital taxes, entire enterprises suffer, especially so with farms and rural estates. The concessions at present given to alleviate the burden of capital transfer tax on farms in hand should be widened in scope and above all extended so as to benefit all interests privately held in land given to agriculture and forestry. A landowner who lets his land out to farming tenants provides to them land and buildings and services which are as essential to the farming enterprises of the tenants as are the land and buildings to a farmer with land in hand. The concessions should be uniform for all tenures.

Actions

IN the light of the above observations and opinions, policy for land taxation should (a) require the repeal of the Development Land Tax Act 1976; (b) the modification of capital gains tax so as to introduce a roll-over principle to benefit the development of inner cities and other special areas; (c) the investigation of a proceeds tax on land bought and sold for development, as a simple form of a special tax on land should political expediency require it; and (d) if the heavy burden of capital transfer tax is not generally alleviated, the concessions now given to farm freeholds in hand should be extended to all interests in land given to farming and forestry, including the reversionary interests of rural landlords.

Appendix

Barlow, Scott, and Uthwatt re-examined

Cause to look back

FORTY years have passed since the outbreak of war in 1939. The war meant new resolves, new social orders, relationships and values and a technological revolution. And with all else came planning, national and local. Two generations have learnt to live with these new things. What were new ideas, hope-filled and assertive in the war days and after have become commonplace and taken for granted today. Among them is town and country planning. We tinker with its devices and its mechanics and forget that it is a machine whose parts and assemblage were in large measure forged in wartime. It has served some purpose and is now creaky with age; even those who love it best are apprehensive of its future. Was it fashioned two generations ago to bring in the decay of our inner cities, urban sprawl in the surrounds where town and country meet, the emptying of villages and the frustration of planners? The recent surveys made by Alice Coleman, her aggregates and analyses have shown how much land in our day is still neglected and under-used or developed with scant regard to agriculture and the countryside.[1] The Community Land Scheme, the latest version of the land planning machine devised by the last Administration, was even by that Government counted an embarrassment from whose failure attention was turned to contemplate the neglect and wasting of the inner cities.[2] And so staunch an advocate of the planning process as Professor Gerald Smart cannot convince himself that structure plans are working out effectively in practice, nor

that the process is properly related to other local authority planning activity and the cycles of policy planning.[3]

Dare we, then, re-examine the planning process afresh? It looks as if we should. Why do we need it? What is it meant to achieve? What, indeed, are the planners planning for? There is evidence to show that these questions put to the planners bring as many different answers as there are years since the modern planning provisions were first enacted. It looks as if we have constructed a gigantic governmental administrative structure with no clear notion of its purpose. There is no point in searching the spate of legislation from the war years to the present time which provides for planning authorities and their powers. That great foundation enactment, the Town and Country Planning Act 1947, which set up the machinery, nowhere in its provisions states what the purpose of planning shall be. Plans are to be made, development plans by planning authorities. That is mandatory. Why this should be is nowhere stated in the law. Is it not time we re-examined the texts and the thoughts behind them of the three historical Reports on which government after government have based planning policy and provisioning since the Second World War? We should go again to the beginnings, to find the original signposts and, in finding them, see how far we have wandered from the pathways of hopes and purpose.

The Reports

THE text that was destined to become Siniatic in pronouncement and historical context was the Report to Parliament of *The Royal Commission on the Distribution of the Industrial Population* which sat under the chairmanship of Sir Montague Barlow and delivered its submissions in January 1940, as Cmd. 6153. The other two Reports came out of the work of the Barlow Commission, either indirectly or directly. Agriculture had a special claim to be considered in any study of the utilisation of national resources, especially of land. Nevertheless, the Barlow Commission saw it as lying beyond their own terms of reference. To fill the gap, Lord Reith, then

Minister of Works and Buildings, in consultation with R. S. Hudson, the Minister of Agriculture, appointed in October 1941, a special committee under the chairmanship of the Rt. Hon. Lord Justice Scott to consider and report on *Land Utilisation in Rural Areas*; a committee which did its work with some dispatch and reported back within the year, in August 1942 as Cmd. 6378. The Barlow Commission had not gone far up the road before it met head-on the nagging problem of compensation and betterment. They recognised the issue as germane to their task but beyond their competence to deal with. Accordingly and deliberately they recommended the appointment of a body of experts to examine the question.[4] Again Lord Reith moved and appointed an expert committee in the hands of The Hon Mr Justice Uthwatt to tackle the problem. The committee was appointed in January 1941. They also acted quickly and produced as a matter of urgency an interim Report in the same year, Cmd. 6291, and a final version in September 1942, on *Compensation and Betterment*, Cmd. 6386.

Early planning

ALTHOUGH all three Reports were to have profound effects upon the future of planning in this country, in not one of the terms of reference was 'planning' as such specifically mentioned. This omission is of extreme importance to any historical analysis of the evolution of planning in Britain as we shall see later on in this article. The planning process did not start with the work and recommendations of these three wartime reports. For some time it had been a more or less local affair. Its affinities ran back to the Public Health Acts of 1848 and 1875 and the early Housing legislation. Planning schemes were the first step; taken in 1909 under the Housing, Town Planning etc Act of that year. The schemes were to be made by local councils in respect of land 'in course of development or appears likely to be used for building purposes'. The schemes had clear objectives: that in future land in the vicinity of towns shall be developed in such a way as to secure proper sanitary

conditions, amenity and convenience in connection with the laying out of the land itself and any neighbouring land. Planning schemes were local elaborations of bye-laws more akin to extensive estate management layouts than comprehensive development plans. Even so, the preparation and approval of them proved to be a lengthy business; and because of the compensation provisions in the law requiring the payment of compensation to landowners whose interests were adversely affected by the schemes, they were very costly into the bargain. Besides all this, the schemes were no more than permissive, there was nothing mandatory about them. After the First World War, Parliament tried to put new pep into the planning activites by introducing the idea of interim development control. The interim was the period between the passing by the council of a resolution to prepare a scheme and the time when the scheme became effective. Schemes were still restricted to the outgrowing fringes of suburban land. In 1932, however, the scope of them was extended to any type of land in England and Wales, under the provisions of the Town and Country Planning Act of that year. So slow was the pace that, at the time in the war years when the Barlow, Scott and Uthwatt commissioners and committee men got down to work, only 5 per cent of the plannable lands of England were subject to formal, operative planning schemes, 1 per cent of the lands of Wales and no more than 0·4 per cent of Scotland. Resolutions to have an operative scheme one day were much more widespread; covering 73 per cent of the lands in England, 36 per cent in Wales and 9 per cent in Scotland. Interwoven with the making of planning schemes were simple ruses, designed to solve the compensation and betterment problem. To counter the paying of compensation for harm done, the law gave power to the local authorities to raise betterment levies in respect of one-half of the increase in value of land due to the coming into operation of a planning scheme; this figure was raised to 75 per cent under the Town and Country Planning Act 1932. So complicated and uncertain were the betterment provisions and their application and, indeed, so contrary to the spirit of the times, that, relatively simplistic though they were, no betterment was ever recouped under the Acts of 1909 and 1925. The war overtook the revised law of 1932 before its

provisions had run long enough to be tested properly. Such was the scene, preparatory, operative and financial at the time of commissioning Sir Montague Barlow and his colleagues and the Scott and Uthwatt committees which followed hard on their heels.

Barlow Royal Commission

WHEN Neville Chamberlain, as Prime Minister, announced the constitution of the Royal Commission under Sir Montague Barlow in July 1937, there was nothing in his speech to show or imply that either he himself, or Parliament, was concerned with planning for planning's sake. Public opinion, influenced somewhat by the views of Sir Malcolm Stewart, the then Commissioner for Special Areas (England and Wales), and the gathering war clouds was disturbed by the thoughts that danger lurked in the concentration of our industrial output and commercial enterprise in vast conglomerates which grew haphazardly with the expansion of the nation's wealth, especially as reflected in what Sir Malcolm called the 'macrocosm' of London. Besides which, the suspected strategical dangers were obviously more than matched by possible economic disadvantages and patent social ills in the great and rapidly growing cities. Consequently, the terms of reference to Barlow ran:

> 'to inquire into the causes which have influenced the present geographical distribution of the industrial population of Great Britain and the probable direction of any change in that distribution in the future; to consider what social, economic or strategical disadvantages arise from the concentration of industries or of the industrial population in large towns or in particular areas of the country; and to report what remedial measures if any should be taken in the national interest.'

The Royal Commission pointed out that legislation so far had not made provision for planning from a national standpoint. It was conscious that it was the first authority commissioned with the duty to consider the country as a whole in relation to the problems of industrial, commercial and

industrial growth and in the light of the needs of the entire population. The Commission never lost sight of the specificity of its terms of reference – to consider the causes of present distribution of the industrial population and the probable direction of any change; the social, economic and strategical disadvantages and remedial measures. Nowhere in the fullness of its deliberations and recommendations did they pay attention to planning as policy in itself. Planning could be and was important to national thinking and action; but always as incidental to some clear purpose, problem or task. In the outcome, the Royal Commission concluded that the disadvantages, alike on the social, economic and strategical side, constituted serious handicaps and even dangers to the nation's life and development. It strongly advocated Government remedies. Among the members there was unanimous support for the setting up of a Central Authority, national in scope and character, over-riding and distinct from the activities and powers of existing Government Departments. National action should be directed to redevelopment of congested urban areas, decentralisation and dispersal of industry and industrial population and encouragement of a reasonable balance of industrial development. The new central authority should be responsible for forming a policy of decentralisation, involving garden cities, satellite towns and trading estates if need be. There would be vested in it a right to inspect planning schemes, to collect information, pursue research and advise local authorities and Government. Opinions differed as to the executive powers of the new authority. Some wanted them to be advisory only; others to give the authority special powers to deal with London and the Home Counties; and others, the hawks, wanted a full-blooded Ministry of Industry with full executive and administrative powers over the location and development of industry. The majority took a halfway position; they agreed to the advisory and inspectorate aspects of the new powers and wished to see also vested in the Central Authority power to regulate the establishment of additional industrial undertakings in the area of London and the Home Counties. In short, they proposed planning machinery for dealing with a specific problem – the location of industry and

commerce – on a national scale. Such national directives and action needed to be co-ordinated with existing planning schemes but only in the primary interests of the location of industry and commerce, not in the interests of planning *qua* planning.

Scott committee

THE terms of reference for the Scott Committee were complimentary with those of Barlow. Barlow said it had not taken account of the impact the dispersal of industry and commerce into the countryside would have there and especially upon agriculture. Scott and his members were instructed to look into just that side of national affairs. The wording was explicit:

> 'To consider the conditions which should govern building and other constructional development in country areas consistently with the maintenance of agriculture, and in particular the factors affecting the location of industry, having regard to economic operation, part-time and seasonal employment, the well-being of rural communities and the preservation of rural amenities.'

In general, the Committee was asked to deal with construction in country areas consistent with agriculture. The location of industry as such was not for general consideration. Because of Barlow, however, it was necessary to give it particular thought and in looking at constructional development in general to have particular regard to the coming of industry to the country and its affect upon employment, agriculture and rural amenities.

Here again the instructions to the Committee were clearcut and unambiguous. They were not asked to consider planning policy or procedure. In the main, Lord Justice Scott and his colleagues went about their business faithfully and to the point. All forms of industry, housing and what was called miscellaneous constructional development were analysed, classified and considered in relation to agriculture, one by one and collectively. The Report, however, caused confusion both to the reader and to certain members of the Committee when

the majority decided to go further than a strict adherence to the terms of reference permitted. They took it upon themselves to review and make proposals about national planning, policy and procedure. Consequently, there was a minority Report which disassociated its authors from this excursion into the unpermitted.

The catalogue of precise observations and recommendations takes second place to the diversions into planning machinery and procedure. And here the Report becomes ambiguous and obscure. The Committee declares that the true function of planning is the attainment of the best use of land. It is not explained from whose point of view the 'best' should be judged. In one place the Committee assumes that the maintenance of a prosperous agriculture will be a predetermined plank in post-war policy; in another it proposes interference with the development of land for agriculture from the centre downwards in a manner which could sorely upset the fortunes of farmers and landowners and put in jeopardy their prosperity as agriculturists. Much is made of the need to have a centrally guided planning machine. And it is in this approach that the intentions of the Committee are most uncertain. There is to be a Minister of National Planning and a Central Planning Commission to assist him. Local authorities in the form of county planning authorities will continue to make planning schemes having regard, however, to agriculture and every other consideration, and to the suzerainity over them of the all-knowing Minister and Central Planning Commission. At one time in the Report the Minister is referred to the Minister of National Planning and the Central Planning Commission is to advise him on the formulation of national planning policy[5] and at another time the Central Planning Authority is to be concerned only with national land planning. If the Committee seriously meant to advocate the setting up of machinery for national planning and not simply national land use planning, they were very far from their terms of reference. Reading between the lines, these ambiguous phrases were probably no more than examples of inadequate thinking and the extenuating circumstances of a wartime rush.

It is possible with patience to sift out the ambiguities and discover the rationale behind what the majority of the

Committee are trying to say in their Report. At the end of the day, they are not concerned with planning only but also with policies. 'We have emphasized especially the need for long-term policies, for example in agriculture, to secure the necessary conditions of stability for satisfactory development.'[6] In short, planning without policy is pointless. And for the Scott Committee, the priority of agriculture in the country-side was the hall-mark of sound policy. To quote it again: 'Where the land is of good agricultural quality and there is no dominant reason why there should be constructional development, the task of the Authority (i.e. the proposed Central Planning Authority) is simple – its answer will be "No!" But in the case of some of the intermediate qualities of land, especially where *pros* and *cons* are at all evenly balanced, or other sites are offered to the applicant as alternatives, it would be of very general assistance to all persons likely to want sites for construction, as well as to the owner of the agricultural land, and the Minister of Agriculture himself if it were common knowledge that agricultural sites would not be handed over unless a clear case of a national advantage was made out.'

The Committee sitting under Mr Justice Uthwatt was the expert body wished for by the Barlow Royal Commission. Its terms of reference did not mention planning or planning procedure specifically. The definition of the task was precise to the point and mentioned the public control of land use; that is the interference by public authority of private rights, whether done in the name of planning or for some other reason. The exact wording required the Committee:

> 'To make an objective analysis of the subject of the payment of compensation and recovery of betterment in respect of public control of the use of land; to advise, as a matter of urgency, what steps should be taken now or before the end of the war to prevent the work of reconstruction thereafter being prejudiced. In this connection the Committee are asked: To consider: (a) possible means of stabilising the value of land required for development or redevelopment, and (b) any extension or modification of powers to enable such land to be acquired by the public on an equitable basis; to examine the merits and demerits of the methods considered; and to advise what alterations of the existing law would be necessary to enable them to be adopted'.

Right from the start the Committee was radical in its

approach and made fundamental and telling assumptions about revised planning powers and procedure. They took up the proposal of the Barlow Commission for the establishment of a Central Planning Authority. But they did not limit the functions of that Authority to controlling the location of industry and commerce as Barlow had done. At the outset in their Interim Report they foresaw the Central Planning Authority controlling building and all other developments throughout the whole country by reference to national planning considerations, and with a view to preventing work being undertaken which might be prejudicial to reconstruction. Admittedly these powers were to be temporary; but even so Uthwatt wanted the formation of 'reconstruction areas' for a much longer period wherein no works of reconstruction or development would be permitted except under licence from the Central Planning Authority.

In the final Report of the Uthwatt Committee, a strong Central Planning Authority with comprehensive powers to make and execute national plans for the control of land use was germane to its whole thesis and proposals for the solution of the compensation and betterment problem. The Committee accepted, apparently without much analytical investigation, the notion that the value of land for development 'floated' about on the eddies of the market and none could be certain where it would settle; and twinning with this notion was the fancy that the public control of land use could 'shift' value, as a detached thing in itself from one site to another. There is no time now to examine these questionable assumptions. It is important that they have influenced the postulations behind planning policy in this country ever since. Because it thought as it did, the Uthwatt Committee quite logically maintained that unification of proprietary interests in the single title of the State was the only way of cutting out the compensation and betterment problem. It proposed that what they called development rights should be acquired compulsorily from the owners of all interests in land 'outside built-up areas'. Planning control could then proceed regardless of its effect on development values; if one site were to become more valuable for development than another, it would not matter for both the gain and the loss would fall on the State

and cancel each other out. The idea of a Central Planning Authority jibed well with this development rights acquisition policy. The Authority could be the paymaster to pay for the acquired rights. And it would also play a further acquisition role and a disposal role whenever land, over which the development rights had been acquired, came to be developed for private purposes; the state would buy out the 'owner's interest' and re-grant the land as a long leasehold to the erstwhile owner or his assignee.

The Government of the day, influenced by Barlow, paid lip service to the idea of a central planning authority by changing the name of the Minister of Works and Buildings to the Minister of Works and Planning and handing him the town and country planning functions formerly exercised by the Minister of Health.[7] This was very far short of the grand national planning authority envisaged by Uthwatt. The Committee had assumed that national planning was intended to be a reality and a permanent feature of the administration. It had further supposed that such planning would be directed to ensuring that the best use is made of land with a view to securing economic efficiency for the community and well-being for the individual. It concluded that it was apparent that the Central Planning Authority, which it had assumed was an organisation, did not yet exist and that 'planning' had a meaning not attached to it in any legislation. Town and country planning, it added, is not an end in itself; it is an instrument by which to secure that the best use is made of the available land in the interests of the community as a whole. Planning, in short, is nothing without a purpose, known and declared.[8]

Planning to purpose

THE Royal Commission and the two Committees, enthusiastic and confident though they were about the use and extension of planning, never advocated planning for planning's sake. Even the Scott Report which came the nearest to doing so, had it that the true function of planning was to obtain the 'best' use of land – ambiguous, yes, but at least definitive. And for the

majority of the members of that Committee, the best use of land meant putting agriculture first above all else in the schedule of considerations for the use of rural land. Planning was never confused with the job it had to do. It was always regarded as the tool for the job; preserve agriculture (Scott), promote economic efficiency and solve the compensation and betterment problem (Uthwatt), decentralise and allocate industry and commerce (Barlow) – these were the jobs to be done and for which planning was the obvious tool.

Behind the advocacy was the raw, common sense that no one can efficiently plan unless the purpose of the plan is seen and known. Planning without a purpose is a tram without tramlines. This subtle but fundamental understanding was common to all three Reports and appears to have been overlooked by the Government of the time and by the policy makers in the years that were to come. Perhaps Barlow, Scott and Uthwatt were too fulsome and forthright in their insistence that planning would work. Those who tried to follow their lead were overwhelmed by it to the point of confusing the means with the end. Also, it should be remembered that the jobs each Report had in mind as the issues of first consequence for the Central Planning Authority to handle differed with the Reports and were in conflict with one another rather than complementary. To have linked planning primarily with one purpose could have worked to the deprivation of the other. If the primary aim of planning, following Barlow, had been to seek the dispersal and reallocation of industry so as to avoid the social and economic disadvantages of the big conurbations and save them from the inherent strategic dangers, agriculture would at best have had second place in the countryside, to the confounding of Scott.

Missing the point

WHATEVER the reason, Parliament supposed, so it seems, that it was accepting and acting upon the advice given when in fact it missed the main point in framing the legislation for post-war planning policy. It accumulated the equipment and packed its

bags and then misread the signposts. To some extent this was inevitable; otherwise Parliament would have had to go three ways at once – another was of standing still. So from the start the policy was planning for planning's sake – the highway to confusion and purposelessness. Certainly there was to be a Central Planning Authority. This was seen to in the passing of the Minister of Works and Planning Act 1942; and more especially so in the Minister of Town and Country Planning Act 1943. The latter enactment whose purport and wording have been carried down through all amending and consolidating legislation of the 1950s and 1960s to the present time, prescribed the authority and duty of the Minister of Town and Country Planning as that of 'securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales'. He is not called upon to prepare a national plan. He is no policy maker. His duty can and has been properly and faithfully carried out by setting up planning machinery as such, irrespective of the purpose. Thus the pattern was set. It is no wonder that when later, in 1947 and the ensuing years, legislation was passed to require planning authorities to make surveys and mount development plans upon them, it was nowhere stated what the purpose of the development plans was to be. Plans had to be made; the making of them was the policy, the making of them secured consistency and continuity, never mind for what. No one can blame the planners for not knowing what they were doing – they were never told. Parliament said 'plan'; and 'plan' they did. It is ironical but understandable in the circumstances, that when Parliament subsequently saw a clear purpose or purposes for which land and sites were needed, they had to pass special laws to give definitive point and purpose to the planning of them. Thus it was with the policy for national parks and the *ad hoc* National Parks Commission; with the new towns and the New Towns Commission; and industrial development control under special powers given to the Board of Trade. No matter whether Barlow, Scott and Uthwatt were right or wrong, we cannot accuse them of leading us into by-pass meadow and the trackways to Castle Despair – for we never followed their signposts. Should we, then, go back to read the signs afresh? If

we do so, we should be careful to read them in the context of their own time. The lesson they have for us is profound but is one of principle, hardly of practice in the light of our present day experience.

Cause for caution

THE two generations that have passed since Barlow, Scott and Uthwatt were writing their Reports were generations of continuous and unprecedented inflation, stoked and stimulated by Keynesian economic theories and policies. Every effort of the imagination is required of us to comprehend the economic ambience of the early war years when the Royal Commission and the Committees were sitting and sorting out their ideas. Their most recent experience had been years of deflation, years in which the land market was depressed and freeholds in good farming Sussex lands were selling at £19 per acre with possession. And in the towns, road by road and street by street were bedecked by 'To Let' and 'For Sale' boards. The financial policies proposed by Uthwatt were coloured by this experience. He and his colleagues could not imagine the pressures and price peaks of the boom years and inflationary economies that were to come. If they had been so informed, they would have realised how unrealistic were the assumptions that development rights could be bought out 'once and for all' while creating marketable leases to be traded on an avaricious land market. A few years on from 1947 would have shown them the facts of life; in the days when the development charge raised under the Town and Country Planning Act 1947, logically to buy back the development rights acquired wholesale by the State, was shaped by market pressures to become an entry fee back into the land market.

We must acknowledge, also, that the war years were times in which this country was subjected to the most far-reaching, detailed and rigorous totalitarian policy and administration – and willingly so. Radical powers of policy-making and administration were, under the Emergency Powers (Defence) Acts 1939 and 1940 and the Defence Regulations based upon

them, given into the hands of Ministers and officials. Here was planning to a purpose. It worked because people made it work and knew what they were planning and working for. The Scotts and Uthwatts were living too close to these conditions to see how different the peacetime perspectives would be. It gave them false evidence of the potentialities of national and detailed planning. If farmers could be given precise instruction on the use of their lands in war-time by WAEC's, planning authorities could do the same in peacetime. So the thinking appears to have run, forgetting that the main issue in the war was to win freedom from just such bureaucratic and totalitarian suzerainty.

There was a hearty arrogance about the recommendations for the use of centralised coercive power. Barlow, sitting nearer in time to the memories of a free market economy, was far more cautious than were Scott and Uthwatt. Scott and his colleagues blandly assumed that the planners would know 'best' what to do with land, better than the owners and farmers would. Uthwatt distinguished the 'proper' planning of the planners from the 'improper' (i.e. uncoordinated) planning of the landowners. Again this was reflective of the war days and experiences which marked them.

The Royal Commission and the Committees were all new boys to the games they were playing. They used words and phrases which were ambiguous at the time and could but confuse later comers. Scott was especially prone to do so. He referred to 'national planning' when he meant land use planning directed from the centre. He did not mean the activities which we now associate with the National Economic Development Council and the National Plans of the early 1960s.

In looking again at the thinking and recommendations of these great wartime Reports, we should also make allowances for wartime attitudes and outlook on finance and staffing. The Scott Report in particular makes sweeping recommendations, completely oblivious of the costs involved in time and men. Factories which after the war are unsuitably sited from the Scott Report's point of view of the 'best' use of rural land should be eliminated – a wonder they did not say 'liquidated'! Money and men were of no consequence. Again it was this

Committee that wanted compulsory registration of title of land and supposed it could be accomplished for the whole of England and Wales in five years. It has taken ten years to complete an experimental registration of title in Renfrewshire alone, and that in a country already entirely covered by a system of deeds registration going back generations.

The lesson and the future

So as we go back to the signposts of Barlow, Scott and Uthwatt it behoves us to be careful how we tread. But the way should not deter us. There is wisdom to be read in those foundation texts. For all the limitations in their outlook, their ignorance of the full complexities of planning, the conditioning of the wartime energies and the splendour of the wartime cooperative spirit which surrounded them and, perhaps, cocooned them from the "horrors" of peacetime, the authors of the Barlow, Scott and Uthwatt Reports were writing the prescriptions for the future of planning, land use planning that is. The supreme lesson of principle which they have to remind us of, is the one above all others we have not heeded: in Uthwatt's words – 'town and country planning is not an end in itself'.[9] We have pursued our policies over the last two decades as if it were. Barlow, Scott and Uthwatt, each in their turn and in their own way, knew what it was they wanted from planning, knew what to plan for. We do not. And they call us back to the beginnings, to ask us to ask ourselves what it is we are planning to achieve. We have problems much as those in the war years had – urban sprawl, inner city neglect and decay, an uneasiness about betterment, the confrontation of ownership and planning powers, and the struggles between individual and private autonomy and collective directive and conformity. Why are these problems still with us, despite all the planning activity and experience of forty years?

May not the answer be that we have overlooked the supreme lesson running through the guide-texts which we have in other respects so faithfully adhered to? We have no purpose or purposes in our planning. We plan for planning's sake. The

time has come not only to look to our actions but to go deeper and consider how planning might find a purpose. The problems, the solution of which are the objects of planning, or should be, need to be examined in the light of each other. If planning is to have a purpose, that purpose must for the time being be the dominant objective of national policy and planning endeavour. The coming ten years. 1980-1990, have been heralded as the Land Decade. We know matters are not right with the land and its uses. The control of land use in itself is no solution. We need to know who shall control it and to what end. One of the earliest tasks in the coming 'land decade' and one perhaps to be embarked upon in preparation for it, is to re-examine the thinking and proposals of Barlow, Scott and Uthwatt to see how far their practical wisdom of planning to a purpose can be effective in the future and help us catch up from the oversights of the past. They will tell us to seek our purposes. And this we must do with all the energy and wisdom at our disposal, political, professional, academic and lay. In the end Parliament will have to come in, for of a certainty it will be necessary to re-define the duties of the Minister responsible for land use planning. Perhaps, therefore, Parliament should come in at the beginning and we should match the texts of Barlow, Scott and Uthwatt with up-to-date versions.

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