

Ethics and modern property development

Paper for Pacific Rim Real Estate Conference, Perth, WA, January 1998

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Abstract

Drawing on recent European research², this paper confronts the values, choices and conduct seen to be involved in land and resource development. Viewing progressive changes in government, business and social mores as unwittingly encouraging an operating environment of unexpected and unjustified license, it prompts real estate professionals to consider how the emerging imperative of sustainability³ will affect ethical standards and, through them, development practices. Conceiving development processes as driven by 'accountancy economics'⁴, it argues that these are prone to overlook many other forms of capital. Often masked by the common pursuit of cash profits, 'jobs', and monetary wealth, these include social, welfare, community, cultural, and various forms of resource, capital.

By definition, 'planning' is concerned with futures. By default it appears to have become little more than a cipher for short term political goals. Regulatory regimes, designed to protect rights and freedoms, are regularly being overridden⁵ and (notional) open local government replaced by covert, elitist decision making practices. Placing 'democracy' and due process under threat, a form of 'municipal entrepreneurialism' may be emerging. This shows Yiftachel's (1996) 'dark side' of Development Control to facilitate not just social engineering, but private profiteering. With no one to speak for the environment, Agenda 21 sustainability and subsidiarity⁶ seem only of interest to cities if they serve the same ends. In the face of this, it is argued, real-estate professionals have a moral obligation to protect land and resources for the benefit of countless future generations. To ignore this duty may prejudice the existence of both. Thus, with current ethics in the property industry seen as a 'sham', a means to replace or renew them is suggested..

Keywords: Ethics, Responsibility, Integrity, Government, Regulation, Planning, Decisions, Economics, Sustainability.

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² A 32 case project enquiring into the decision processes surrounding permits for major private European development projects (2 Czech Republic, 11 England, 5 France, 2 Germany, 2 Hungary, 5 Italy, 5 Netherlands)

³ United Nations *Earth Summit*, Rio de Janeiro, 1992. For the principles underlying sustainable development see *International Journal of Sustainable Development and World Ecology*, 2, pp 104-123.

⁴ An economics primarily concerned with profit & loss and balance sheet calculation rather than wider capital considerations.

⁵ Although large for a study of its type, the number of cases involved is too small to be considered a sample

⁶ The principle adopted by the European Union that decisions all should be taken at the lowest possible level.

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“**E**thics is bunk”, said the Green futurologist⁸, only to resile a little later, stating that “Of course we do have a duty to do the best we can for the earth, although not for people.”!

His first point was simple. Ongoing change causes shifts in attitude, relevance and meaning. More particularly the speed of change undermines the stability which was once associated with moral mores, making society feel confused, uncertain, threatened. For example fifty years ago abortion was generally illegal, 30 years ago it was legalised in certain circumstances, today it seems acceptable to ‘abort’ one twin while the other lives. While this extreme (?) case may prove a watershed for medical ethics, it encompasses the dilemmas which increasingly confront people everywhere. Their old, trusted, reliable standards are undermined by ‘the advancement of science’. The distinctions between ‘right’ and ‘wrong’ concepts, ‘good’ and ‘bad’ conduct are no longer certain even within religious ministries. Yet how ‘old’ and ‘trusted’ these standards are may itself be questionable. Not so long ago, for example, it was not unusual for Eskimo’s to kill one of their twins at birth.

His second point is perhaps more difficult for mere mortals to take on board, let alone swallow. In geological time scales humankind has occupied the earth for but an instant. More pointedly, in Lovelock’s, (1979) Gaia hypothesis⁹, the importance of human life is questionable. Yet, with new evidence reinforcing the concept and convincing the sceptics, the ‘new’ science of geophysiology is rapidly being adopted. Dick Holland, professor of geochemistry at Harvard University, for example, is a founder member of the newly formed Geophysical Society. Brian Goodwin of the UK’s Open University attaches the concept of ‘superorganism’ - the state of order that emerges from complex interactions between myriad components - to the Gaian (Earth) complex of regulatory feed-backs. He suggests that each superorganism manifests a boundary and its own dynamics, but still reflects the chaos from which it arose (Tickell 1996). Thus, with the entire Earth seemingly alive, or at least having life like properties, the rapid growth of human life and its destructive activities may equate with a cancerous growth. What matters to our futurologist is the Earth, not people since, after us, a more intelligent, respectful life form may arise or colonise the planet.

1 The ‘ethics’ of real estate development

So, what has such ‘bunkum’ got to do with the noble art of real estate development and those honourable professions which serve its cause?

Well, if the way people view their world influences their principles or standards of conduct - their ‘ethics’ or ‘morals’ - then the mere fact that attitudes are changing implies a potential shift in the way they approach real estate. Since historically such shifts are discernible, present trends and the extrapolations of futurologists may help identify some of the challenges the property industry will have to face as we turn the millennium.

As with any industry, real estate involves two sorts of people, producers and consumers. But in real estate perhaps a wider range of people are involved on the production side than in many other industries. Besides the craft workers in the extraction, component and construction processes, they include

⁷ Moral codes, rules or standards governing the fitness and propriety of, and values in, choices and conduct

⁸ personal communication with Keith Hudson, The Job Society.

⁹ The idea that the Earth is a self-healing, self regulating organism.

a wide range of service professions; from surveyors, architects, planners and engineers to lawyers, marketers, advertisers, financiers and managers. While for most their professional conduct may be governed by codes of ethical behaviour, they are also all consumers in one way or another and, as members of society at large, interact with and modify their views as social attitudes change. Thus, the way people involved with real estate development interpret and apply their personal and professional 'codes' may vary. Such interpretations may or may not reflect the draftsman's intent. Here some of the scope for the vagaries, doubt and license, intimated above can already be seen creeping in.

To protect against this most countries independently regulate the use and development of land and property. At least in part they do so to uphold certain standards, as is the case with planning and development control systems. Seen as 'ethical' constraints, a huge part of the justification for them is that they resolve competing claims over the use of resources, attempt to balance an uneven distribution of power, and protect the interests of weaker groups (Kivell 1993, 8). However, such regulation may itself fall subject to 'interpretation'.

So, how robust are these systems and how can one tell, particularly when the use and objectives of their 'rules'¹⁰ may change, both over time and with conflict within and between countries. As shown by Exhibit 1, they may also reflect ideological persuasion. For example, the 'New Right' of the 1980's continually argued that government support of property markets and private enterprise led to a level of market based redistribution, betterment, and the promotion of social values.

Now, given that calls for improved environmental quality may necessitate reconstruction and that ecological and landscape concerns may also depend on rationalisation in the organisation of human settlements, as the admonition goes, "*Don't listen to what they say, watch what they do!*"

In part this is the aim of this paper.

<i>Objectives of development control 'Rules' - tentative juxtapositions</i>	
redistribute 'betterment' social values	support land and property market promote private enterprise
containment sustainable development balanced communities	expansion creation and growth of settlements European spatial development
protect natural resources develop in local community interests neighbourhood protection healthy neighbourhood	control natural resources develop in general public interests communications political interests in responding to various crises
environmental quality ecology & landscape quality of life and environment	reconstruction rational organisation of human settlements compete with European cities

Exhibit 1 *Objectives of different national development control 'Rules'*

2 English -v- Continental European development control systems

First, several of the concepts in the simple expression 'real estate' require at least passing consideration. To avoid boring readers with lengthy definitions, here the term is taken to mean 'legal interests in land, other natural resources and all immovable property attached to them'. In this, 'property' describes any object or right that can be owned, and 'ownership' involves, first and foremost, possession¹¹. In modern societies this implies the rights to use, prevent others from using, and dispose of property, such rights being legally protected. Whilst in this context 'development' is taken to mean the laying out and construction of infrastructure, services and building, the more generic term 'devel-

¹⁰ 'rules' here refers to the combination of legal plans, legal regulation and formally declared land use and development policy.

¹¹ Ownership and possession themselves have separate legal constructs

opment', meaning 'to grow or evolve from latency to or toward fulfilment' may serve as a useful signpost for this consideration.

In theory, then, 'rights' to own property and to use or withhold its use in or from development, should be protected and exercised fairly. Interests in real estate development should be moderated both by regulatory systems and by the 'rules' governing the conduct of those professionals involved. All should deliver equity, although the way in which they attempt to do this may vary.

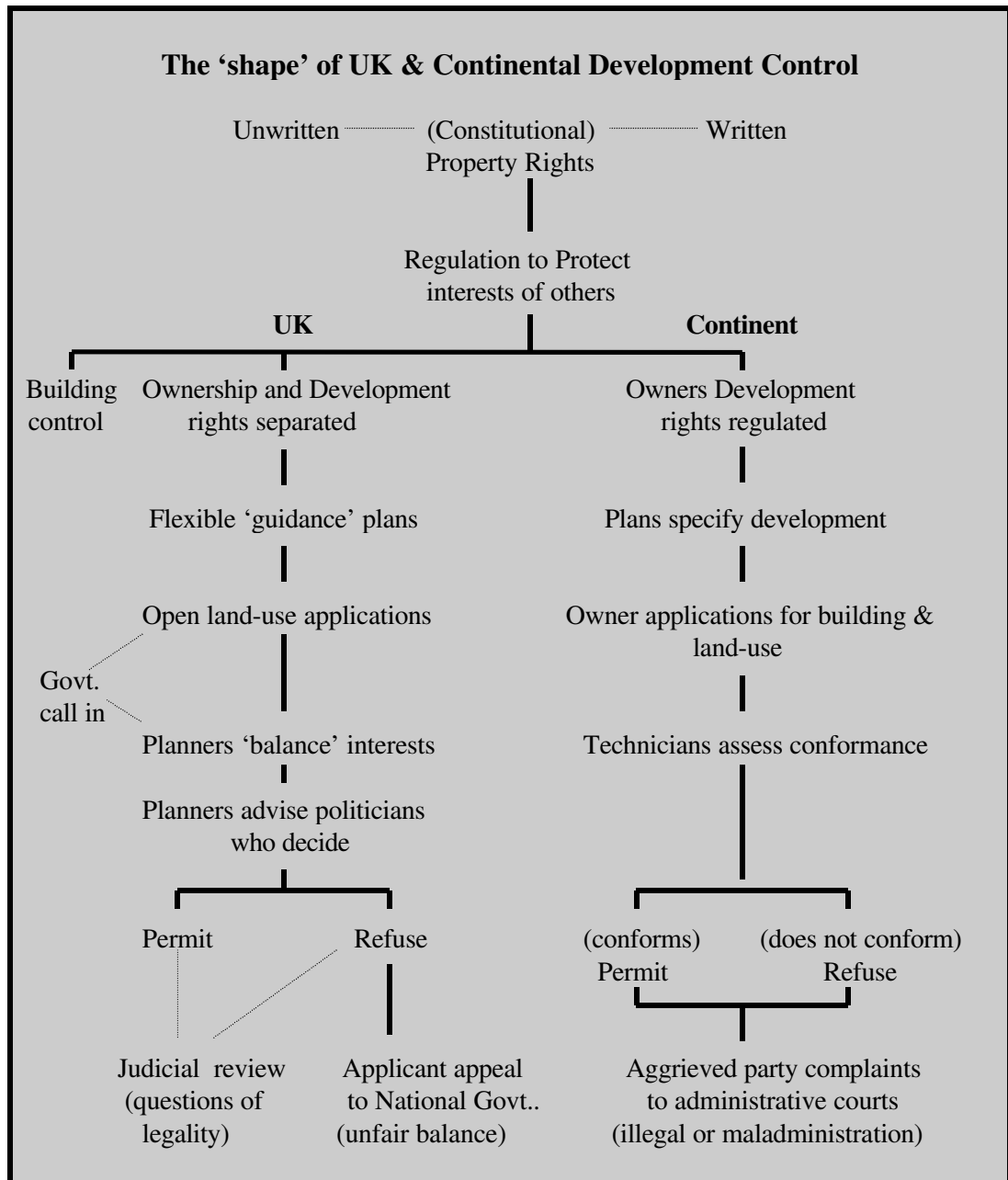


Exhibit 2 *UK & Continental Development Control in theory*

To return to planning and development control legislation, for example. There are major differences between the way UK and Continental planning systems approach this task, not the least being that all mainland countries follow written constitutions, whereas no such document exists in the UK. These differences and the related permit decision practices are shown diagrammatically in Exhibit 2. Simplistically, in the UK planning and building regulations are addressed separately by different municipal departments. It is the duty of professional planning officers to give effective *de novo* planning consideration to each application. To 'mediate' (Healey et al. 1988) between interests and advise political decision takers on the balance of these as they affect individual cases. 'Rough justice' is accepted as part of the cost of such judgmental discretion. On the mainland, land-use allocation is seen as taking place when plans are made by impartial professionals who weigh and determine all considera-

tions. Applications for development should merely be assessed for conformance with these plans along with the building regulations, by technical officers. Only those which comply with all requirements should receive permits. At least in theory.

However, the research upon which this paper draws suggests that, whatever the intention, the way in which 'rules' are used may be changing. It points up many ethical concerns and struggles with Mammon¹². Given Europe's two distinct planning and development control systems, two heuristic models of the permit decision process were conceived for this research. The English, policy led, discretionary decision and the Continental, pre-planned, conformance decision. Additionally, following the work of Goodchild & Munton (1985) a third, latent, 'negotiative' model was envisaged for England.

3 European permit decisions in practice

In fact seven decision making practices were identified across Europe. Overall they suggest that 'might is right', that Hobbes¹³ 'war' is extant, and that Nietzsche's 'Übermensch'¹⁴ is the reality. Although most permit decision processes appear to follow a mix rather than a single model, contrary to theoretical expectations, 'negotiation' or 'deal making' emerged as the most important. Indeed, informal negotiation appears a well established and accepted practice on the mainland. Overall more than 82%¹⁵ of case decisions were seen as negotiated in one way or another. The vast majority being either straight forward negotiation (41%), or involving a mix of policy and negotiation (41%). The number of cases in each category is represented graphically in Exhibit 3. & Exhibit 4¹⁶. One of the most significant findings was the identification of two new hybrid forms of the permit decision process. Similar in form, each emphasises the entrepreneurial and exclusive nature of such decisions when major private projects are concerned.

Although large for its type, the study contains too few cases for these to be considered representative. However, what it does suggest is that throughout Europe a major shift may be in process. A shift from the observance and/or legal enforcement of pre-determined plans to the elite, corporatist negotiation of permits. In general 'rules' seem either freely interpreted, manipulated, disregarded or used as a screen to avoid responsibility. Seldom do they protect or address rights and interests equitably.

Case findings were supported by evidence from 'expert witnesses', i.e. informants not associated with any case. In Holland, for example, a national planning inspector had found that "75% of developments... (did) not accord with the plans." and the director of a national development company asserted that "The DRO¹⁷ 'massage' the regulations so that wanted developments can proceed." In Germany a chief building officer confided that "... (decision takers) close their eyes to the B-plan and regulations and permit the new development regardless."

Everywhere it seems that, in Europe's new ethos of 'competition', ad hoc development policies are

¹² In the New Testament, riches, avarice, and worldly gain personified as a false God (Mathew 6:24; Luke 16:9,11,13). Riches regarded as a worldly goal or evil influence.

¹³ Hobbes (1588-1679) assigns greatest importance to organised society and political power¹³. He argues that human life in the "state of nature" (apart from or before the institution of the civil state) is "solitary, poor, nasty, brutish, and short," and that it is "a war of all against all." Consequently, people seek security by entering into a 'social contract' in which each person's original power is yielded to a sovereign, who regulates conduct.

¹⁴ Nietzsche's (1844-1900) startling but logical elaboration of the Darwinian thesis, that survival of the fittest is a basic law of nature, holds that so-called moral conduct is necessary only for the weak. Moral conduct—especially such as was advocated in Jewish and Christian ethics, which in his view is a slave ethic—tends to allow the weak to inhibit the self-realisation of the strong. According to Nietzsche, every action should be directed toward the development of the superior individual, or Übermensch ("superman"), who will be able to realise the most noble possibilities of life.

¹⁵ Where percentages are given these have been rounded up or down to the nearest whole number. However, these are merely a device to aid comprehension. They do not give a quantitative scale and should be treated with circumspection. Comparisons are of patterns between cases and cannot be generalised to all cases possible.

¹⁶ Produced with Microsoft Excel 7

¹⁷ Municipal planning office

being determined 'on the hoof'. While ideology and party politics appear to engage more at higher than local levels of government, land-use planning is viewed as lacking purpose. As an English case planning officer explained, "*Local plans in general are over-ridden or circumvented because of market pressures in favour of development.*" A French Maire agrees, stating that "*Regulations can always be led astray. The only true constraints are financial ones. The market is the limit.*" Here, the opinion of a German professor is telling. In his view "*All the rules are bent. That is not what is important. The important thing is that everyone should get equal treatment under them.*" Unfortunately, if the research is a fair reflection, this seldom occurs.

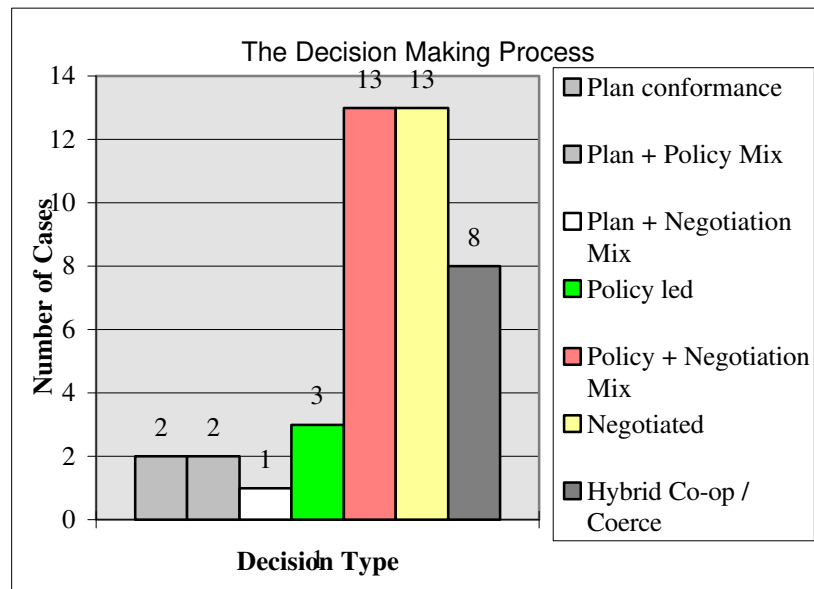


Exhibit 3 European decision making processes by category

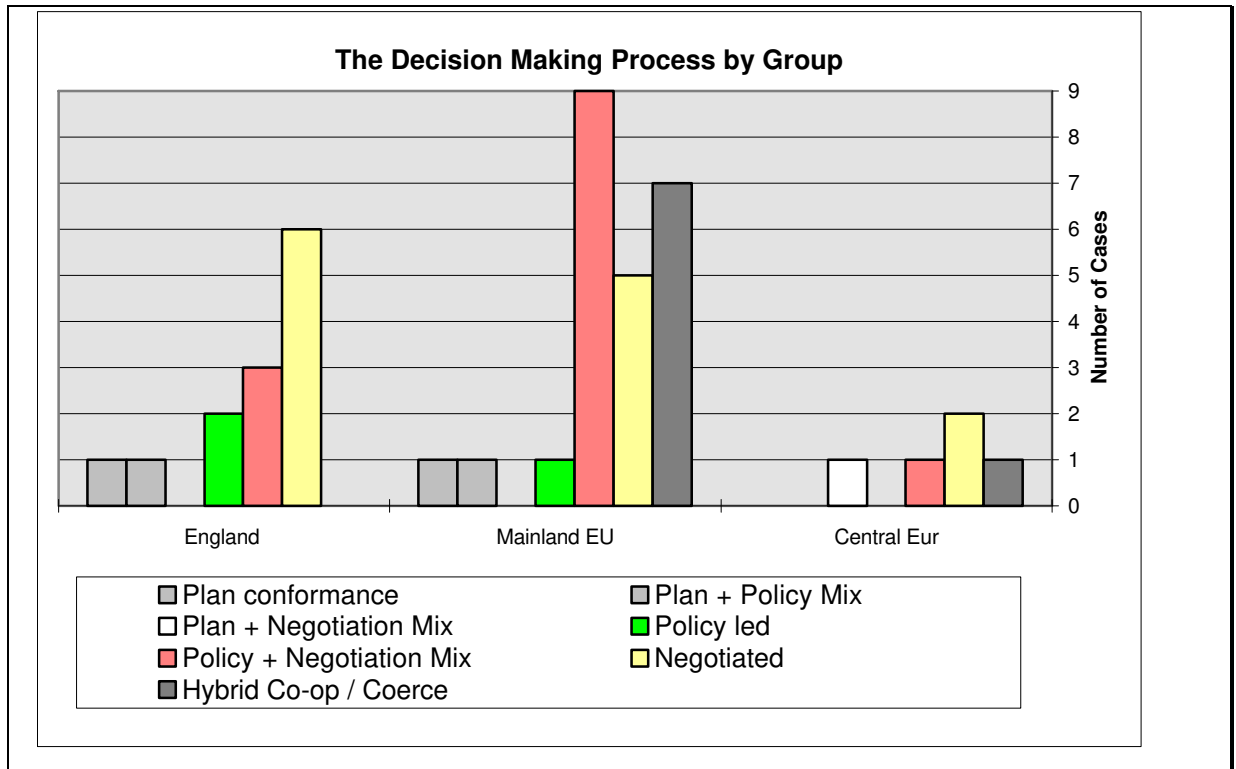


Exhibit 4 The decision making process by number of cases per country group

It might be argued that such wide spread aberrations undermine conventionally accepted standards of ethical behaviour. But a case may also exist for seeing them as society's response to wrong and bad regulatory limitations imposed in the past which have resulted, or are resulting, in both improper con-

straints on liberal freedoms and unequally favouring an insensitive form of 'democracy'. If so, then what is happening may be legally wrong, but morally good in terms of the collective search for a higher natural justice in the co-operative good. But this is a long process during which many wrongs may arise, unless both Curran's¹⁸ *vigilance* and Bennett's¹⁹ *publicity* admonishments are heeded.

4 The self serving nature of 'ethics'

What is also seen through the research is that the degree to which different actors and agencies need to become involved in particular developments depends very much on the substitutes available to them. Additionally their behaviour and response to risk may vary according to their interests and objectives. For example, those whose interests revolve around re-development (Watson 1992) may act very differently from those with a wide range of economic interests who may look completely outside development for other opportunities (Gore and Nicholson 1991). But, as Crenson (1971, 34) notes, "*the stimulus response conception of power fails to account for the way in which men define their own interests and the way in which others perceive and respond to those interests*".

So, if the conflicts observed by the research between decisions and 'rules' are linked to endemic change driven by market forces, it is perhaps not surprising to find developers devising strategies and tactics to capitalise on these. Or that the non-elected, business domination of local government has led, for example, to left wing councils, anxious to promote their own local economies, courting business interests and attempting to demonstrate not only their responsible management but also their desire to work in partnership with the private sector. As Brouillon²⁰ asserts "*What Governments (i.e. politicians) want is to stay in power and to stay in power they have to please voters and to please voters there has to be jobs and growth and in that sense the way governments go is the way we go because development is the goal.*"

Now, in the same way that the sceptic may disparage political and business ethics, s/he may also view professional ethics merely as a form of protectionism, a hangover from the guilds. To widen the scope of this discussion with an example from the USA, take opinion No.15 of the *Ethics Committee of the Mississippi State Bar* on Rule 27 governing rules of professional conduct²¹. In essence this states that, when additionally qualified as, say, an Accountant, Insurer, or Realtor, a lawyer may not advertise such services from the same premises. To do so might serve as a 'feeder' for their lawyer's practice and could lead to suspicions of unethical conduct since "*Direct or indirect advertising or solicitation is unacceptable in any size of community.*" On reading this the sceptic might think that the concern of the esteemed *Ethics Committee* was with protecting first those lesser qualified (and able ?) lawyers from the (unfair) competition of their brethren, and second the image of the profession. Little regard seems shown for the quality and convenience of service delivered or, more importantly, the duty and responsibility of trust, care and attention to clients affairs. Whose interests does such an *ethical* opinion serve?

Again the sceptic may see lawyers the world over as enjoying the sinecure of legislative protection. Only those qualified and licensed to practice may do so. In many countries this extends to other professions. For instance in mainland Europe architects and engineers enjoy similar privileges and in most such countries they are the only people allowed to prepare town plans. In contrast, since the late '70's English solicitors have lost various protections, like conveyancing. But, as if to compensate, their governing *Law Society* now permits them to operate as estate agents, a much longer standing practice in Scotland.

In addition to the general protections noted above and despite the niceties of legal wrappings, the detail of construction and property regulation may also serve as a 'feeder' for professional work. To take another US example, Philadelphia's department of licences and inspections issues over 160 kinds

¹⁸ *The condition upon which God hath given liberty to man is eternal vigilance*: Speech of John Philpot Curran (1750-1817) on the right of election of the Lord Mayor of Dublin, 10th July 1790.

¹⁹ *The price of justice is eternal publicity*: Arnold Bennett (1867-1931) 'Things that have interested me', (2nd series, 1923) 'Secret Trials'.

²⁰ cited in Newell (1995, p.19)

²¹ Posted on Internet (see Ethics)

of license. While not specifically spelled out this effectively requires proprietors and owners to engage the services of a range of professionals, including now electricians and plumbers, to make (acceptable) applications for property construction, alteration, use, etc. (DLI 1996). Likewise the codified regulations of many continental European countries imply, if not apply, similar controls, and certainly support professional practices. In England too a 'creeping codification', via 'back door'²² statutes, is creating a 'certainty' to replace the vagaries of discretionary, common law style judgments which, progressively, is achieving the same end.

To take a jaundiced view, whatever their original intent, 'ethics', as part of the 'rules' which govern society and its professional servants, have become part of a rhetoric to direct and kid the punters. As Lukes, (1974, 24) identified, rules and institutional practices may indeed be used to systematically bias the operation and outcomes of the social system in favour of some issues (and interests) and against others. If so, ethics may indeed be 'bunk'.

5 The immorality surrounding property development

In themselves neither property development or the 'rules' which attempt to control it are either 'good' or 'bad'. Their morality lies in the way in which they are implemented. Like the gun lobby's argument, what matters is whose finger is on the trigger. And increasingly the motives which lead to it being squeezed are becoming suspect.

For example, Europe may have adopted different approaches to development control (see section 2 above), but reached the same end. Supported by expert evidence²³, what the research indicates is that a *culture of co-optation* is emerging. One in which dissident voices²⁴ are 'bought off', persuaded not to 'rock the boat', are silenced, or simply ignored. Whether or not they are important or relevant, their *interests* are just not strong enough to count. Yet the lobbying, pre-negotiation, and hidden agendas, found by the research, the deliberate delays and non co-operation also noted by Newell (1995), can all be expected of a process which encourages use of the media to project a good, competitive 'image'.

Westra (1994, Ch.3) observes that, "*If we demonstrate that a social system is unfair, disrespectful, there is no obligation to respect the system's integrity or protect its future*" To judge from the research findings, this is exactly what is happening in real estate. If the indications from Europe are anything to go by, if professional 'ethics' follow the US example, and if codified regulations are being used to reinforce professional exclusivity, then those 'rules' which supposedly govern land-use and development have been reduced to being mere bargaining chips for elite circle 'deal making'.

In this, the dominant actors of the 80's²⁵ now appear to have been mere sycophants of a much wider movement, pawns in a larger game; a game in which Goldsmith's (1993, 76) description of the shift in British local government from the welfare-state model towards an economic-development model, also appears typical of the continent. Short term, profit and loss, finance 'economics'²⁶ is now a demi-god. Where this prejudices the long term interests of other forms of capital it may also be considered unethical. Competition, the 'touchstone' of the Thatcher/Reagan years (Thornley 1991), has given rise to precisely the kind of growth coalitions described in the US literature. However, in mainland Europe they are often led by the public, rather than private, sector. Competition has resulted in a 'new urban corporatism' (Dunleavy and King 1990 and others) in which reliance on outside agencies may "*compel local planning authorities to incorporate production interests into the plan-making process.*" (Simmie and French 1989, 18). Municipal resources ('rules', land & personnel) are effectively placed at the disposal of commercial enterprises to lure whatever ventures will aid a town's other policies. Additionally many obligations in texts are sufficiently ambiguous to enable

²² L. Whittaker LIB, 1995, personal communication.

²³ i.e. planning and property development professionals providing information as non-case informants

²⁴ The related statements are all taken from case findings.

²⁵ e.g. Thatcher, Reagan, Mitterand, Delors.

²⁶ a narrow definition of economics concerned primarily with finances - revenue, profits, losses, balancing budgets, returns on investment and the expertise needed to address these, etc.

powerful industry groups to press upon governments interpretations beneficial to their interests (Newell 1995)²⁷.

This highlights the bargaining power of actors, based on the control of resources and information, and helps explain why financial institutions usually take the lowest risk of all (Gore and Nicholson 1991), since those upon whose resources the success of the development process most depends are likely to be in the position of greatest bargaining strength. Thus, to find that allocation of land for private developments turns more on decisions made on applications than on inclusion of land within a development plan, with agreement to grant a permit negotiated in advance, should not be surprising; nor should the *lack of interest* in planning systems and 'rules'. Although not the same as there being no interests at stake, with few people really knowing much about these frameworks and the chance that, as an Italian Professor recognised, "*they have been copied from somewhere else - badly*" it is hardly surprising that, as in Italy, "*Planning law²⁸ has no influence on the PRG²⁹ or any subsequent amendments...*" and that "... *there are no planning justifications for design ... no strategic overview of the problems of a town.*" Although plan-making activities might normally be expected to take place well before permit decisions come to be negotiated they may actually be concurrent. For example, as in one Italian case where the promoter appeared to simultaneously negotiate the permit while organising national legislation to help him do this.

There is an apparent inter and intra commercial collusion between political leaders, private organisations and officers. This makes the fundamental question of how robust any development control system is in 'balancing' interests at the point of decision, a non sequitur. Concentration on 'competition' is at the expense of all else, most markedly local communities and the environment. Yet in competing for jobs, cities are actually trying to export their unemployment elsewhere. And where is the morality in this? As Krabben (1995,232) asks, should we "...*favour a property system that incites local authorities ... to compete with each other in their efforts to attract companies to their respective municipalities?*" while "*the environment dies in silence*"³⁰ (Kramer 1995).

A further danger, potentially enhanced in systems which permit *ad hoc* policy decisions and protect private property values, is that private gains from land conversion (i.e. from one use to another), are so great that they introduce possibilities for corruption. Although bribes were observed in only one (Italian) case, potential for favours and obligations to influence planning decisions was noted in all countries. These seem always linked with policy instruments. It matters not who the actors are, whether from the local aristocratic family, business, politics, or simply the local Mr Big, fringing on the Mafiosi³¹. For, as one Italian informant explained, it is more the pattern of patronage in which 'men of honour' are responsible to whomsoever they owe fealty for position and protection and must discharge 'obligations' whenever they are called upon to do so, even to the extent of "*killing another person*" (*sic*).

Here the concern is not just that strict morality is marred by impropriety, that design 'competitions' are often a sham device, that municipalities undertake work on behalf of developers who are certain that corruption is present everywhere, or that, according to a Dutch planning inspector, the whole claim to need more and more houses is "*a lie*", designed to create work for major development companies³². What is more import is that environmental concerns are overridden and that costs and prices are increased as both landowners and contractors/ developers fight to secure the necessary margins to

²⁷ in his consideration of the fossil fuel lobbies

²⁸ As for planning laws, the engineering schools are more conservative and teach more of these than the architects. With reform of the architecture schools they have a big restriction on the area of planning. Only 300 hours out of 4,500 hours allocated to this (6.6%) (I-B/AB).

²⁹ Piano Regolatore Generale

³⁰ Authors note from conference proceedings.

³¹ Mafiosi are local power structures, not to be confused with organised crime 'Mafia'. This is often resisted, although increasingly, it seems, this is gaining control of the local structures, mainly as a result of drug trafficking.

³² Elsewhere many Europeans question the real need for much demolition and 'replacement', and the overall efficacy and social justice of, for example, out-of-town shopping malls and greenfield industries.

make their 'payoffs'. Often this means maximising short term profits at the expense of long term impacts.

Not infrequently it turns out that 'open' government is more about 'insider dealing'; that the protections afforded by regulatory systems are traded away; and that, through economic competition, the planning and development 'game' (Healey 1983) is in process of being transformed back into Hobbes' 'war of all against all'. As Habermas (1975) explains in his theory about the colonisation of civil society, both the monetarisation and bureaucratisation of social relations have created a set of social benefits and securities at the cost of creating a new range of dependencies, while destroying or severely atrophying existing solidarities. This destructive process has served to undermine people's capacities for self help and co-operative forms of horizontal communication for resolving problems at the base of societies - in civic communities.

To judge from the research evidence, collectively we may be witnessing a greater immorality. As the Green futurologist might argue, the immorality of a war not to defend and protect life, but against life itself. As tools in the hands of increasingly desperate politicians, our systems of planning and urban design have created a world that grows far beyond the capacity of the environment to sustain life into the future³³. Thus it is 'sustainability' which holds the challenges of the new millennium³⁴.

6 The costs of this 'war'

Presently the real estate industry seems driven by the self serving 'ethics' of competition, profits and growth. Instead of honouring the principles of nature, it violates them, producing waste and harm regardless of purported intent. As we destroy more topsoil, build over more habitats, destroy more forests, burn more coal, produce more toxic and radioactive wastes, dam more rivers, drift-net more fish, poison more insects, bleach more paper, and burn more garbage in order to build, furnish, light and heat property, feed, educate and entertain people, and then clean up after them, we create a vast industrial machine. Increasingly, reports of death and disease linked to environmental pollution, industrial and traffic accidents, ozone depletion, *et al* depict this world as a place not for living in but for dying in. It is a war, to be sure, a war that only a few more generations can surely survive.

Referring to the glass, plastics, synthetics, electrics, *et al* of modern constructions, architect William McDonough (1993) describes his team's search for materials that won't make people sick when placed inside buildings. They discovered that today's entire system of building construction is essentially toxic. They also learned how, 350 years ago, when the oaks were cut to build one of the English Oxford Colleges, the architect specified that a grove of trees be planted and maintained to replace the ceiling beams when needed. He then explains how one of their office designs in Poland guaranteed the building a long life by making it convertible to other uses when its office utility was no longer. Then, after calculating the energy cost to build the structure and the energy cost to run and maintain it - 6,400 acres of new forest were needed - they required the clients to plant 10 square miles of forest to offset the building's effect on climate change. The cost to plant these trees in Poland was equivalent to a small part of the firms advertising budget.

Today's consumption may be seen as a form of rake's progress. In contrast, nature operates on 'current income'. It does not mine or extract energy from the past. It does not use its capital reserves. And it does not borrow from the future. In contrast our resources, work, effort and other contributions are measured by paper currency and Gross National Product. Yet, as McDonough (*op cit.*) asks, "*What are we really measuring? If we have not put natural resources on the asset side of the ledger, then what are they? Does a forest really become more valuable when it is cut down? Do we really prosper when wild salmon are completely removed from a river?*" Today mass systems of production for the capitalist marketplace, the economic sphere, dominate society and kinship relations. Not the family, but the impersonal corporation is the dominant institution of production (Carr 1996).

³³ Such arguments have been increasingly promoted since 'Limits to growth' (Meadows 1974) appeared over 30 years ago.

³⁴ Numerous discussion groups have formed around this issue, e.g. the Internet 'Sustainable Cities Network' (SCN-discuss@mailbase.ac.uk)

Similar sentiments can be found over and over again among First Nations. In a report written by a team of First Nation people the authors describe why, in Native traditions, respect for people and for the earth is linked together in order for people to survive and care for at least the next seven generations. When we begin to separate ourselves from that which sustains us, we immediately open up the possibility of losing understanding of our responsibility and our kinship to the earth. When we view the world simply through the eyes of human beings we create further distance between ourselves and our world. When the perceived needs of one *spirit being* is held above all others, equality disappears (Clarkson, Morissette, and Regallet 1992).

In fact, the costs of development's war of attrition against nature are potentially much greater. McDonough, *op cit.*, illustrates this well. When he worked on the master plan for the Jordan Valley for King Hussain, he was walking through a village that had been flattened by tanks and saw a child's skeleton squashed into the adobe block. He was horrified. The King looked at him and asked "*Don't you know what war is?*" McDonough said he guessed he didn't. And the King replied, "*War is when they kill your children.*" In the same way as, for example, the rise in asthma in our young appears related to modern development practices, failure to call a truce and seek sustainability in all our 'development' may prejudice the lives of our children even beyond seven generations..

7 Higher natural justice

What the research indicates is that society now uses a narrow definition of 'economic' and plays by 'negotiable' rules. Progressively it is being conditioned to accept the domination of 'market competition' in which there are losers as well as winners³⁵. In Healey's (1992,159) terms there is a "...naive belief in the power of democratic discussions, while the forces of global capitalism ever more cleverly conceal the ways they oppress us"³⁶. 'Equity', it seems, has been usurped by 'competition' around which elite groups form. Yet acceptance that rational persuasion will not work on the masses does not require surrender to either present or alternate elites. Instead, through an improved understanding of how they behave, it demands that the conditions for sustainability be identified and to then require all elites to justify how their (intended) actions will satisfy these conditions. It requires a return to 'equity' in moral philosophy (ethics). A search for and a reliance on a higher order of natural justice. Like McDonough, we have to recognise that to live within the laws of nature means to express our human intention as an *interdependent* species, aware and grateful that we are at the mercy of forces larger than ourselves, and that we obey these laws in order to honour each other and all things. We must come to peace with and accept our place in the natural world.

However, issues of the environment and interdependence are complex and long term. They entail a far more radical critique of industrial societies than, say, Marxism (Orr 1992,69). But politicians who talk about complex issues and difficult choices don't win elections. What appears to be needed is the separation of long term planning from short term politics. Unfortunately, since there is no political gain in surrendering control over resources, while contemporary politics concentrates on immediate issues, like jobs and crime, and government partners business to secure 'development', the prospects for truly meaningful new legislation seem slim.

Happily, released from the ossification of political and economic evolution imposed by the capitalist-communist ideological stand-off of the cold war years, a long overdue re-think of many issues has commenced. The growing volume of literature on, for example, Green politics³⁶, Alternative economics³⁷ Direct Democracy³⁸, etc. evidences this, with planners being seen as potential 'champions' of community (Poulton 1995,12) and environmental (Benfield 1994; Kramer 1995) interests. New concepts for planning and development are emerging. For Albrechts (1991), these will involve a shift from planning for capital to planning for society. The danger, as Ophuls (1977, 163) warns, is that

³⁵ Cheshire (1991) has identified numerous European cities that have done badly as well as improved.

³⁶ See for example Ash (1992), Brown (1993), Deblonde (1995), Dobson (1993), Gibbs (1993), Jacobs (1991), Lundmark (1995)

³⁷ See for example Chichilnisky (1994), Clark (1993), Douthwaite (1992), Jacobs (1993), Robertson (1974), Robinson (1995), Strong (1995)

³⁸ See for example Cadogan (1974), Hoggett (1995), Horrocks (1994), Will (1993)

ecological scarcity will create “*overwhelming pressures toward political systems that are frankly authoritarian.*”

Ideas for limiting this danger are increasingly presented for evaluation³⁹ Many of these endorse the principle of ‘sustainability’ adopted at the Rio de Janeiro ‘Earth Summit’ of 1992 and currently exercising the collective planning consciousness. Together with ‘subsidiarity’, this faces all concerned with land-use planning and development with the potential emergence of a ‘new morality’ (Benfield 1995). But switching to a new paradigm for development involves seeing the world differently (Harper and Stein, *op cit*, 4). It involves such radical change in the standards of measurement, in the range of questions and answers and in the lexical structure of the perceived world, that those with different paradigms literally live in ‘different worlds’ (Ross 1995). As Kuhn (1970) states, “...*we are prisoners caught in the framework of our theories, our language.*” On this extreme view, different paradigms become unintelligible to those who have not *converted* to them (Harper and Stein, *op cit*. 9-10).

In attempting to bridge this gulf, Westra, *op cit*. Ch.6, proposes that Urban Centres should be guided by the “*Principle of Integrity*”. She asks how much urban culture is the minimum we can live with and at the same time the maximum the earth can tolerate. She argues that whatever we choose as morally right must not conflict with the way nature functions. Linking with geophysiology and the Gaia concept, this requires that all actors and agencies consider humankind’s place in the universe, the ethical dimensions and qualitative limits of our interaction with the environment, the scale within which we operate for quantitatively morally defensible interactions with the environment, and the scale, size and quality of disturbances (to which ‘duration’ is added here). Invoking Ophul’s authoritarian fears, she recommends the use of ‘ecological eyes’ which choose laws and regulations according to an ideal ‘good’ rather than voter preference and which supersede individual states and countries as the final arbiters for choosing these laws and regulations.

8 The co-operative consciousness

Opposed to Hobbes’ concept of ruthless and unrelenting struggle as the basic law of nature, Kropotkin⁴⁰ among others asserts that survival of species is furthered by mutual aid. Humans, he argues, have attained primacy among animals in the course of evolution through their capacity for co-operation⁴¹. And co-operation, it is suggested here, introduces the need for fairness and the quality of being ‘just’. This springs from an individual inner sense of delivering what is properly due or merited. As Hume (1711-76)⁴² and Smith (1723-90)⁴³ recognised, it draws on the feelings of sympathy which people bear to one another even when not bound by kinship or direct ties. Ultimately it leads to Kant’s (1724-1804) ‘categorical imperative’ to “*Act as if the principle on which your action is based were to become by your will a universal law of nature*”⁴⁴, and to Bentham’s (1748-1832) universal, hedonistic ‘utilitarianism’, in which the highest good is the greatest happiness of the greatest number of people⁴⁵.

But to appeal above temporal considerations to some universal law of nature is surely unrealistic. It requires empathetic human beings to seek mutual aid through a co-operative order which protects individual freedoms, liberty and choice to secure greatest utility (e.g. Dewey, 1959-1952⁴⁶) As Moore,

³⁹ See for example (Bailey 1995; Benfield 1994; Benfield 1995; Carta 1993)

⁴⁰ Kropotkin, Pyotr Alekseyevich, Prince, 1842-1921, Russian geographer and foremost theorist of the anarchist movement. Principle works include *Memoirs of a Revolutionist* (1885; trans. 1899); *Fields, Factories, and Workshops* (1899); *Terror in Russia* (1909); *Ethics, Origin and Development* (1924).,

⁴¹ “Mutual Aid, A Factor in Evolution” (1890-1902) and “Ethics, Origin and Development” (posthumously published, 1924)

⁴² “*Essays Moral and Political*” (1741-1742)

⁴³ “*Theory of Moral Sentiments*” (1759)

⁴⁴ “*Grundlegung zur Metaphysik der Sitten*” (*Principles of the Metaphysics of Ethics*, 1785).

⁴⁵ “*Principles of Morals and Legislation*” (1789)

⁴⁶ According to Dewey, the good is that which is chosen after reflecting upon both the means and the probable consequences of realising the good.

(1873-1958)⁴⁷, might argue, it requires 'Good', moral behaviour to take on an un-analysable, emotional quality in which 'equity' subsumes justice, even-handedness, fairness and impartiality.

Surprisingly, and to confound the doubters, recent evidence suggests that this *co-operative consciousness* may be wakening. According to EDK (1996), survey and focus groups have found a growing number of Americans believing that greed, rather than competitiveness, is motivating large corporations. Besides being angry with government, their anger is now mounting over corporate behaviour. They don't begrudge big profits, but are angry that these aren't shared with the workers. They're not angry at huge CEO salaries, but because these salaries come from making thousands redundant, using temps instead of permanent staff and using low cost youngsters to replace older workers. They still admire large corporations who play by the old rules, perceived as an unwritten 'social contract' between workers and management. But when an organisation is profitable and breaks this, they get angry. This is the same for all age groups, races, educational backgrounds, income groups and political parties. Seeing this as a greater problem than government corruption, waste and inefficiency, EDK suggest the findings show that, increasingly, objectors are ready to support intervention to curb these excesses.

Although the imperatives of sustainability are not yet widely understood, this is changing rapidly. If the public make a link between their great, great grand-children's inheritance, past and present consumption, and what they perceive as corporate greed, then their anger may boil over. Were this to happen, political and regulatory systems which can take account of the very long term may emerge. If so, then the real estate industry will be on the battle's front line.

9 Rights and the 'Good' Earth

By any definition, 'planning' is future orientated. In the same way rights, understood as interests, are always future orientated. One inevitable consequence of property rights theories that rely on ethical justifications, is the acceptance of some kind of Lockean Proviso which provides all generations with a chance to acquire some previously un-owned property. This presents planning and therefore development with a major difficulty, since one near-universally accepted limit on property rights is that their use must not constitute force. However, a close analogy can be made between the relationship which present society has with beings in the future, to one of force (see section 6). Consequently, if the same criteria which apply among contemporaries are applied to the property rights of earth's future inhabitants then, as Fairweather (1992) asserts, substantial obligations to protect natural resources are inevitable.

Yet how can non existent future beings who might have such rights, and which would require the environment to be protected now, have rights now? (Attfield 1991, 92) If, as Beatley (1994) contends, the present generation has "*...no absolute right ...to use or develop land or to reap high profits from its use where significant environmental destruction is the outcome, then where such activities fundamentally change the natural character of the land, the presumption must be against allowing extensive development.*"⁴⁸ This argument adopts both Baier's (1984, 227) belief that "*...future persons interests can be determinate even when the persons themselves are not yet determinate*" and Rawls' (1971) 'just savings principle' - that rational individuals deciding on the principles of social justice (and under a 'veil of ignorance') would acknowledge certain obligations to their immediate descendants

⁴⁷ In *Principia Ethica*. Moore argues that ethical terms are definable in terms of the word good, whereas "good" is undefinable. This is so because goodness is a simple, unanalysable quality.

⁴⁸ This principle has been perhaps more eloquently articulated by the Wisconsin Supreme Court in its landmark decision *Just -v- Marinette*. The Court upheld a local shoreline zoning ordinance which prevented a landowner from filling and building on a wetland site. The court stated that "An owner of land has no absolute and unlimited right to change the essential character of the land so as to use it for a purpose for which it was unsuited in its natural state and which impairs the rights of others. The exercise of the police power in zoning must be reasonable and we think it was not an unreasonable exercise of that power to prevent harm to public rights by limiting the use of private property to its natural use." (56 Wis. 2nd at 11.201 N.W.2d) cited in Beatley (1994, 35)

If the Earth is our common heritage, then land, like other natural resources may be considered a common, rather than individual, possession (George 1937; 1947; 1953). Contrary to the Lockesian⁴⁹ tenet, this suggests that land should be managed in the common interest. It contrasts with Plato *et al's*⁵⁰ notions of proportional distribution and limitation on holdings, giving all interests a voice in its use and a share in its produce. Such view sees land being 'held' and managed for the common good, its use regarded as a privilege, not a right, with change being evolutionary, small and slow (Leopold 1949). This position argues for *environmental rights* to be respected even where they are not socially efficient or optimal under a utilitarian model. They may involve, for example, rights to things, such as rights of access to mountains and rivers and beaches, or rights to be *free from* excessive levels of pollution. But they face theoretical and practical differences in determining their extent and whether they can legitimately vary from one country, region or culture, to the next (Beatley 1994, 20-21). If systems for development were based in equity⁵¹, then fair treatment of interests, issues and power between stakeholders in land-use decisions might form a central platform in land-use planning and development systems, possibly revisiting Geddes' "theory of planning". As summarised by Ferraro (1995,13) this is presented in Exhibit 5.

Geddes' "theory of planning"

- ◆ Planning cannot be based on authority. It mainly requires co-operation.
- ◆ Co-operation within each generation is an attitude of respect and conservation, of care of the Life and the Earth, while co-operating among different generations is an attitude of openness towards the future.
- ◆ Then the plan must develop as a game, and the ability of the planner is to keep the game open to new (now unforeseeable) interpretations and the future aspirations to come⁵²
- ◆ Then the work of the planner is mainly communicative: his words and his action (the Appeals he makes and the incentives he distributes) do not directly build objects, but they are intended to stimulate interpretations and "moves" from people, and to persuade people (through appeals and incentives) to co-operate.

Exhibit 5 *Geddes' theory of planning as seen by Ferraro (1995)*

10 Summary: the battle lines

This paper has not just been about ethics in real estate, but about their role in setting new agendas. Using the academic research of practical decision making across European countries, it has shown how the interventionary use of land-use planning and property development has shifted from concern with the improvement of living conditions, through economic competition, to the cultural manipulation of social groups in the battle for municipal entrepreneurial supremacy. Seeing sectional 'ethics' and legislative protections as, in the main, tools for promoting the self interests of those elitist cadres party to land-use permit decisions, it has suggested that, where major private developments are concerned, regulatory systems provide merely a negotiating framework. A framework within which, as deals are agreed, regulatory protections are bargained away. A framework which can be hidden behind to

⁴⁹ John Locke (1632-1704) reflects the British philosophical tradition that possession of property is a fundamental, natural right. The concept of 'freedom' is closely allied to property ownership and the notion of a property-owning democracy (Norton-Taylor 1982).

⁵⁰ In *The Republic* Plato (1955-87) recommends that landed property be distributed in equal proportions among all citizens of a state. This proposition was actually earlier proposed by Phaleas of Chalcidion, to whom Plato refers. In the *Laws* he holds that accumulation should extend to no more than five times the amount owned by any other citizen. Aristotle's *Politics*, in his chapter on Phaleas, refers to Solon who 'introduced laws restricting the amount of land which an individual might possess.' Other laws forbade the sale of property. No Lucian could sell his property unless he could show beyond all shadow of doubt that he had suffered some grave misfortune. Original allotments of land had to be kept intact (Rose 1985, p.8).

⁵¹ Here meaning justice, fairness, and impartiality.

⁵² Town Planning in Balrampur: A Report to the Hon'ble Maharaja Bahadar, Murray's London Printing Press, Lucknow, 1917 (cited by Ferraro (1995,13))

avoid responsibility. A framework which enables both Earth and citizen to be robbed of access and voice.

This trend is attributed to a growing global, a-moral, economic juggernaut, whose progress is distorting not just democratic systems, rights and freedoms, but fundamental truths and values. Pointing to myopic politics, land and property greed, and the destruction, rather than creation, of sustainability, this paper has argued for real, long term wealth creation. This involves social, welfare, community, cultural and various forms of resource capital; assets which are often masked by the common pursuit of cash profits and 'jobs'. By drawing attention to the looming crisis and mismatch between world resource stocks, renewability, and demand, the paper highlights the need for centennial if not millennial time spans to be used when evaluating land and natural resource issues. This requires appropriate recycling and conservation approaches in planning, design, construction and all other aspects of real estate development. It's pursuit is enormously complicated, resource intensive, time consuming, and knowledge demanding and its outputs, together with the thought, imagination and effort expended upon them, represent real wealth. Wealth which should be invested not just for present society, but for coming generations over the very long term.

Four things seem clear. First, with the function and discipline of planning and development control seen as lacking purpose, regulatory regimes appear widely manipulated, if not ignored. Second, with plans superseded by individual, ad hoc, negotiated decisions, planning's 'rationalist' project has failed. Third, with access to decision processes reserved for key resource holders, planning's 'participation' and 'mediation' objectives may be thwarted. Fourth, with the new imperatives of sustainability and subsidiarity increasingly being recognised, there is an urgent need for all those concerned with land-use and property development to devise and adopt a new ethic, a new moral philosophy, in their tasks, duties and responsibilities. These will face the real estate industry with hard decisions over for example ownership, property rights, durability and renewability. The property development industry will be forced to consider Earth's latent potential rather than its rampant exploitation.

The proposition here is that it must find ways to transcend society's presently distorted economic goals. It must take on concern for intergenerational equity. And, as the Green futurologist might argue, it must give the Earth a major voice at the negotiating table. In presenting this challenge to the whole property development industry, it addresses those professional bodies concerned with the regulation and conduct of members behaviour in particular. If their ethical codes were re-drawn and subsequently enforced to ensure that members did not transgress the principles outlined above, then they could *de facto* move land and resource issues out of the short term political arena, strike a bold blow for long term sustainability, and limit the excesses of latter day economic myopia.

As a wider recognition of Earth's geophysiology dawns, as we ponder the prospect of alternative occupants for our planet, as the first skirmishes herald the onset of 'war' for the future of our next seven generations, which side are *you* fighting on?

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