Land-use Planning, A Case Book on the Use, Misuse and Re-use of Urban Land. By Charles M. Haar, Professor of Law, Harvard University. Little Brown and Company, Boston, Toronto 1959. Preface pp. vii to x. Table of Chapters, xi. Table of Illustrations xiii—xiv. Table of Contents xv—xxiv. Table of Cases xxv—xxxv. Land-use Planning, pp. 1-764. Index 765-790. Price not marked.

Whether we like it or not, with the increase of population, the fund of things available for human use is becoming less and less and planning in every field is becoming inevitable. The book under review deals with urban land-use planning. It gives a selection of cases and extracts from the literature on town planning and of jurisprudence. The book is divided into eight chapters : (1) An introduction to the goals and assumptions (remedial, utopian and emergent) of land use planning, and the interaction of American history, planning theory and land policies, (2) Judicial determination of conflicting land uses in the law of nuisance, and the relation of private to public nuisance, (3) Legislative districting of permissible land use through zoning, the most extensively employed city planning tool, (4) Sub-division and street controls, including a more intensive study of the regional framework for land planning already implicit in the zoning materials, (5) The use of eminent domain by government as land owner and redistributor, stressing the issues of public use and just compensation, (6) The private planning of land use through covenants, conditions, defeasible estates, easements and other devices having their roots in feudal times, but now utilized in urban renewal, (7) The role of federal government in land-use policies and the indirect restraints and inducements through housing, credit, fiscal and tax policies, and (8) Land-use planning by whom, how and for whom—the role of the master plan, and the desirability and efficacy of urban planning.

The volume is a hefty one and is a book for the students of planning and of law. The book has been conceived by the author, he tells us, "as a teaching instrument. I have tried to place differing and inconsistent opinions (judicial or planning) in juxtaposition so as to encourage a critical and closely analytical approach. Only by weaving his own way through diverse situations of fact and opinion, and subjecting them to as precise reasoning as possible, can the student of law or planning strike his own determinations"—(p. ix). That is true enough, but as I went through the book, I felt in many places that the book would have proved more helpful to the student if Professor Haar, following the method of Mr. C. H. S. Fifoot in his "History and Sources of the Common Law: Torts and Contract", had given us

more of his own view of the significance, worth, meaning and relevance of the passages and cases selected and of his arrangement of the material and of the conclusions to which they have led him.

Throughout my reading of the book, two questions constantly presented themselves to me, one a political and administrative one, and the other a jurisprudential one. The first question was whether under the planning law and administration, the state was not going to become all powerful and the subject a mere puppet or plaything of the ruling party. City planning is a necessity. It is concerned with the shaping and guiding of the physical growth and arrangement of towns in harmony with their social and economic needs. It aims at the physical comfort and well-being of the city-dwellers and at providing them with good means of communication, roads, water supply, places for recreation and proper sites for hospitals, places of worship and schools. Segregation of residential, business and industrial buildings makes it easier to provide fire apparatus suitable for the character and intensity of the development in each section; it will increase the safety and security of home life; greatly tend to prevent street accidents, especially to children, by reducing the traffic and resulting confusion in residential sections; decrease noise and other conditions which produce or intensify nervous disorders, and preserve a more favourable environment in which to rear children. All this is true. But it is also true that the price we pay for it and the dangers involved in it are very great. In conferring upon him the benefits of the planning, the state deprives the citizen of much of his liberty and freedom, and the power to think for himself and reduces him to abject dependance on itself. Is there any escape from such a political and administrative danger? there seems to be none, though Professor Haar himself appears to be optimistic.

This brings us to the jurisprudential question. Is there anything in our current jurisprudential conceptions of property to withstand such an onslaught by the state on the liberty of the citizen, by gradually depriving him of all property in land? A reading of Professor Haar's book would lead us to the conclusion that there was nothing. The older jurists, with Hegel, believed that ownership was primarily a relationship between the owner and the thing owned and from this followed as a corollary the owner's rights against the other citizens. Further they believed with Blackstone that property had its roots in the law of nature and so was something beyond the power of the state to change or violate. But Felix S. Cohen, speaking from the pages [328-336] of Professor Haar's book, tells us that Hegel and Blackstone and

Bigelow and Powell, "are all prisoners of common sense, which is usually the metaphysics of five hundred years back" [329], and proceeds to propound the theory of the modern jurist, free from all bondage to common sense, that property is a creature of mere state-made law, and that it does not involve any relation of the owner to the thing owned and that it consists merely of relations between persons—relations which are merely the creature of the civil law. Private property, we are told, is "a delegation of sovereign power in certain limited areas In those areas the government does not make a final decision but agrees to back up whatever decision the so called owner of property makes" [335-6]. "Private property is a relationship among human beings such that the so called owner can exclude others from certain activities or permit others to engage in those activities and in either case secure the assistance of the law in carrying out his decision" [336].

In all land-use planning is involved ultimately the power of the state to acquire compulsorily land belonging to private owners, paying them compensation for it, and of regulating the uses to which the private owners can put the land. The questions here crop up: What is the jurisprudential basis of this power of the state? Is the state the owner of all property? Then what is the position of the private owner? Felix S. Cohen's theory gives a complete answer to all these questions. The private owner has no relation to the thing owned. His only relations are with other persons. And these relations also are the mere creation of the state. They are "a delegation of sovereign power", and it follows that the state that has delegated the power may resume it at its will or regulate it in any way it likes. The theory is a simple negation of all private property, and if it is true, then all our constitutional guarantees about property are a much ado about nothing.

Here Professor Haar has brought us face to face with a problem and invites us to subject it to "as precise reasoning as possible", and leaves us there. There are many such problems that he raises. With the consummate skill of an experienced teacher, he lends his magic vision to us and makes us actually see a contractual right, a covenant running with the land, incorporating itself into a real right and actually transforming itself into a real right. Is the transformation a reality, or is it an illusion? Then again he takes us to an owner dividing his land into plots and transferring them to several purchasers under some common conditions and restrictions as to user. Each of the owners can enforce the restrictions against the other owner and Professor Haar suddenly throws a new light on the situation by suggesting that each

owner governs the other. Thus the ownership of property confers upon the owner governmental rights. How does this happen?

Professor Haar raises many such problems and invites to think out the solutions, to decipher and to clarify by our own personal efforts. I may be excused if I here take the liberty of submitting that the problems are really insoluble if we confine ourselves to the methods employed by the Western jurists, using tools inherited from the Roman and feudal lawyers. This is clearly shown by Cohen's brilliant Dialogue on Private Property, referred to above. We here in India, have to build up a new jurisprudence, using more efficient tools and manipulating them with a logic much more rigorous. In our attempts at the solution of such problems we are likely to derive substantial help from a study of the methods of our jurists like Medhatithi and Vijnaneshwara and Jimutavahana, and the great thinkers of the *Purva Mimansa* and the *Nyaya-Vaisheshika* schools. The *Purva Mimansa* was mainly concerned with the philosophy of *Yajna*, or sacrifice, but the performance of a *yajna* required property and the performance could bring results to the performer only if he had properly and justly acquired the property which he used in the sacrifice. So the *Purva Mimansa* philosophers were vitally concerned with the investigation of the origin and nature of property and of titles to it. The *Nyaya-Vaisheshika* philosophers had classified the whole universe of things into seven categories and had determined the various realms in which they existed. There was much discussion amongst them as to in which of the seven categories *Swatva* or ownership could be put and whether it did not form an eighth category by itself and as to what realm in which it existed. Felix S. Cohen raises in the Dialogue the questions: "Why should we assume that all reality exists in space? Why not recognize that spacial existence is only one of many realms of reality and that in dealing with the law we cannot limit ourselves entirely to the realm of spacial or physical existence?" and suggests that the difficulties and the defects in the property theories of Aigler, Bigelow and Powell and others arose from their non-recognition of these various realms of reality in which various forms of property like land, a mortgage, a copy right and a song exist. The *Nyaya-Vaisheshika* philosophers recognized these various realms of reality and conducted fundamental research into the nature and origin and function of property.

I do not wish to lengthen this review by pointing out analogous conceptions from Hindu jurisprudence. Suffice it to say that on many points which are discussed in Prof. Haar's book the Hindu Jurists had exercised their minds. For example the conception of the *Nyaya-Vaisheshika* philosophers and of Vijnaneshwara of ancient India that

the transferor's rights are extinguished within himself and that new rights are created in the transferee is a conception that liberates our attention from bondage to the past and leaves us free to observe the transferee and his rights in the present in their proper social surroundings. So it is a far more elastic and dynamic tool for the solution of many of the problems shown by Professor Haar's book to be arising in the course of land use development over a period of years in which property changes hands. To take another example the theory formulated by the Mithakshara lawyer to explain the law of joint family and inheritance and succession the central concept of which was the "Daya" property was based on his conception of a community formed by blood relationship and relationship by learning—a conception which is obviously of a more general significance and application. The conception should prove of some use in the solution of town planning problems. Every citizen is related to every other citizen of the city by the fact of their residence in the same city and thus every citizen is the owner as his Daya of every other citizen's property. A similar conclusion, but much more indefinitely and vaguely expressed, is reached by the modern jurist, after laboriously refuting the view held by Blackstone and Hegel and other older jurists in Felix S. Cohen's Dialogue above referred to. There it is said: "In fact private property as we know it is always subject to limitations based on the rights of other individuals in the universe". [330].

To give only a final illustration the Mitakshara community was conceived as a community working by co-operation towards the common goal of Moksha or liberation from the bondage of worldly life. Somewhat similarly we hear it being declared by Mumford from the pages of the book (51) that the "Western man has exhausted the possibilities of the dream of mechanical power, which has so long dominated his imagination; he is now the self-betrayed victim of those who would utilize that power for the fulfilment of debased and irrational purposes, barbarising man instead of subduing and humanizing nature"; and by Aronovici (48) that "the task of the planner is to contrive a functional mechanism of co-operative living and it can fashion the law as an instrument for the achievement of that goal, by not neglecting its own jurists and thinkers and by studying the tools and methods employed by them.

The great merit of the book is that it makes us think for ourselves and provides us with ample important material for it from varied and scattered and sometimes not easily accessible sources. By bringing out the book Professor Haar has put all students of land-use law and of

planning and of the philosophy of law under his obligation and we congratulate him on the achievement. I need not say anything as to the excellence of the printing and the get up of the book; the name of the publishers proclaims it.

I. S. Pawate *

Our Fundamental Rights: Their Nature and Extent (As Judicially Determined) by Dr. N. Banerjee: The World Press Private Ltd., Calcutta, 1960: Price Rs. 25.00 or 37s. 6d. net. Pages 483.

The book purports to describe, with special reference to the Preamble, the nature and extent of the fundamental rights "as they have been judicially determined".

The title of the Book may give the impression that the case-law on the subject of Fundamental Rights was considered in the exposition at least to some extent. But surprisingly, the learned author has chosen only a few cases to illustrate some of the principles embodied in Part III of our Constitution dealing with Fundamental Rights.

The preface indicates that a major part of the material in the book was already published in the form of Articles in various journals and the book is based on these Articles. From the foot notes it may be seen that they were published during the years 1955 and 1956. In general, cases referred to were those decided before that period. The book would have been much more helpful if the case-law was brought up to date.

In dealing with Article 14 containing mandate to the state not to deny equal protection of laws to a person, the author discusses only three cases decided by the Supreme Court, namely, *Chiranjitlal* v. *Union of India*; [1] *State of Bombay* v. *F. N. Balsara* [2] and *State of West Bengal* v. *Anwar Ali Sarkar*. [3] But *Kathi Ranning Rawat* v. *State of Saurashtra* [4] where the Supreme Court is said to have made a retreat from the position it took in the *Anwar Ali* case is not even mentioned.

In considering Article 15 the learned author discusses at considerable length the Supreme Court decision in *State of Madras* v. *Champakam Dorairajan* [5] and he similarly dealt with *Venkataramana* v. *State of Madras* [6]

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1. A.I.R. 1951 S.C. 41.
2. A.I.R. 1951 S.C. 318.
3. A.I.R. 1952 S.C. 75.
4. A.I.R. 1952 S.C. 123; See Alladi Krishnaswami Iyer, *Our Constitution and Fundamental Rights*, p. 37, foot note.
5. A.I.R. 1951 S.C. 226.
6. A.I.R. 1951 S.C. 229.