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# Curry: Public Regulation of the Religious Use of Land

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## BOOK REVIEWS

**AUTOMOBILE ACCIDENT COSTS AND PAYMENTS.** By Alfred F. Conrad, James N. Morgan, Robert W. Pratt, Jr., Charles E. Voltz, and Robert L. Bombaugh. Ann Arbor: University of Michigan Press. 1964. Pp. 506. \$12.50.

This volume is a report of research into the economics of injury reparation. The depth and detail of the study afford the reader an appreciation of the many problems involved in one area of legal specialization — automobile accident litigation. Viewing trial delays, client procurement, and attorney compensation as superficial eruptions in this area, the authors of this study designed the research model to explore “what are the economic losses from injury, and what is being done to repair these losses.” To these ends, the authors have been extremely successful, for the data analysis provides a perspective for the future.

Part I of this three part study concerns a collection and analysis of statistics and programs related to traffic victims. Part II is related to a field study involving the injured parties themselves, and Part III of the study involves an examination of some foreign systems of reparation. From this brief outline it can be seen that it is difficult to capture the essence of all the significant matters contained in this volume in a few short pages. However, the following survey of the more significant findings and conclusions of the study will serve to indicate the value of the entire contents.

One of the most interesting and informative parts of the study concerns the types of losses suffered by traffic victims. Here, the authors demonstrate that a broad spectrum is encountered when one attempts to list or categorize all types of losses. One accident may produce anything from nebulous psychic loss to permanent disability or death. The Michigan field study reveals that there were approximately 86,000 injuries arising out of 59,000 accidents in 1958. The largest losses occurring in a single category were the property losses which affected 58,700 of the victims, or about 68 per cent of all those reporting injury. Fifty-nine per cent incurred medical expenses, which represented 16 per cent of the total economic loss for the group studied. It is also interesting to note that 64 per cent of the individuals reporting loss had losses of less than \$500.00. Only 6 per cent of the group studied reported losses in excess of \$3000.00. One might comment here that the data presented by

the study is extremely well organized, presented, documented, and explained.

Another informative aspect of the study deals with sources of reparation. Traditional sources of reparation have been shown to be grossly inadequate. However, the trend in recent years indicates that new sources will play a significant role in correcting this problem for future litigants. For example, one can expect an expansion of the benefits made available by old age and survivors insurance programs. Underscoring their potentiality is the fact that only 50 to 55 per cent of the money available to make injured parties whole comes from tort damage settlements or jury verdicts. This may surprise the reader who is inclined to over-value tort law as a scheme of reparation. However, field studies indicate that few serious accident cases ever reach a lawyer's desk. The Michigan survey indicates that only 49 per cent of those injured ever hire attorneys, only 5 per cent commence trial, and only 0.5 per cent are ever appealed to a higher court.

Foremost among the disadvantages of an already inadequate system of reparation is the overbearing cost of its administration, which the study found to be 120 per cent of the benefits actually received. This becomes more credible when one considers that insurance companies are reported to pay out something less than 50 per cent of that which they take in by way of settlements and judgments. This figure, standing alone, would seem to have some significance in any attempt to reorder the existing system. In addition, other schemes of coverage, notably accident and health programs, function for about 22 per cent of the new benefits paid out.

The present system is also disadvantageous from a psychological and sociological point of view. The Michigan study suggests that individuals who cause accidents pay a very negligible share of the total amount received by the person injured. The study indicates that of those defendants who have been involved in accident litigation, less than one-third knew what disposition was made of their case. Furthermore, only the conscientious driver will purchase liability insurance, thus shifting the loss in advance. On the other hand, the financially irresponsible drive regardless of the risk involved.

Another shortcoming of our present system of reparation concerns distribution of benefits. The study suggests that only half of those seriously injured receive as much as half of their economic loss. There are many underlying reasons for this problem, perhaps

the most important of which is the oft-present defense of contributory negligence. On the other hand, a very high percentage of victims receive several times the amount of their economic loss. This is explained merely by pointing to the fact that the law often allows redress for pain, suffering, and inconvenience. However, this book points to an even greater tragedy in this area, and that is that those who are permanently disabled or seriously injured tend to have the least chance of obtaining prompt compensation. In other words, the more serious the injury, the less adequate the compensation under the present system.

Proponents of change have frequently suggested that certain broad steps be taken to improve the present system of handling the claims of those injured as a result of automobile accidents. Some would compensate the individual who has sustained out-of-pocket expenses, such as hospitalization, medical expenses, and damage to property, without regard to fault. These schemes seem to have gained some acceptance in the past few years.

Since modern motoring involves a great deal of interstate travel, improvement of the present system of reparation ought to include some sort of joint effort between the federal and state governments, perhaps along the lines of workmen's compensation. Such an approach would certainly lower the cost of administration in terms of actual benefits paid out. However, one problem which must be kept firmly in mind in considering any scheme is that as high as 10 per cent of the claims for "relief" may be fraudulent. This is obviously a defect which would be difficult to remedy under any system of reparation.

One particular aspect of the study which has not been touched upon is the relative desirability of a program of rehabilitation for traffic victims. While the survey indicates that individuals without sufficient funds to pay for emergency health care usually find some means of obtaining this necessary treatment, there is no indication that elective medical treatment is always available to them. The book also suggests the need for considering alternate means for making the injured party whole. In this regard, some authorities have suggested that claimants would willingly forego claims for psychic loss, or accept this as the price of riding in an automobile, if some scheme could be found to expedite compensation for out-of-pocket expenses, property damage, and living expenses incurred during the period of disability.

Although the Michigan study affords the reader little by way of

appreciation for the influence of alcohol, tranquilizers, and emotional factors on automobile accidents, it does effectively demonstrate that there is no such thing as an individual who sustains injury solely for the purpose of collecting benefits or "secondary gain." However, much work remains to be done by those interested in reshaping our current system of reparations, primarily in developing a scheme which would afford an injured party some opportunity to recover with speed and dignity. The overtones of a system which demands two or three years for the settlement or adjudication of a claim are such that it behooves all interested parties to advance their divergent points of view in order that some solution may be forthcoming. For example, since there is ample evidence that those who cause injury pay only a slight portion of the assistance which the victim receives, it is suggested by the authors of the book that criminal sanctions be imposed to curb the use of alcohol, tranquilizers, and various other drugs while driving.

In terms of socio-economic planning, this study reveals that the contention of insurance companies that large jury verdicts tend to raise the cost of insurance is not supported. As previously noted, very few cases go to trial, and even a smaller percentage result in a large or, at best, substantial verdict. But the initial problem is the most difficult, *i.e.*, finding where the problems really exist. By exposing the exposed roots, *Automobile Accident Costs and Payments* has provided an excellent base for growing a better tree.

JUSTIN C. SMITH\*

PUBLIC REGULATION OF THE RELIGIOUS USE OF LAND. By James E. Curry.<sup>1</sup> Charlottesville: The Michie Company. 1964. Pp. xxii, 429. \$12.50.

For good or evil, zoning controls reach into every man's backyard. They also reach into every clergyman's churchyard, limiting and regulating sensitive religious practices. Such is the thesis of Mr. James Curry who presents in this single volume a complete and informative analysis of the cases and developments concerning public regulation of the religious use of land.

The book begins with a discussion of the historical structure of the problem; with how the origin of villages was found in the establishment of shrines and sacred precincts by pagan priests. Later, cities were walled to protect supplies in anticipation of siege. The

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author observes that one of the consequences of this protective measure was a primitive form of zoning; that separating the surrounding countryside from the city for religious and military purposes accomplished in a very modest form what occurs today under modern zoning laws. The city eventually became important as a reservoir of labor, and as a result new interior walls were constructed. The classic example is Athens, where the Acropolis became the zone restricted to religious and military uses, while the balance of the city was zoned for residential, industrial, and general uses.<sup>2</sup>

In America, early city plans were initiated primarily by religious leaders. William Penn, for example, founded Philadelphia as a religious project. While these religious establishments grew and spread in a relatively organized fashion, the author notes that "most of the secular-inspired cities grew up in unplanned squalor. No one could build or rent a house with any certainty that a factory would not be built next door" (pp. 6-7). But the great immigration of the 1890's made it mandatory to regulate city land, and it was at this point that both political and religious leaders began to support the idea of municipal land use regulation under the police power. However, at no time during this period were churches considered to be subject to such regulation. In fact, Curry notes that one of the principal authors of the first modern zoning ordinance was of the opinion that communities that are too sensitive to welcome churches should protect themselves by private restrictions.<sup>3</sup> This notion prevailed for thirty years, the courts holding for the most part that churches were immune from the prohibitions of zoning regulations.<sup>4</sup> But finally, in 1949, a California court squarely decided that land use regulation could be fully effective with respect to churches.<sup>5</sup> It is from this point that the balance of the book flows. Thus, Chapter 2 proceeds to a discussion of the police power and the Constitution as they relate to the rights of churches. Here, general consideration is given to the "substantial purpose" doctrine, stemming from the due process clause of the fourteenth amendment, as well as to the rights of churches under the equal protection clause and the guarantees of the first amendment.

The substantial purpose doctrine is given more specific treat-

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1. Member of the Bar of the District of Columbia.
  2. See generally MUMFORD, *THE CITY IN HISTORY* (1961).
  3. BASSETT, *ZONING* (1940).
  4. See Note, *Zoning Laws and the Church*, 27 ST. JOHN'S L. REV. 93-103 (1952).
  5. *Church of Jesus Christ of Latter Day Saints v. City of Porterville*, 90 Cal. App. 2d 656, 203 P.2d 823 (1949).

ment in the next eight chapters (pp. 24-118). The author notes that the test of substantiality is the same for both religious and secular uses of land: "is the public purpose to be served by the regulation sufficiently substantial to justify it and do the means adopted to promote these ends bear a reasonable relation to the declared purpose" (p. 50)? In applying this test, most courts are conscious of the necessity of balancing the interests of other public purposes with that of the church. Curry demonstrates this application with a series of cases where the courts have given great weight to the "public service functions" of religious institutions and the public benefits derived from their activities. However, most cases in this area do not involve merely a matter of balancing interests; rather, churches have challenged land use regulations on specific constitutional grounds. More precisely, churches have attacked the constitutionality of regulations based on: (1) aesthetic objectives; (2) preservation of space, light, air, and ease of access to adjoining property; (3) fiscal considerations; (4) protection of property value; (5) protection of enjoyment of neighboring property; and (6) traffic control problems.

The questions raised by the first point — aesthetics — cut much deeper than the problem of regulating the religious use of land.<sup>6</sup> However, restricting consideration to religious uses, Curry concludes that "the regulation of religious uses of land has never been sustained solely for aesthetic purposes. . . . However, this factor can have considerable practical significance where an attempt is made to exclude all churches, without exception, from a residential zone" (p. 77). Regulations based on the preservation of space, light, air, and ease of access, however, have generally been sustained with respect to regulation of the religious use of land. But the author notes that the case is not so clear where fiscal considerations are involved. Here, the primary question is whether a city can completely exclude churches from a particular locality, or at least limit the scope of their projects, because the establishment of such an institution would either: (1) require the city to provide costly new public services, such as new streets, police and fire protection, and the like; or (2) cause valuable land to be transferred from a taxable to a tax exempt status. With respect to the last point, a leading Ohio case

6. See generally Agnor, *Beauty Begins a Comeback: Aesthetic Considerations in Zoning*, 11 J. PUB. L. 260 (1962); Dukeminier, *Zoning for Aesthetic Objectives: A Reappraisal*, 20 LAW & CONTEMP. PROB. 218 (1955); Rodda, *Accomplishment of Aesthetic Purposes Under the Police Power*, 27 SO. CAL. L. REV. 149 (1954). For a discussion of the Ohio cases in this area see Recent Decision, 16 W. RES. L. REV. 431 (1965).

found that no municipal corporation can justly refuse a permit to build a church only because the property will no longer be subject to taxation.<sup>7</sup> The same attitude seems to prevail where a religious use requires the addition of new facilities. For example, a Pennsylvania case recognized that the expense occasioned by the establishment of a Catholic high school in a small township would be substantial, but nevertheless concluded that "this reason bears no substantial relation to the only standards which must guide the board or the court in their exercise of discretion."<sup>8</sup> However, Curry notes that there is also authority on the other side of both of these questions, leading him to the conclusion that the area of fiscal considerations "is one of the outstanding questions of church zoning law, the judicial answer to which may become more important than it presently seems" (p. 94).

Closely related to the problem of creating a financial burden on the municipality is the consideration that must be given to protection of private property values. Curry notes that while the most frequent present-day justification for regulation of religious land is the prevention of traffic hazards,<sup>9</sup> "in the beginning, the principal justification advanced for all land use regulation was protection of property values" (p. 95). Here, as with most of the other justifications advanced in support of regulations on the religious use of land, the courts have reached inconsistent results. Two Ohio cases serve as examples. In one case, the court brushed aside the depreciation argument by stating that "this impairment [of nearby property values] would be but a consequence of the factors already enumerated."<sup>10</sup> However, in a later case, the same court found that the area around a proposed Jewish school was improved with well-kept homes, occupied in most instances by the owners and that "there is testimony that the use of the relator's property for school purposes would substantially and permanently injure the appropriate use of the neighboring property and lower its value."<sup>11</sup> As a result, the court upheld the zoning board's rejection of the application.

Ranking third in order of importance as a justification for regu-

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7. *State ex rel. Anshe Cheshed Congregation v. Bruggemeier*, 97 Ohio App. 67, 115 N.E.2d 65 (1953). *But see State ex rel. Wis. Lutheran High School Conference v. Sinar*, 267 Wis. 91, 65 N.W.2d 43 (1954).

8. *Appeal of O'Hara*, 389 Pa. 35, 131 A.2d 587 (1957).

9. See note 12 *infra*.

10. *State ex rel. Synod of Ohio of United Lutheran Church v. Joseph*, 139 Ohio St. 229, 247, 39 N.E.2d 515, 523 (1942).

11. *State ex rel. Hacharedi v. Baxter*, 148 Ohio St. 221, 224, 74 N.E.2d 242, 244 (1947).

lation of the religious use of land is the matter of protecting the enjoyment of neighboring property. Here, the author notes that the "enjoyment" factor is purely subjective and hence much harder to measure than, for instance, the amount of traffic or the market value of lands. Mere inconvenience to neighboring property owners will not be sufficient to exclude a church or any of its projects; however, such things as disturbances of the peace, fire, health, sanitation, and even psychological factors, such as the frequent occurrence of funerals, have been held to be valid objections to the religious use of land in a residential area.

"The one factor that more than any other has reconciled reluctant courts to the necessity for regulating religious use of land is the increase in automobile traffic" (p. 118). This factor comprehends many facets, namely: parking problems, noise, fumes, the intrusion of automobile lights, the blocking of private driveways, and the delays in normal travel for those using the highway. Perhaps even more important than any of these factors, however, is the less obvious matter of increased dangers of injury to person and property. Thus, Curry concludes that "while some courts were slow explicitly to recognize it, there is now little doubt that the control of traffic is a sufficiently substantial public purpose to justify the regulation of the religious use of land and, in proper cases, even the exclusion of churches from residential areas" (p. 133).

In the remaining portions of the book, Curry discusses the impact of anti-religious discrimination in regulation cases (pp. 135-52), spot zoning (pp. 153-63), discrimination between religious and public schools (pp. 164-85), and first amendment liberties involved in church zoning cases (pp. 209-40). In the last two chapters (pp. 310-33), all the decisions relative to the problem of regulation of the religious use of land are classified by state and court of decision. In short, this book should prove useful to lawyer and laymen alike. The author has avoided technicalities, yet manages to present an accurate analysis of the area. He has successfully accomplished his purpose of providing an informative and definitive manual for those interested, on any account, in the political science of church-state relations.

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