COMMUNITY VALUES AND THE PLANNER

RUBEN JUBINSKY

MPL & MPA Candidate, 2012
School of Policy, Planning and Development
University of Southern California
Abstract

Many planning theories advocate the planner as a neutral stakeholder in the planning process, able to rationally absorb and process multiple, often competing perspectives. But is the ideal of the neutral, rational planner even possible? In this paper I explore three aspects – diversity, communication, and control – of a recent planning controversy, zoning for tattoo parlors in Hermosa Beach California, through the perspectives of various theorists to illustrate that planning decisions are heavily influenced by community values. Planners and people making planning decisions must understand that they inhabit and represent many different communities, and must find a way to appropriately balance these oft-competing value systems.
Introduction: The Myth of the Impartial Planner

Many planning theories advocate the planner as a neutral stakeholder in the planning process, able to rationally absorb and process multiple, often competing perspectives, and lead/facilitate the discovery or creation of solutions that are beneficial to ideally all parties affected in the formation of the good, just city. Friedman (1987) organizes the last two hundred years of planning theory into four ‘traditions’ – policy analysis, social reform, social learning, and social mobilization – each with differing tenets regarding the application of planning knowledge to planning action. Three of these traditions are based on the impartiality of the profession itself: planning as a “scientific endeavor” (Friedman, 1987, p. 76) in social reform; the preference in policy analysis for perfectible science over unmediated politics; and social experimentation as the “scientifically correct way to effect change” (Friedman, 1987, p. 82) in social learning.

But is the ideal of the neutral, rational planner even possible? After all, planners are human beings, products of their genetics and environment, results of nature and nurture. As humans, we are each shaped by the unique set of circumstances from which we came to be and influenced by the communities we inhabit. Every person, thus every planner, is inherently biased, absorbing and processing information and making decisions with a unique lens and value system, be it consciously or subconsciously. Moore (2010) recently explored how black lesbians and gay men, as minorities within a minority, struggle against the competing values of the various communities to which they belong. Planners and people making planning decisions also simultaneously inhabit multiple communities – as parents, town residents, and national citizens, for example – and likewise struggle to reconcile the competing values of these communities.

In this paper I explore three aspects – diversity, communication, and control – of a recent planning controversy through the perspectives of various theorists to illustrate that planning decisions are heavily influenced by community values. Planners must understand that they belong to and represent many different communities, and must find a way to appropriately balance these oft-competing value systems. Events for the planning controversy were reconstructed primarily using archives from local newspapers, including the Daily Breeze, The Beach Reporter, and Easy Reader (established 1894, 1977, and 1970 respectively), meeting minutes of the Hermosa Beach Planning Commission and City Council, and published opinions of the US Court of Appeals for the Ninth Circuit. Personal interviews were not conducted.

Communities in Conflict: David and Goliath

On September 10, 2010, the host of NPR’s Morning Edition announced:

“Good morning. I'm Steve Inseep with another extension of constitutional rights – to tattoos. Johnny Anderson was denied a business license to open a tattoo parlor in Hermosa Beach, California. The city banned those businesses because of health and safety concerns. Now, a federal appeals court says that is an unreasonable overreaction. There can be health regulations but not a ban. A tattoo is protected free speech under the First Amendment, no matter where you put it” (NPR, 2010).
The decision by the Ninth Circuit Court of Appeals ended a six-year struggle by Anderson, proprietor of *Yer Cheatin’ Heart* tattoo parlor in Gardena, to relocate his business to the city where he was born. The affluent beach city of Hermosa Beach, as well as other cities in the South Bay region of greater Los Angeles, had zoning ordinances that, while not banning outright, effectively prohibited the entry and operation of tattoo establishments. In 2004, Anderson had sued the nearby city of Torrance for denying his application, eventually settling for $50,000 in 2006. But his dream was always to be in Hermosa Beach: “It's my hometown” (Morino & Guenther, 2010).

Anderson had initially skipped the application process and sued Hermosa Beach in federal court in 2006, alleging that the city’s zoning code violated his right to free expression. The case was dismissed due to lack of ripeness, and in May 2007 Anderson filed an application with Hermosa Beach, which issued a denial the following month. Anderson subsequently reintroduced his suit in the US District court (US9th, 2010). Meanwhile, the Hermosa Beach Planning Division drafted text amendments to the zoning ordinance to allow tattoo businesses and included monitoring mechanisms. At an October 2007 meeting of the Planning Commission, the Planning Division presented its recommendation, along with reports from the police chief regarding increased criminal activity related to tattoo parlors (there was none). After public comment and deliberation, the Commission voted 4-1 to deny the application, justifying its decision by the need to limit the number of age-restricted businesses. Commissioner Perrotti, the lone tattoo shop supporter, noted the hypocrisy in allowing beauty parlors to tattoo permanent eyeliner onto customers while forbidding tattoo parlors from operating (Hermosa, 2007). With a similar 4-1 vote, the Hermosa Beach City Council upheld the application denial in January 2008. Mayor Michael Keegan had mixed feelings: “I don’t think it would ruin the city, but I also don’t think this is the image we want to project” (Hermosa, 2008).

In October 2008, the US District Judge ruled that tattooing “is not sufficiently imbued with elements of communication” (Stitt, 2008a) and is not protected under the First Amendment – the recipient of the tattoo is protected under the amendment, but not the provider of the service. Anderson appealed to the Ninth Circuit Court in November. Concerned with the cost of the impending litigation, the City offered to settle, which Anderson declined (Stitt, 2010a). In May 2010, the City presented its case to a three-judge panel in Pasadena, arguing that the ordinance was based on potential health hazards. The panel was unconvinced. Judge Jay Bybee writes:

“We hold that the tattoo itself, the process of tattooing and the business of tattooing are forms of pure expression fully protected by the First Amendment. We further hold that the city’s total ban on tattoo parlors in Hermosa Beach is not a reasonable ‘time, place or manner’ restriction because it is substantially broader than necessary to achieve the city’s significant health and safety interests and because it entirely forecloses a unique and important method of expression” (US9th, 2010, p. 13766).

With the court’s decision, all nine western states that are under the Ninth Circuit’s umbrella must allow tattoo shops to open where they were previously not allowed (Stitt, 2010a; Stitt, 2010b).
Anderson never thought of becoming an activist, yet his historic lawsuit opened doors for future tattoo artists that were previously sealed shut. He expressed a kind of disbelief over the decision, pointing out that his own religious faith contributed to his pursuit of a studio in Hermosa Beach (Morino, 2010b).

**Changing Communities: From Henry Rollins to Jack Johnson**

The Hermosa Beach Chamber of Commerce & Visitors Bureau’s website (n.d.) boasts “…the town is the very essence of the Southern California lifestyle.” Daytime activities include volleyball, surfing, ocean swimming and fishing from the pier. Cultural pursuits include the thriving live music scene, live theater and the famous *Comedy and Magic Club*. Family-friendly events include Fiesta Hermosa, the St. Patrick’s Day Parade and Festival, and weekly Farmers Markets. The energy and excitement continues after dusk with a happening nightlife of dancing, pubs and restaurants. “Hermosa Beach, the little gem by the sea, is ideal for everyone” (Hermosa, n.d.).

Well, maybe not *everyone*.

In 1996, the City Council denied two applications for tattoo parlors. Council objections ranged from aesthetic to economic to fears that the city would be overrun with tattoo shops. “I don’t think tattoo parlors are what this town is about,” (Yang, 2006) argued one resident, concerned that the town’s image might be tarnished. Such attitudes have become more common as Hermosa Beach continues to gentrify.

But it wasn’t always this way. Just a few decades ago before the million-dollar homes and trendy shops, the city's main thoroughfare was lined with seedy bars and abandoned buildings. The homeless slept on benches lining The Strand (Morino, 2010a). Paul Silva, Publisher & Editor-in-Chief of *The Beach Reporter*, fondly recalls:

> “I grew up in Hermosa Beach in the 1970s, when lower Pier Avenue was lined with head shops selling everything except marijuana (at least not officially). I remember the macramé madness you encountered when you entered the old Colony hippie cooperative on Hermosa Avenue. I remember rows of Hell’s Angels motorcycles parked outside The Lighthouse [Café]...” (Silva, 2010).

What Hermosa lacked in sophistication and civility, it made up for in culture, fueled by a vibrant music scene that included punk icons Black Flag and even jazz titan Miles Davis, who recorded a live album at The Lighthouse. Much of this culture lives on today in the many live music clubs that draw national touring acts to the tiny beachside town.

**Diversity in Communities: Multiple Personality Disorder**

Thus there is an ongoing tension between those residents who continue to patronize and cultivate the city’s counter-culture, and those (including relatively new transplants) who focus
on ‘family friendliness’ and economic (read: house price) security. It is no surprise that the latter group holds most if not all of the seats in the city government. Two communities, each with its own values, share the same spatial environment and are sometimes in conflict over its use.

Such multicultural cities present challenges to planners. Qadeer (1997) describes how conflicts arise when an increasingly culturally diverse urban demographic encounters traditional planning policies and standards based on uniform and monolithic perceptions of citizens’ interests. He advocates a pluralistic planning approach where culture becomes a significant analytical category for assessing public needs and analyzing social conditions. Unfortunately, the planning decision-makers were, by-and-large, neither sensitive when discussing Anderson’s application nor inclusive when assessing public needs. One commissioner stated that “these businesses” are not in the best interest of the City, and argued that “high quality communities don’t have tattoo establishments” (Hermosa, 2007). Another commissioner jumped on the first justification for denial presented. Qadeer would argue that even the US District Judge erred when she compared Anderson to a hairstylist or barber, rather than an artist. The City’s response to multiculturalism was reactive and ad hoc, with planning standards and criteria that are based on the unitary conceptions of those who hold the keys to government. On Qadeer’s Ladder of Planning Principles, which has seven progressive steps to support multiculturalism, Hermosa Beach is barely hanging on to the second rung.

The City meetings on Anderson’s application became an outlet for the deep-seated fears, aversion, and anxieties of some residents. Sandercock (2000) argues that the planning has historically been used to “manage fear in the city: fear of disorder, fear of disease, fear of women, fear of the working classes, of immigrants…” (p. 22). Among the comments made by residents during the Planning Commission and City Council meetings:

“A tattoo parlor would bring in the wrong element…”

“This business…was not compatible with a family-oriented community…”
(Hermosa, 2008, p. 12332)

“There are too many schools and children in this area…”

“It would create a negative impact upon the City’s image” (Hermosa, 2007).

Fear of the ‘other’ and the requisite knee-jerk response of exclusion – including spatial policing and segregation – were on full display.

The overturning of Hermosa Beach’s zoning ordinance by the Circuit Court illustrates the inherent contradiction of hospitality pondered by Derrida (2001), only in reverse. In this case, the city-state wants to control and restrict (limited hospitality) while the nation-state demands protection of individual rights (unconditional hospitality). Such a reversal is an example of how planning culture is not an independent variable, but is in constant flux, sometimes resisting, at other times facilitating social change in response to both internal and external pressures (Sanyal, 2005). Here the federal court, as the decision maker, is imposing social change at the local level. However, if the issue under debate were something else (say,
immigration) the roles may reverse with the nation-state restricting entry and the city-state wanting to protect worker rights and further boost economic development. This tension reveals yet another community – the nation-state – which planners and planning decision-makers inhabit and whose values influence planning attitudes, processes, and decisions.

**Communication between Communities: The Power of (Mis)Information**

The adversarial tone of the controversy was established at the very beginning when Anderson bypassed the application process and proceeded directly to litigation. This opening salvo between communities with different values precluded the possibility of authentic dialogue, the cornerstone of communicative action theories. Innes & Booher (2010) define a frame as “the way people see an issue, situation or practice” (p. 124), and frames are used by stakeholders to create common meanings and shared interests during negotiations. However, frames can also be used as a source of conflict, as illustrated by Anderson and City officials.

In this case, stakeholders used frames to protect themselves. When the Planning Commission denied the permit, it framed the discussion as “a land use and General Plan issue” (Hermosa, 2007), stating that the city should not allow another age-restricted business and citing the plethora of bars and an adult entertainment store. In suing the City, Anderson called upon democratic principles, alleging a violation of his freedom of expression under the First and Fourteenth Amendments (US9th, 2010). When appearing before the Circuit Court, the City declared tattooing to be a public health and safety issue, and argued that its zoning ordinance exists “because of the potential health hazards caused by unsanitary tattoo practices” (Stitt, 2010a). Each of these frames created an identity – the Rationalist, the Artist, the Protector – that carried certain expectations, shaping attitudes and views, and leading to irreconcilable and intractable positions. There was little internalization of the other’s view to enhance mutual understanding, only the expectation of continued confrontation. When the Planning Commission denied his application, Anderson was non-plussed. “We knew this was going to be a long process. We're just going through the motions. We'll proceed judicially and leave it up to the courts” (Stitt, 2006). Councilman Michael DiVirgilio said Hermosans don’t want a tattoo parlor, and he bristled at the thought of being “bullied into it” by Anderson’s lawsuit (Fulcher, 2008).

The lack of authentic dialogue meant that information was not understood and trusted by either the Planning Commission or the City Council, violating another tenet of collaborative rationality. An alternative model to the traditional linear approach of planning and policy formation, collaborative rationality emphasizes expert knowledge, complete information, reiterative reasoning based on argumentation, and sincerity (Innes & Booher, 2010). While Commissioner Perrotti took a problem-solving approach to research in requesting data from the Department of Health and Police Chief, the majority of decision makers did not make substantive use of the findings of such research. Instead, most took a political approach, staking out positions and ideological commitments and strategically using research as ammunition. One commissioner relied heavily on anecdotal evidence, stating that very few people he consulted support a tattoo establishment in Hermosa Beach. Another highlighted that most neighboring cities do not have an ordinance in their codes to allow tattoo studios (Hermosa, 2007), thus deriving legitimacy of position from the sheer number of like-minded municipalities. Such
rationale is dependent on who wields power in a given situation, which blurs the line between rationality and rationalization (Flyvbjerg, 1998). Many decision makers echoed the “this is a family community” mantra, yet failed to recognize that Anderson was himself a family man, whose MySpace page states: “I am married to a swell gal and have two beautiful children. God has blessed us. With him all things are possible.” This is another example of power holders procuring knowledge that supports their purposes but ignoring and suppressing knowledge that does not.

Of course, power is a relative term, as evidenced by the Ninth Circuit Court overturning the District Court ruling and invalidating the City ordinance. Flyvbjerg (1998) provides a framework of ten propositions with which to understand rationality and power. A corollary to his Proposition #4 posits “in a democratic society, rational argument is one of the few forms of power the powerless still possess” (p. 321). Anderson took full advantage of rational argument in the judicial system, which systematically defined yet another reality and rationality: tattooing is recognized to be a purely expressive activity and the City’s ordinance is an unconstitutional overreaction to health concerns. Here, Flyvbjerg’s (1998) Proposition #8 – “in an open confrontation, rationality yields to power” (p. 323) – was in full effect as the anecdotal evidence and derivative legitimization of the City Council’s position yielded to the authority of the US Court of Appeals.

But was Anderson really powerless?

Controlling Communities: David and Goliath Revisited

At the local level, one could view Anderson’s travails as a microcosm of the modern state (in this case, the city-state) using planning to exert control and oppression, where planning is manipulated and used by elites to dominate and control space, power, wealth, and identity resources (Yiftachel, 1998). The Planning Commission and City Council, dominated by the landed gentry of Hermosa Beach, crafted exclusionary regulations, deprived businesses owned by or catering to a different demographic to livelihood in their preferred area, and alienated and delegitimized a culture they deemed to be ‘the wrong element’. However, Yiftachel’s structure gets turned upside-down at the regional level, where the landed gentry are the oppressed, forced by the Circuit Court to accommodate the demands of an ‘other’ who (on the surface) does not share the same values. The City government is told to change its laws and literally make space for the newcomer (who is actually an old-timer).

Davidoff’s (1965) version of pluralism offers a more stable framework for analyzing power in this controversy. A tenet of Davidoff’s advocacy planning is that appropriate planning action cannot be prescribed from a position of value neutrality, for prescriptions are based on desired objectives, which are based on values. Thus the City Council preached the interests and values of the landed gentry from the legislative pulpit, while Anderson’s attorney acted as advocate for the interests and values of the counter-culture on the legal stand. Two competing visions of the physical, social, and economic environment of Hermosa Beach competed for legitimization via an adversarial process. Davidoff’s use of law as a metaphor for planning could not be more appropriate, since the Ninth Circuit Court is the institution making the planning decision. In this framework, Anderson is not powerless – his ability to access the
courts ensured inclusion in the process and a stage from which to be heard. Indeed, his victory in the legal war had far greater impact than all of the battles won by the City on the administrative and legislative fronts.

**Conclusion: The Self-aware Biased Planner**

Community values affect how people observe, process information, communicate, and make decisions. Sometimes the values of different communities are in alignment. Often they are not, which can lead to misinterpretation, misunderstanding, misrepresentation, and conflict. As the planning controversy over zoning for tattoo parlors in Hermosa Beach demonstrates, planners and planning decision-makers are challenged by these conflicting values, which may occur at or between the local, regional, and national levels. Examples of these tensions include: social stability vs. social integration, economic growth vs. business diversity, public safety vs. artistic freedom of expression, a charm bracelet for Mom vs. a tattoo that says “Mom”. Planners themselves are inherently biased by gender, race, culture, education, religion, place of residence, national citizenship, economic status, and many other factors, and consequently struggle to reconcile a dizzying array of potentially competing interests. If they are to be successful at creating the good, just city, planners must be aware of both their internal biases and the values and associated biases, stated and hidden, of all community stakeholders when making planning decisions.
References


