

THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK.
By Robert A. Caro. New York: Alfred A. Knopf, 1974. Pp. 1246.
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ger.*

One of the common beliefs of lawyers, and particularly of academic lawyers, is that we can save the world through the processes of law. This belief is a source of comfort, and perhaps of inspiration, to the profession, but there is some reason to wonder just how great an impact "law" does have in really shaping events when confronted by big questions—or big men. The story unfolded in Robert Caro's book, *The Power Broker, Robert Moses and the Fall of New York*, offers a case in point.

Caro is not a lawyer, and therefore perhaps not a firm believer in the efficacy of law. He is a journalist, mesmerized by the rising and falling of New York and of that shadowy colossus, Robert Moses. As a result, he is able to expose, within his mosaic of a decaying city, not only the stork ornamenting the bathhouse of Corona Pool "wearing an expression that made him look as if he were puzzling over the physical differences in the creatures he had brought into the world,"¹ but also a paradigm of our most troubling problem, the irrational structure of our policy. Caro, the reporter, stands at the opposite pole from most legal writers and some of the political scientists. He supplies us, not with principles and definitions, but with a mass of facts of the sort that resist quantification. It is his brute description of things as they are that makes his work important to those who would impose order upon political power.

This is not to say that Caro offers no theories, for he does. He believes that the destiny of New York was shaped by Moses, and "Master Builder," striding like King Kong across the Manhattan skyline, and that Moses was shaped by a mother shaped in turn by her mother. Perhaps Caro is right in his psychology. He may also be right when he credits Robert Moses with the shaping of New York City, for it may well be that without Moses there would have been no Jones Beach, no chain of parks across Long Island, no Triborough Bridge, no Long Island Expressway. But the epic story related by Caro suggests, at the least, that the Mater Builder was not free to pursue other goals. Whether Moses deformed our greatest city, or the city deformed him, is a question perhaps beyond speculation. The

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¹ R. CARO, *THE POWER BROKER* 513 (1974) [Hereinafter referred to as CARO].

moral for us, at least, lies in the story, not in its motivations.

Caro tells the story of a man of great ability and great ambition, who desired, in some abstract sense, to do good, but even so, one virtually untouched by normal human concerns. In the telling, he creates a portrait of Moses as a sort of inverted Mephistopheles: "Einer von jener Kraft, die stets das Gute sucht und stets das Böse schafft"—"One of that force, that always does ill while seeking to do good."² The crucial point is that Robert Moses arrived in New York as a reformer, one of a band of hardy souls who hoped to create a rational system of governance for New York State. Their concerns were not with ends, but with procedures. Their style was technological, not political. And they failed.

But Moses survived to become a protege of Al Smith and a master technician in the service of political power. He was not a lawyer, but Caro calls him, with justice, "the best bill drafter in Albany."³ He was the perfect *eminence grise* for the flamboyant governor of New York. He was ambitious.

Governor Rockefeller was not the first New Yorker with an edifice complex. Moses wanted to build. At first he wanted to build parks, which were desperately needed. A rational decision maker, subjected to the constraints of administrative procedure and judicial review, might have discovered this demand. I suspect, however, that the demand was inchoate and inarticulate until Moses led the people to his parks. Supply sometimes creates demand; that fact lies behind Moses' great success and his ultimate failure. A rational decision maker who knew of the demand might have designed a system of parks that, unlike Moses', would have been available to those who needed them, the poor.⁴ Moses recognized no such constraints, but he did build the parks.

Caro's book is a study in lawless power. It is almost as monumental as its subject, its vast bulk containing something for everyone, including lovers of soap opera⁵ and admirers of Dink Stover at Yale.⁶ Each reader must carve his own thinner volume out of the mass provided by the author. The results can be exceptionally rewarding, even though Caro's style tends to be that of an interminably extended

² Cf. J. GOETHE, *FAUST* 40 (Alfred A. Knopf 1941).

³ CARO 174.

⁴ *Id.* 318, 492-93; see also *Id.* 546-47. Moses designed the access to his parks so that they would never be available to those who must depend on public transportation.

⁵ See, e.g., CARO 598.

⁶ *Id.* 38.

feature article. The real importance of *The Power Broker* lies not, however, in its style, but in the raw data it contains: the palpable stuff of the human condition, the reality of man as a political animal.

I said that Robert Moses was a failed reformer. Here is Caro's description of the change that led to Moses' success in later life:

Childs received further proof of how much Moses had changed during the latter stages of the 1922 campaign. He and several other reformers familiar with a particular aspect of state government noticed that whenever [Governor] Smith discussed it, he was making misstatements Knowing that Moses was working on Smith's campaign staff, they pointed them out to him. "We were," recalls one, "absolutely shocked at Bob's reaction. He threw back his head and laughed at us and said, 'Why, we know *that*. But it sounds a hell of a lot better this way, doesn't it?' Bob had always been so truthful. Now Bob was telling us that Smith was telling a deliberate lie—and Bob was condoning it."

. . . Bob Moses had changed from an uncompromising idealist to a man willing to deal with practical considerations; now the alteration had become more drastic. . . . [H]e had been learning the politicians' way; now he almost seemed to have joined their ranks.

More, he was openly scornful of men who hadn't, of men who still worried about the Truth when what counted was votes. He was openly scornful of reformers whose first concern was accuracy, who were willing to devote their lives to fighting for principle and who wanted to make that fight without compromise or surrender of any part of the ideals with which they had started it. Bob Moses was scornful, in short, of what he had been.⁷

That, I think, is the key to Caro's study of the rise and fall of Robert Moses. Although Moses was to rise to be the most powerful man in New York City, perhaps the most powerful in the state, he did not have the power to accomplish his original goals. There were dark and powerful forces at work in the body politic, forces which Moses could channel and perhaps intensify, but they were not forces that he could oppose and still be powerful. And the price of power was the corruption, not only of the body politic, but also of the wielder of the power.

Moses' greatest achievement was undoubtedly his first major one, the creation, almost *ex nihilo*, of a string of parks along Long Island. This achievement appears, at first glance, to be an accom-

⁷ *Id.* 134-35.

plishment which no one today could question. The parks are—even with their deliberately limited access⁸—an undoubted social good. But their cost—in a sense not calculable in economic terms—was, I submit, too high. For the parks were paid for, not primarily with money, but rather with a cynical corruption of representative government and of the law.

Once, no reformer, no idealist, had believed more sincerely than [Moses] in free and open discussion. No reformer, no idealist had argued more vigorously that legislative bills should be fully debated, and that the debates should be published so that the citizenry could be informed on the issues.

But free and open debate had not made his dreams come true. Instead, politicians had crushed them. And now he was going to make sure that . . . no one—not citizenry, not press, *not Legislature*—was going to know what was in the bills dealing with parks that the Legislature was going to pass . . .⁹

It is, of course, difficult to feel too upset at Moses pulling the wool over the eyes of the legislature of New York State or the legislative bodies of New York City. The wool was pretty dirty already and was worn by a pretty mangy bunch of wolves—or jackals. There is little evidence in *The Power Broker* that Robert Moses corrupted anyone other than himself. There is, however, plenty of evidence of corruption, and Caro documents the extent to which Moses' power rested on that corruption. In a sense, Moses' failure as a reformer was evidence that representative and responsible government did not function and could not be made to function in the milieu that was New York.

One of the pleasures of *The Power Broker* is that it deals with ancient history. Watergate and Spiro Agnew and the Knapp Commission are too immediate and actual to be easily grasped—but the fact that government does not always function under law can be clearly seen in pages of *The Power Broker*, where one meets not only the daemonic Moses but such lesser imps of the political perverse as Silent Charlie Murphy and Tammany Sachem George Washington Plunkitt, “who, as a state senator, had ridden at the head of ‘Black Horse Calvary.’”¹⁰ Here one is introduced to the nice distinction

⁸ Note 4, *supra*.

⁹ CARO 173-74 (emphasis in original).

¹⁰ CARO 713.

between “honest” and “dishonest” graft.¹¹ But here is Caro’s own description of the milieu in which Robert Moses grew to power:

New York was a city in which the police, every day, sold the law in the streets—sometimes it almost seemed as if being on the force was synonymous with being on the take—and in which sacred justice was sold in the very temples of justice (which was not too surprising, of course, since many of justice’s black-robed priests, who presided in those temples, had purchased the right to do so), in which the only law that really counted was the law of the jungle. New York was a city in which public office was, increasingly, a means to private profit.¹²

Caro also describes another, more sophisticated corruption which permeated the political reality that was the foundation for Moses’ monuments. At least Caro calls it corruption, although I am not sure that is the proper word.

In the post-La Guardia era, there was no more “Tin Box” Brigade. It was the Retainer Regiment now. Corrupt public officials who were lawyers would support or oppose a bill according to the wishes of a business firm, and later the firm would retain the official in his private capacity as an attorney, paying him a fee for “services”—legal services, of course—“rendered.” Corrupt public officials who were insurance brokers would be allowed to write a firm’s policies, and thereby to obtain the premium attached. . . .

The profit in public works in New York had long been huge; with the postwar building boom, it reached new dimensions. . . . Every large-scale public work, it sometimes seemed, had to have its arrangements, its payoffs, its deals—its “coincidences.” Until the coincidences were arranged, there would be no public work. If Board of Estimate or City Council approval was required, that approval would not be forthcoming. If implementation of announced policy by a city agency was necessary, that implementation would be endlessly delayed [I]n the City Hall . . . everything had a price. And to Get Things Done in the city, one had to pay it.¹³

So long as lawyers are allowed to function simultaneously as politicians, “coincidences” will occur, and some of these—though who can tell which?—will violate no law and will be uninfluenced by

¹¹ W. RIORDAN, *PLUNKITT OF TAMMANY HALL* 3-6 (1905).

¹² CARO 712.

¹³ *Id.* 713-14.

corrupt motives. And even if a regime forbade the wearing of both hats, lawyer's and politician's, at the same time, it still seems that a knowledge of the ropes within the government, and the rope-pullers, will be a valuable addition to the skills of a lawyer who once held political office.

Despite our pretensions that government is under law, one is likely to find lawyers under politics.

A charting of the legal fees and other emoluments that Moses distributed to lawyers during the postwar era—a year-by-year analysis of who got the fees, when they started getting them and when they stopped getting them—provides almost a year-by-year chart of the fluctuations of the political influence of certain Democratic lawyers.¹⁴

Yet Caro takes pains to make clear that there was no legal impropriety:

. . . . [N]o evidence has been found of specific fees being given for specific favors. Moses did not operate by demanding direct quid pro quo's. Rather, it was a case of being on his team or not being on his team. Politicians and office holders who consistently supported his proposals were considered "on the team"—and men who were on the team were generally also on the payroll. And the overall record is very clear. When a Mayor or a Governor turned to a man on Moses' payroll for advice, often not knowing that the man was on that payroll, the advice given was invariably the advice that Moses wanted given. When a Moses proposal was before city or state legislative body, legislators secretly on Moses' payroll, were generally the legislators pushing hardest for adoption of Moses' proposal. If Moses was purchasing influence, these men were peddling influence.¹⁵

One can call this process of exchanging favors, this creation of an infrastructure within the government, "corrupt." However, it is not necessarily illegal or improper within our governmental system—the evidence in *The Power Broker* suggests rather that it is the system. The problem that these passages—and the evidence for their truth that is scattered throughout the pages of *The Power Broker*—represents is not whether the political figures and the lawyers who aided Robert Moses were corrupt. The question, rather, is whether a political process that is inhabited by such creatures can

¹⁴ *Id.* 720.

¹⁵ *Id.* 722.

either produce a livable world or be controlled by the legal constraints that would lead to such a desideratum.¹⁶ Somehow those who would design a governmental system that behaves with decency tend to lack political power—the young reformer, Robert Moses, was a failure—while those who have the power will not and cannot redesign the political system which, as it exists, is the very source of that power—witness the older Moses.

Perhaps this view is unduly pessimistic. Structural reforms, including liberalized judicial review and the amended Freedom of Information Act,¹⁷ may supply some sort of antidote. They do not, of course, offer an ironclad guarantee that correct social decisions will be reached, but they will create a governmental environment better able to resist the daemonic forces that slither through the pages of *The Power Broker*. But notice that these structural changes have for the most part been achieved only on the federal level, while the decisions that are perhaps most important in shaping our lives are made by state and local governmental units that are less likely to be concerned with public interests than with the private good of local squires and barons.

The paying off of the already corrupt was not the whole price of Moses' public works programs. They also exacted a terrible cost in the trampling underfoot of the legal rights of individuals, in the loss of legality which they brought in their train. For example, although Moses had the power to "appropriate" the land for his parks, that power was subject to at least one condition precedent: before land could be appropriated, the appropriating body had to have money available to pay the compensation. Moses, however, appropriated lands without having the funds available. When the landowners attempted to assert their rights in court, Moses adopted "dilatatory tactics"¹⁸ until—after the fact—he acquired the moneys necessary for

¹⁶ Of course, efforts have been made to construct a model of the "log-rolling" process within legislatures in the hopes that such a process will, somehow or other, short circuit Arrow's paradox that a democratic society cannot have a consistent set of preferences. K. ARROW, *SOCIAL CHOICE AND INDIVIDUAL VALUES* (2d ed. 1963). See, e.g., J. BUCHANAN & G. TULLOCK, *THE CALCULUS OF CONSENT* (1962). But these are models of the legislative process, not of a system in which political power is treated and traded as a form of private property. There are also some analyses which consider log-rolling among governmental agencies and their clients to be a potentially satisfactory way of making social decisions. See, e.g., Ostram, *The Politics of Administration* in MADELKER, *MANAGING OUR URBAN ENVIRONMENT* 22 (2d ed. 1971), but even here the assumption is that the different agencies have social goals other than the purely private lust for personal profit or power.

¹⁷ 5 U.S.C.A. § 552 (Supp. 1, 1975).

¹⁸ CARO at 203.

the compensation and then reappropriated the lands. But the initial appropriation was clearly unauthorized. In the words of New York Court of Appeals:

The appropriation of and entry on the lands was illegal when made. So far as the individual defendants seek to justify their acts by such appropriation and entry, it must be held that they acted without warrant of law. They may therefore be restrained from further waste of the lands in question, and held liable for the damages, if any, sustained by the plaintiff by their acts in taking and withholding possession.¹⁹

The litigation dragged on. Caro suggests that the reason the victims finally received only nominal damages for the illegal seizure of their property lies in the fact that:

Moses had never stopped developing [the initially misappropriated property]—as if its acquisition were a *fait accompli* . . . [H]e had laid concrete for access roads and parking fields, set out scores of stone fireplaces and picnic tables, erected wooden bathhouses with showers and lockers and finished renovating the mansion and out-buildings, at a total cost of hundreds of thousands of dollars. During the summer . . . , it had hundreds of thousands of visitors. By the time the higher courts came to park on the question of whether the Taylor Estate was a park, it *was* a park. What was a judge to do? Tell the state to tear up the roads and tear down the buildings, to destroy what hundreds of thousands of dollars of the public's money had been spent to build? Tell the people who had visited the Taylor Estate that they could visit it no more? In theory, of course, judges should not be influenced by such considerations. But judges are human. And their susceptibility to such considerations was undoubtedly increased by Moses' willingness to attack publicly those of them who ruled against him . . . thereby letting the public know exactly who it was who was closing the park to them.²⁰

You can see, perhaps, why I believe that everyone who is concerned with law should read *The Power Broker*. There are lessons there for us: that the agents of the government can be lawless; that the resources of government can be used to grind one down; that

¹⁹ *Pachogue Land Corp. v. Long Island State Park Comm'n*, 243 N.Y. 15, 27-28. 152 N.E. 451, 454 (1926).

Unfortunately, although Caro supplies us with copious notes, he carefully avoids ever using a legal citation. He discusses the decision of the Court of Appeals in *Pachogue* at some length, but the only clue to finding the published report is the date of the decision.

²⁰ CARO 216-17.

those who pursue the public good may—in their self-righteousness—be as brutal as the most rapacious villains;²¹ that “[o]nce you sink that first stake . . . they’ll never make you pull it up.”²² Such lawlessness on the part of the government—a lawlessness that was institutionalized in Moses’ later career—was too high a price to pay even for the parks on Long Island.

But perhaps the largest price paid by the public for the parks was that from then on Moses was unstoppable—and uncontrollable. The techniques which Moses developed in accomplishing his first success could be applied with equal force to less worthwhile ends—and would be. Moses liked to say, “If the end doesn’t justify the means, what does?”²³ But often the means were such that no end could justify them and, more often than not, the only end was to employ the means. For Moses did not so much acquire power as become its slave. His power rested on his ability to accomplish things and would atrophy if he stopped building his monuments, abjured the corruption, stopped running. Ultimately, what he accomplished, what he built, was immaterial.

This is not to say that Moses was not rewarded for his slavery. But the rewards seem trivial in comparison with the destruction that he wrought. Consider the case of the Columbia Yacht Club, which Moses harried out of existence, even though “[b]y destroying the Columbia Yacht Club clubhouse, he deprived the city of a \$50,000 structure which could have been turned into a waterfront restaurant with only the most minor alterations.”²⁴ His excuse was that

its existence conflicted with the public interest, [but] those close to the affair knew differently, knew that his actions were, as the club secretary had said, “sheer spite work.” Recalls Assistant Corporation Counsel Chanler, who handled the case for Moses and drew up the final stipulation: “I spoke to Moses about it. He said they had to be evicted at once. I said, ‘Why?’ ”

“He said, ‘Because they were rude to me.’ ”²⁵

He had other petty victories. An aquarium in Battery Park offended him, so it was destroyed.²⁶ Some trees got in his way. They

²¹ *Cf.* *Drakes Bay Land Co. v. United States*, 424 F.2d 574 (Ct. Cl. 1970).

²² Robert Moses quoted in *CARO* at 218 (emphasis in original).

²³ *CARO* 218 (emphasis in original).

²⁴ *Id.* 506-07.

²⁵ *Id.* 507.

²⁶ *Id.* 678-87.

were destroyed.²⁷

Moses' willfulness and unbridled power led finally to two great disasters. For some reason, perhaps because he never learned to drive, Moses like building highways. Caro documents how as the supply of new highways increased, the demand for them increased even more, and the city strangled, though Moses built more highways, and more highways, deliberately making sure that public transportation could never be available to the growing communities on Long Island. It may be that these highways have doomed Long Island to inefficient land uses which can never be remedied. Yet in this case, at least, it seems that the demons were clearly beyond Moses' control. He did not foresee that demand would continually rise to exceed supply. The forces at work seem wholly irrational and unpredictable.

The second disaster was federally funded slum clearance projects. Moses was Chairman of the Mayor's Slum Clearance Committee as well as Construction Coordinator of New York City. Moses may have liked automobiles, but he did not like the poor. There were, however, funds available for slum clearance. Supply once again created demand. Caro's account of urban renewal in New York under Moses is reminiscent of the pacification programs in Viet Nam. It is too long to quote.²⁸ But it should be read. It is enough to make one despair of any hope for government under law. And yet, once again, one feels that Moses was merely the tool of forces more powerful than any man.

The picture that Caro draws is intended as a portrait of the Master Builder. I saw instead the panorama of our politics. Breughel painted "The Fall of Icarus" as a great seascape in which the splash-down of the falling hero is hardly noticeable. Caro has painted the same sort of scene, though the Dutch master who comes to mind is Hieronymus Bosch. If Moses had not existed, perhaps the world would be different, but one cannot feel that he was master of his fate. The paradox is that while Moses was not restrained by law, in the end he seems as much the victim of his lawlessness as any citizen whose home was ground beneath Moses' bulldozers.

The law and its practitioners are shown by Caro as the instruments of lawless power. To a law teacher, the book is frightening, but it must be read. It is a good cure for our hubris. And perhaps it has a moral. It may serve as a reminder that as lawyers our primary task

²⁷ *Id.*

²⁸ *Id.* 705-1009 *passim*.

is not to save the world, but to defend the individual victim, from the injustices inherent in any political order, whether it seeks cold-blooded efficiency or the glorification of some master builder. Our duty runs not to economic efficiency or political rationality or any other social goal, but to the disparate desires of the individuals whom we serve. It is not our job to design a rational polity. Perhaps, if we were to perform our lesser, more traditional task, we could assure that no one would be a master—or a slave. It is not our job to reform, but to check the impersonal forces that would rule men's lives.

