Landmarks Are in Trouble With the Law
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ARCHITECTURE VIEW

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Landmarks Are in Trouble With the Law

The future of the landmarks law in New York—if there is one—is going to involve the wisdom of Solomon, the moral convictions of Moses, the courage of Caesar and the flexibility of Machiavelli.

Right now it is endangered by a series of suits and threats of suits and even more, perhaps, by a set of attitudes in the city that tend to read defeat as victory and fail to differentiate between the timid maintenance of the status quo and a slow trip down the drain. There are very real problems implicit in landmarks legislation which are currently coming to an unpleasant head in New York. But this is being reinforced by a supine defeatism masquerading as reasonable compromise that is more dangerous than the legal questions themselves.

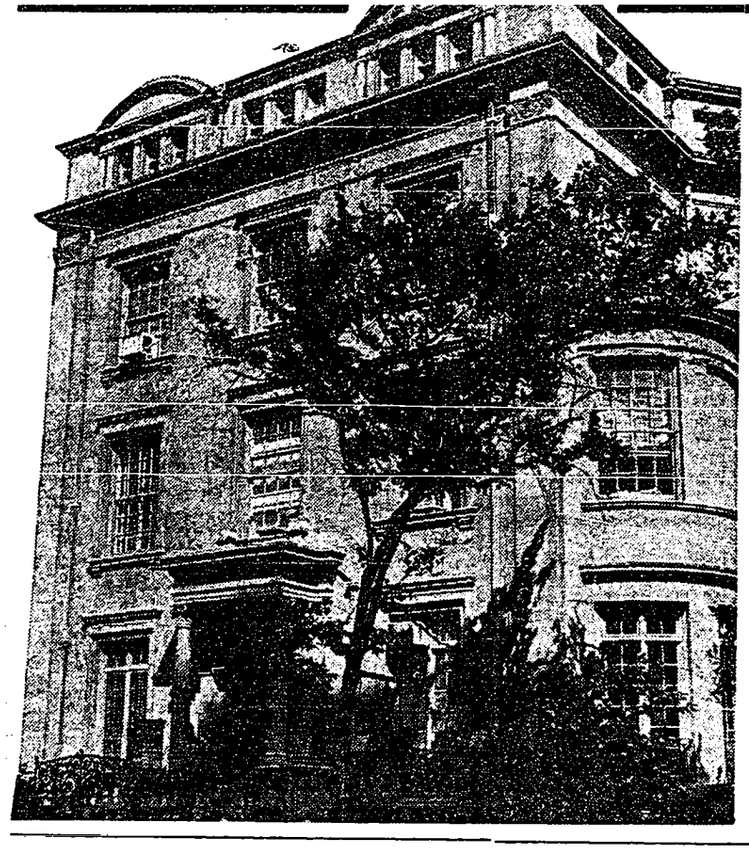
It is the nature of landmarks laws to be challenged, since they are concerned with the controversial "taking" of property by cutting down its commercial development potential. The conditions of designation must be "economically fair" to the owner. However, the principles of landmarks legislation have been upheld quite consistently in the courts as being in the public interest. New York has moved with great care, and although the city has had its share of litigation, it can point to significant victories. The Landmarks Commission has, in fact, built up a solid record of accepted and upheld designations that put the city's record, and law, on reasonably firm ground.

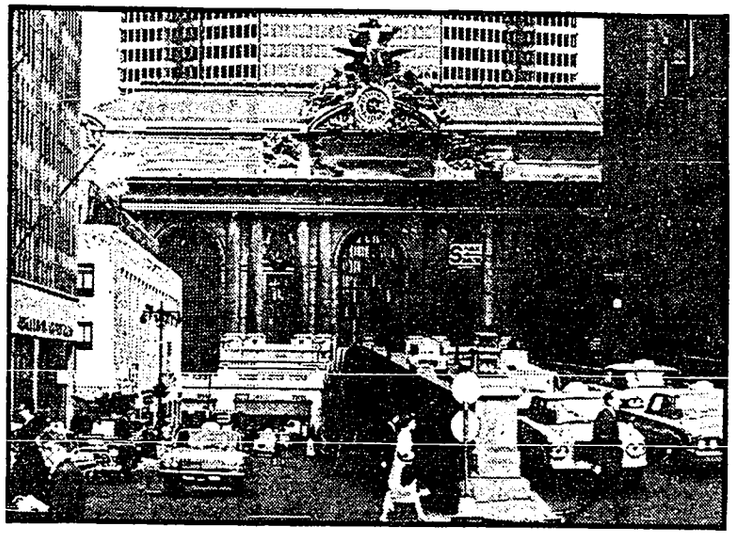
Right now, however, everything seems about to come apart. Two lawsuits, one already decided and one pending, have combined to threaten the entire structure and operation of landmarks preservation in New York.

Last summer, the New York State Court of Appeals decided against the city in the designation of the J. P. Morgan house owned by the Lutheran Church, which wanted to demolish the structure for a new office building. The decision was based on two factors. First, since the law provides for no economic relief for tax-exempt, charitable owner-institutions, as it does for commercial owners, the court decreed that designation was an uncompensated "taking."

The second factor, an opinion by the court that the architectural quality of the house was not high enough to justify landmark status, was a subjective expression of the judges' taste against the expertise of professionals. There is a serious question as to whether this aspect of the decision has any validity at all. But the combination of a genuine weakness in the law and an aggressive lack of understanding by the court has engendered a climate of fear.

At the moment, that fear can be cut with a knife, in large part because of a well-publicized pending suit to abrogate the designation of Grand Central Terminal. This one has been hanging over the city's head for five years, since the Landmarks Commission decided that an enormously unsuitable design for an office tower to be built on the air rights over the Terminal would be so visually destructive that it was an "esthetic joke." Penn Central and the developer have been seeking to have the designation overturned and to have the law declared unconstitutional. If that were not enough, they want $60 million in damages for losses incurred by the delay of the project.





New York has lost the landmark designation of the J. P. Morgan mansion (left) and is fighting to save the status of Grand Central Station.

Persistent rumor has it that the decision, which has been awaited from Supreme Court Judge Irving Saypol for an incomprehensible two years, will be unfavorable to the city; and inquiries and news leaks indicate that an odd form of negotiation is going on. The Corporation Counsel's office would apparently like to have the Landmarks Commission retract the designation before the decision actually comes down. This "settlement" would supposedly avoid the damage suit and the expense of an appeal.

One realizes, of course, that the city is broke; but one was not aware that this bankruptcy was moral as well as financial. Most lawyers like a "climate of settlement," but not at the total sacrifice of the principle of the law. For this is a matter of principle that not even the most negotiable legal conscience can avoid. A city attorney in another department, expressing the general concern, calls the proposal "improper." The obvious and necessary and only proper legal or moral course in the case of a judgment against the city is appeal.

Both the Landmarks Commission and the City Planning Commission are horrified at the prospect of such a "solution," although Landmarks is understandably running scared. The fact that the city presented evidence that other sites close to the Terminal were offered to Penn Central for development, with the city's assistance, makes it clear that ways were made available to offset the owner's loss in saving the landmark's integrity. With this kind of option, the present retreat defies comprehension. The spectacle of the city withdrawing a designation under threat is appalling; it is an act that would invalidate its own legislation and invite a flood of litigation to undo other designations. It would ultimately undo the law and everything it stands for.

In fact, the smell of uncertainty and disabling compromise is so strong right now that the promise of more suits is already wafting in on the ill-wind. The Ethical Culture Society has moved in the State Supreme Court to end its designation in order to be free to negotiate with a developer, although its building on West 64th Street is already backed by an oversize speculative structure and still more density would be a disaster. The owners of the American Radiator Building (now American Standard) are reported to be considering contesting the designation of their early skyscraper near Bryant Park. In this shaky atmosphere, the Landmarks Commission is being asked to approve a singularly unsympathetic design for a new hotel that would keep the landmark Villard Houses standing on Madison Avenue, behind St. Patrick's Cathedral. The owner of the Villard Houses, the Archdiocese of New York, simply reminds the Commission of the alternative of demolition provided by the Lutheran Church decision.

Both landmarks and zoning laws deal with environmental concerns. Except for historic districts, however, a landmark is proposed as an isolated phenomenon of history or art, while zoning is concerned with entire districts or neighborhoods conforming to an overall plan in the public interest. We know now that landmarks are as important to neighborhoods as they are to the art of architecture. But a landmark as an environmental amenity is not in the law. And a landmark as an anchor to a neighborhood is not in the law. (Which is why the Commission hesitates to hold a hearing on the Richard Morris Hunt Association Residence for the aged. It cannot be upheld as the best of Hunt's work—only as the best of the neighborhood.)

The landmarks law is therefore both incomplete in its criteria and dangerously vulnerable. This is a matter for urgent concern, but the city is demonstrating little but calculated cowardice. We cannot, through a failure of purpose and vision, afford to lose everything now.