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The Israel Gazelle Petition: using planning law to protect endangered species

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Keywords: national masterplan | endangered species | forests

Abstract

In 2008 Israel's Supreme Court revoked the decision of Israel's highest planning authority approving development of Mitspeh Neftoah, one of Jerusalem's few remaining forests. The court's decision demonstrated its concern over lack of transparency and public participation in hearings of the country’s National Planning Council. It was also a remarkable example of the use of planning law to protect an endangered species. The uniqueness of the court's judgment also lies in the identity of the petitioners. All six were neighbors from a Jerusalem suburb: five of them were homo sapiens, while the sixth was the gazella gazella, Israel's endangered gazelle. A once abundant species, today the gazelle has dwindled to approximately 3000 individuals in all of Israel. The primary threat to gazelles, as to biodiversity in general, is habitat destruction. The remaining Jerusalem gazelle population is estimated at around 50-100, the most viable remaining population being that of the Mitzpeh Neftoah forest.

The petitioners had raised a variety of arguments to persuade the court to accept their petition. In particular, they argued that since the gazelles are a legally protected endangered species, the decision to develop one of the most viable gazelle habitats in Jerusalem comprised a violation of relevant laws. Yet the court chose to base its decision exclusively on the petitioners’ argument that the National Planning Board's decision to develop Mitspeh Neftoah violated Israel's National Masterplan No. 22, for Forests and Forestation. The court decided the case in favor of the petitioners; it determined that the government had exceeded its authority by ignoring the impact of the development on the forest at issue. In its decision the court did not mention the gazelle, but it also did not demand that the gazelle be removed from the list of petitioners.

Confronting a legally protected but endangered species as a petitioner perhaps demonstrated to the High Court justices that Israel's intensive development has its price: the gazelle, an icon of Israel, who together with us has journeyed throughout the millennia as part of our shared cultural-historical heritage, can easily disappear off the face of the earth as another victim of rapacious development. The battle is not over. Foiled in its previous attempt to develop the Mitspeh Neftoah forest, the government is currently preparing an amendment to the National Masterplan for forests that would exclude Mitspeh Neftoah from its purview. And the neighborhood is preparing another petition.
The Emergence of Planning Contracts in Switzerland

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Keywords: planning contract | contract zoning | development strategies

Abstract

Switzerland is a small country, where land is scarce and must be used very sparingly. Public interest commands that plans be implemented, as they embody development strategies. With the current system, only uses of land that would contradict plans are forbidden, and landowners retain the possibility of keeping land as an investment asset. Consequently, the demand for this type of land must be satisfied elsewhere. This in turn expands urban areas, thus leading to the loss of precious farmland. To this extent, Switzerland can serve as a blueprint for other countries. Such a failed situation must be addressed by lawyers, since there is clearly a significant gap between legal goals on the one hand, and land-use reality, on the other. One solution involves associating landowners with the implementation of those goals, via contracts. This issue questions the link between planning and law, as it suggests that a new instrument should be used in land use strategies.

This said, contracts in planning law raise many questions: how can contracts comply with the legal land-use system, based on planning procedures? How can they be brought into accordance with the dynamic nature of land-use regulations? In the preceding decades, authors and courts have considered planning contracts incompatible with the major principles governing land-use law and public law, such as legality, equality, public interest etc. However, uncontrolled growth, combined with the problems resulting from the current system have recently led to increased awareness of land use issues. Indeed, recent revision of the Federal Land Use Act has opened new paths for contracts. Whereas contract zoning is well-known in the USA, for example, most European legal systems are unfamiliar with it. This contribution aims to explain why there should be a new understanding of “contract zoning” in Switzerland, and how agreements regarding land use topics can be considered lawful. Major questions include the following: while law must be the basis of state’s activity, can a landowner’s consent compensate a lack of legal basis for certain obligations? How can the use of contracts ensure respect for equality, while it offers select landowners certain privileges in lieu of public interest benefits? The use of adequate procedures, particularly in selecting the right contract partner, but also with respect to contents, the use of contracts in land-use matters may not only be lawful, but also a particularly attractive means by which local communities may achieve their legal goals.
Infill Development and Climate Adaptation in Urban Land Use Planning: Are the Recent Amendments of the German Federal Building Code appropriate?

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Keywords: urban land use planning | infill development | climate adaptation

Abstract

Infill development, i.e. the re-use of brownfields and vacant lots in urban areas, has been determining the discussion for sustainable urban development in Germany as a guiding principle for several years. It aims at preventing urban sprawl, characterized by disperse settlement structures, greenfield development and the loss of urban functions. The discussion is linked to several sociodemographic aspects and the debate on sustainable urban development. Firstly, demographic change results both in a shrinking and aging population with changing needs for housing. Secondly, Germany aims to reduce land consumption to a maximum of 30 ha per day until the year 2020. And thirdly, the concept of the “European city”, aiming at compact cities, with more efficient settlement and transport infrastructures, is being implemented.

Besides the need for urban infill, urban development is challenged by climate change, too. Measures to reduce green house gas emissions have mostly synergies with the aims of infill development, and avoiding individual transport (“city of short distances”). In contrast, climate adaptation measures require urban open spaces. Necessary green and blue infrastructure to reduce thermal load and to provide flood retention areas and areas for water discharge may conflict with more compact settlement structures. However, urban development has to consider both infill development and climate adaptation.

The legal basis for implementation is the German Federal Building Code (Bundesbaugesetzbuch, BauGB). It stipulates that infill development and climate adaptation are objectives with equal weight (cf. Sec. 1 (5) sent. 3, Sec. 1 (6) no. 7, Sec. 1a (2) and Sec. 1 (5) sent. 2, Sec. 1a (5) BauGB). The Federal Building Code provides a set of regulatory instruments for implementing these principles in the General Planning Law (regulations on urban land use planning and its implementation, especially preparatory and legal binding land use plans) and the Special Planning Law (urban regeneration and development measures to correct serious deficits in urban districts) chapters. In recent years, infill development and climate adaptation have been emphasized by three amendments of the Federal Building Code: the Act to Facilitate Planning Projects for Urban Infill Development of 21 December 2006, the Act for Promoting Climate Protection in Urban Development of 22 July 2011 and the Act to Strengthen Urban Infill Development and further Development of Urban Planning Legislation of 11 June 2013. The newly introduced instruments will be presented and evaluated from a legal perspective, discussing whether they are appropriate to combine both the objectives of infill development and of climate adaptation.
Regulating private planning initiatives: assessing the public's performance

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Keywords: public interest in planning | public-private ventures | public-private partnerships

Abstract

Urban planning is usually justified by the need to protect the public's interest in the built environment. Specifically, as the public is fundamentally unorganized and unable to protect essential values, and since the public good is continuously endangered by private interests, national planning systems were formed in order to safeguard public benefits and principles. In past decades, national governments relinquished many public responsibilities that were previously taken care of by welfare states. As municipalities have increased their public roles, they have exhibited greater decision making, financing, and entrepreneurial activity. Public-private ventures involving municipal governments and local developers have turned into substantial function development actions, and private entrepreneurs are often required to fulfill developers' obligations as part of the procedure for granting building permission. In the face of public-private ties, the need to assess the performance of planning regulations and the degree to which they safeguard public interests is reemerging.

Based on a series of private planning episodes in Jerusalem, this research develops a framework for assessing the performance of the public planning agency and examining the degree to which it protects the public. The first criterion relates to the definition of the 'good city form'; it asks: To what degree, and by which means, do public planning agencies invest in making the city attractive to private plans? And, is it done at the expense of other public interests? The second criterion examines local planning policies from the viewpoint of unintended consequences, asking: To what degree do private plans and complementary infrastructures match with an accepted planning policy? And are policy makers aware of the unintended consequences of their policies? The third criterion examines the degree to which public assets are being protected, asking: To what degree are private plans allowed to exploit public assets? And to what extent are city inhabitants excluded from public spaces by private developments? The fourth criterion looks at the operation of planning commissions, asking: Are plans being regulated by publicly accepted, clearly articulated and impartial guidelines? The fifth and final criterion engages with public representation, asking: Are city inhabitants well represented by the public planning agency, or do they require the representation of other bodies (i.e. Lawyers, NGOs) throughout the planning process? Are planning decisions concluded by city planners or do they require the involvement of judicial authorities? The five criteria are applied to the Jerusalem cases exemplifying the comprehensive assessment of public planning agencies provided by them.
Coastal Planning and Management by Local Government in NSW, Australia

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Keywords: NSW, Australia | planning | coastal management

Abstract

This paper outlines the history of coastal planning in New South Wales (NSW), Australia. It considers before and after the first planning legislation arose in 1945. Interestingly, local government authorities were slow in preparing statutory-based plans. Moreover, the idea of planning for coastal issues was beyond their scope. Councils focused on more rudimentary tasks such as parks, drainage and sewage along the coastline. This was the realm of engineers. When planners eventually entered the municipal stage, they followed the traditional British statutes. This led to a strict zoning to separate conflicting land-uses with a system largely restricted to urban areas and townships. Coastal land was regarded as minor, if anything at all.

Significant change occurred as a result of modern environmentalism in the 1960/70s. One product was the new Environmental Planning and Assessment Act (NSW) 1980, which still prevails. The notion of ‘ecologically sustainable development’ emerged later from international influence. For instance, under the 1992 Rio Earth Summit was the ‘UN Framework on Climate Change’ which promoted debate on, inter alia, coastal damage. Of course, this had no direct effect on local government. The heaviest influence came from locally visible coastal storm surges and damage to private land. With ongoing climate change, some beachside villages have exhibited need for beach reparation. This demands not only reconsidering how zoning might be improved but also improving strategic planning.

Until 2007, councils were given considerable flexibility in designing their own local statutory plans (i.e. ‘local environmental plans’ (LEPs)) and policy documents. Some coastal councils took the matter coastal planning very seriously. At the state level, a mandatory LEP template was implemented in 2007. Accordingly, the elasticity of LEPs was left behind. This not only means more attention to policy instruments but also councils working together across boundary lines. While many valuable contributions have been made by councils, they suffer from financial paucity. Yet the NSW Minister for Planning and Resources, Chris Hartcher, stated in 2012 that ‘councils will have the freedom to consider local conditions when determining future [coastal] hazards’ which will ‘[m]ake it easier for coastal landholders to install temporary works to reduce the impacts of erosion on … properties’.

Consequent to considering the above, the presentation will raise issues facing government with the benefit of an example that reached judicial examination.
Abstract

The coastal zone is subject to multiple interests and concerns relating to different types of use or exploitation, e.g. urban development, tourism, fisheries, farming, renewable energies, as well as different protection interests related to, for example, flood control, erosion, environment, biodiversity, landscape and cultural heritage. Integrated Coastal Zone Management has emerged as a tool to address - at least ideally - the need to coordinate and integrate multiple interests and concerns through horizontal (sector), vertical (government), spatial (land-sea) and instrumental integration. Law, specifically planning law, plays an important role in ICZM. Yet, ICZM might be hampered by a strong land-sea divide manifested in different regulatory regimes and different levels of government for land areas as opposed to marine areas.

In March 2013 the European Commission put forward a proposal for a marine spatial planning and integrated coastal management directive (COM(2013)133) which aims to ensure the coherent coordination of marine and coastal activities. According to the proposal, Member States must draw up maritime spatial plans as well as coastal management strategies. The proposal lays down quite basic minimum requirements for such plans and strategies reflecting the limitations in the powers of the EU, embedded in the principles of conferred powers and subsidiarity. The question is whether the proposed Directive will in fact promote the necessary legal and institutional arrangements in the Member States for ICZM.

This paper aims to explore the EU ICZM initiatives, as well as their legal limitations and implications, with a particular view to planning law. The paper will illustrate possible implications for national legislation of the proposed ICZM strategies through a short analysis of Danish coastal planning and regulation. A crucial question is whether it is at all possible for the EU to promote ICZM without adopting a more comprehensive approach that transgresses the current limitations at EU level as regards spatial planning.
Recent Changes in Land Acquisition Legislation in India: A Paradigm Shift or Old Wine in a New Bottle?

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Keywords: land acquisition | developing countries | India | public purpose | just compensation

Abstract

Most of the land in India is held in private ownership. The Constitution of India guarantees every citizen “the right to acquire, hold and dispose of [real] property”. The Constitution also allows the state to “impose reasonable restrictions on the exercise of these rights in the public interest”, but if private property is acquired then the state has to pay compensation. The specific law controlling land acquisition was, till 2012, the Land Acquisition Act of 1894.

Over the last twenty years, India has seen rapid urbanization and a significant increase in new industrial projects -- both necessitating large-scale land acquisitions. This has exposed the deficiencies of the 1894 Act. The major problems revolve around the concepts of “public purpose”, “public notice”, and “compensation”. From the year 2000 onwards, land acquisition attempts invariably resulted in acts of civil disobedience, strikes and even violence against entities (public or private) that would be controlling the acquired land. In tacit acknowledgement of the inadequacies of the 1894 Act, some government agencies (such as the Indian Railways) and states (such as the state of Bengal) pushed for agency- and state-specific legislation for land acquisition. Finally in 2012, the federal government in India enacted a new law to guide land acquisition -- the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act. Will the 2012 Act lead to efficient, equitable and controversy-free land acquisitions?

In this paper, I discuss the major problems with the 1894 Act, the changes contained in the 2012 Act and issues that still remain unresolved. I use a case study approach focusing on two recent major controversies: the state of Bengal’s attempt to acquire land for Tata Motors to setup a new car manufacturing plant, and the state of Haryana’s attempt to acquire land for large-scale residential development in Gurgaon. Using these cases, I highlight the problems of the 1894 Act and how application of the 2012 Act would or would not have avoided those problems.

The concepts of “public purpose,” “public notice,” and “compensation” are very contentious worldwide. And with the global uptick in urbanization, these debates will inevitably and frequently arise in many developing countries over the next several years. The findings of this paper can help inform those debates.
Procedural Justice and the Decision Making Process: Property Rights and Planning in Arab Townships in Israel

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Keywords: procedural justice | public participation | minority and indigenous rights | Arab Palestinians in Israel

Abstract

Decision makers and planners in the spatial planning system are confronted by new practices suggested by public participation methodologies based on theories of justice. These new practices require changes in the approaches on which they previously relied. Such approaches should be comprehensive and aim to suggest integrated solutions to critical issues. These solutions should provide appropriate and equitable decisions, especially for indigenous and disadvantaged groups like the Palestinian Arabs in Israel. Arabs in Israel comprise 20% of the State’s total population. As indigenous people, they are landowners of most of the land belonging to Arab localities. However, as a minority group, they suffer from low socio-economic status.

The research focuses on two levels: (1) the collective property and participation rights in decision making; and (2) the social-cultural characteristics of Arab society. These two levels, in addition to procedural justice principles, were the criteria for examining public participation of Arabs in the planning decision-making process. Among the various forms of justice, this study focused on procedural justice.

The research objective was to examine whether public participation in planning promotes procedural justice in the Arab sector. This includes examining whether planning takes into consideration the unique spatial characteristics and the land rights of Arabs as an indigenous and disadvantaged minority. The examination will focus on the implementation of the procedural justice rules, both the general and the contextual, as well as public participation procedures. The research was implemented in two tracks: (1) examination of the public participation procedures in decision making before the discussion of the local Master Plans in the district planning committee; (2) examination of the decision-making procedure within the district planning committee.

This research will significantly contribute to the field in various ways:

1. It suggests a further development to the procedural justice theory. This development will be in two tracks: (1) Inclusion of the local context that contains the local, cultural, social, and political characteristics; and (2) Adding basic human rights to the theoretical debate.
2. The suggestion of an updated framework to the procedural justice rules.
3. Implementation of the procedural justice rules in public participation in Arab planning.
Public Land Ownership and Value Capture: Not What You Had in Mind

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Keywords: developer agreements | property rights | value capture

Abstract

Israel is one of the few countries among the advanced economies, where most of the land is owned by the state. At the same time, there is also public land, especially in some city centers. The division is due more to historic circumstances than to policy decisions. All types of urban and rural land uses are located on state land, with a mix not too different from the areas with private land. So the Israeli case enables comparison of development patterns and public policies between state and private land in similar situations.

In theory, this method has advantages, both for planning controls and the supply of public services: the state can determine the location, timing, and type of development. In theory too, public land ownership should be the ultimate method for capturing land value increments for the benefit of the public purse and public services.

A study we conducted found that there are extreme differences between cities located on state-owned lands and those mostly on private land. This difference is not what one might think: Municipalities fare worse if they are burdened with state land.

Israeli planning law is one of the few examples in the world where a direct value capture (betterment) levy is in extensive operation, and at a hefty rate. A 50% betterment levy applies whenever planning authorities amend a statutory plan (zoning) or grant a variance or exception. All developers or landowners (including those holding already-developed land on public leaseholds) must pay the levy. However, the state pays only one third of the regular levy. Since municipalities are expected to provide municipal level services, a large financial gap is created. Paradoxically, in locations where the state is interested in development, municipalities find it harder to supply the full range and quality of public services. They are forced to resort to either using various ad hoc negotiation tactics with the state, or obtaining funds from other sources. More ironically, some municipalities which retain planning control powers, resort to agreements with developers who have won a tender – a practice that the state does not endorse, and has done its best to root out.

For years the state has turned a blind eye to such agreements, which are not anchored in law in Israel. Until 2011, the courts too were lenient, however, in that year, a High Court ruling closed the door to developer agreements.

Based on a combination of legal and empirical research, the proposed paper has six parts:

1) The specific Israeli land regime and how it relates to urban development compared with private land;
2) The findings of a statistical analysis of municipalities, correlating extent of state-owned land and socio-economic ranking of the town;
3) The concept of direct value capture and how the betterment levy operates in Israel on private and public land;
4) The issue of developer obligations or agreements in law and general practice;
5) The findings of an opinion survey of municipal planners in cities with extensive state land, on whether and how they resort to developer agreements;
6) Conclusions about what can be learned from the unique Israeli case.
English Local Government as a Common Law Institution: Some Consequences for Planning

Philip Booth, University of Sheffield

Keywords: common law | local government

Abstract

A founding myth of local government in England is its ancient origins and its rootedness in local community. Certainly the structures of local government are ancient and were not created by statute. For centuries, the clear distinction between legal, administrative and ecclesiastical processes of the modern world did not exist: local government operated as part of a system of common law that was developed over the course of the middle ages. On the other hand, the courts of common law established that local government had no power to act without the specific approval of parliament, in the form of local – and later public – statutes. The system therefore presents a paradox: on the one hand, locally autonomous, sometimes idealised as a form of participative democracy, and on the other, entirely dependent on the will of parliament.

The impact of that system on modern public administration at the local level has been profound and in particular set the relationship between central government and the local state.

• As the country became increasingly urban and industrial, municipalities sought powers to take control of their local areas, including what might be called proto-planning powers for street improvement, paving and lighting

• Parliament found itself increasingly drawn into creating general public acts to increase the efficiency of parliamentary process, first through the model clauses acts and then through legislation that imposed obligations on all local authorities

• Parliament whose representation was largely drawn from a landed elite that also controlled local government was also mindful of the need to allow freedom to local decision makers and much public law was drafted specifically to allow flexibility

• As a result central government became more and more involved in advising, and later directing, local government on how the legal powers should be exercised.

The impact on planning has been to create considerable tension between local control and central domination.

• Local planning authorities have been accorded explicit discretion by statute, but that discretion is constrained by the doctrines of common law;

• The doctrine of policy, as distinct from legal rules, becomes a major lever in decision making;

• Government involvement in planning at the local level has been largely by directive contained in ministerial circulars and advice notes, and currently in the National Planning Policy Framework;

• At the same time successive governments have tried to bolster local community involvement, most recently in the Localism Act and the introduction of neighbourhood plans to be prepared by local community forums.
Property Rights and the Judicial Role

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Keywords: Canada | judiciary | property rights | regulatory takings

Abstract

Canadian jurisprudence regarding regulatory takings is confused and confusing. It is confused, because recent caselaw conflates regulatory takings and actual expropriation, and because older caselaw is ambiguous as to whether the law protects against regulatory takings at all. It is confusing, because it has inspired recent legal scholarship to posit three alternative states of the Canadian common law of regulatory takings: (1) protection against uncompensated regulatory takings never existed; (2) they once existed, but were judicially extinguished in 2007; (3) they still exist, but only where a judicially undefined “benefit” accrues to the taker. Such an uncertain state of the most basic element of law – going to a fundamental right and to the legal relationship between its holders and the state – is, I take as a given, normatively unacceptable.

At stake is not only clarity in the law and the legal relationship between governor and governed; this discussion also implicates the very notion of a right, which is an inherently proprietary notion. The common law is premised upon an understanding of rights which conceives them as having as their subject our own resources, which we use to make our chosen way through life. HLA Hart took this point about the centrality of property to the common law’s notion of rights even further, observing that any private legal right is itself “a species of normative property belonging to the right holder”.

In a state that observes the rule of law, the enforcement of rights is entrusted (at least primarily) to the judiciary. The judiciary therefore has a salutary role to play in resolving confusion about rights, including rights against regulatory takings – including whether such rights even exist. This poses unusual challenges for the judiciary in Canada, whose 1982 constitutional document did not include property protections. While that did not leave Canadian constitutional law mute on the subject of property rights, the creation and formalization of a new order of rights in 1982 (which omitted property rights, including the right to compensation for takings) appears to have relegated property rights to secondary importance.
What Moves a Judge to Declare a Local Land Use Action Arbitrary?

Peter Buchsbaum

Keywords: judiciary review | arbitrariness | municipal decisions

Abstract

The decentralization of land use decisions in the United States gives state court judges an usual level of influence over the review of local planning and zoning decisions. Municipal legislative bodies large set land set policies which are usually reviewed under state laws by state courts. Local administrative bodies hold hearings and decide up on specific applications for development. Here too, state courts, rather than federal courts have the primary responsibility for passing on the legality of local actions in most of the 50 states.

In this paper, based on work previously published in several legal/planning journals, an experienced state court trial judge who previous had a career as a land use attorney, explores the nature of state court review. When is a judge likely to find local action to be arbitrary and capricious and hence unlawful?

The paper finds a framework in the great jurisprudential writings of Justices Oliver Wendell Holmes and Benjamin Nathan Cardozo who pioneered legal realism in the United states. As Holmes wrote in 1881, the life of the law has been experience and not logic. This observation applies particularly to land use cases which must evaluate an ever changing constellation of social and economic factors. Legal syllogisms rarely determine the outcome of judicial review of land use decisions. As Cardozo noted 40 years later, the method of social utility rather than logic, custom or history provide a better guide to what judges actually do. It therefore behooves attorneys and planners to stress facts and policy considerations when arguing whether a local decision in arbitrary or to the contrary is proper.

In attempting to provide insight into what moves a judge either to declare a local action arbitrary or not, the author provides some specific examples from his own experience. These examples are however placed in and derive from the broader jurisprudential context and do not represent simply ad hoc or gut reactions to particular cases.
Flexibility versus legal certainty in land use planning: the case of urban development projects in Amsterdam North and Utrecht Central

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Keywords: flexibility | legal certainty | area development

Abstract

Modern day urban development requires a flexible approach, especially in times of crisis. This approach is new to Dutch authorities, who have to transfer from a system where they held a tight reign over development processes to one where they set conditions for development by other parties. The law on the other hand tends to attach great value to certainty. This paper investigates the tension between these two requirements in two Dutch cases: the redevelopment of the station area in Utrecht, and the transformation of the Buiksloterham area in Amsterdam. These cases show that flexibility is hard to come by: even if the national legislator intends to award local authorities ample flexibility by enacting contextualizable rules, the courts’ adherence to legal certainty and local authorities’ own desire for clear, easily applicable norms will quickly limit the discretion available to them when drafting their plans.

In Utrecht, the realization of the complete project would take approximately 25 years. To create the flexibility required for a project that would be realized over such a time span, the municipality intended to adopt a global zoning plan, as made possible in the Spatial Planning Act. Case law from the highest administrative court, the Council of State, made this impossible. The solution found by the municipality was to adopt tiny zoning plans for small parts of the area for one project at a time. Even though this approach leaves the municipality with much more control over the developments than the global zoning plan would, several fractions in the municipal council still complain about the council’s lack of control over the development.

In Amsterdam, the municipal planners tried to use the full discretion to draft a land use plan that could provide the stable framework for flexible development of the next ten years and more so that this industrial area could gradually transform into a mixed-use urban area. Similar to the Utrecht case, the instrument of a global zoning plan is easier said than done and it is questionable how global the plan still is after all concerns have been taken on board. The Spatial Planning Act is still based on a tradition that the future can be predicted. The procedural attitude of the Dutch administrative courts as well as the hesitating attitude of planners and project managers, makes it extremely difficult to accommodate flexibility in spatial plans.
Illegal building policies in Mediterranean Countries: Comparative analysis of Greece, Israel and Spain

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Key words: Greece | Israel | Spain | illegal building | enforcement

Abstract

This paper comprises a comparative overview of policies about illegal building in three Mediterranean Countries: Greece, Israel and Spain. It reviews the legal and institutional framework of the three countries, and stresses the practical consequences of their policies in the planning system, and of property rights. To understand the policies about illegal building in these countries, several interviews were held with officials from municipalities, lawyers and academics.

These three Mediterranean countries were chosen because they present different kinds of policies in dealing with illegal building – Greece has recently created “regularization, that is, a specific legal framework and registry procedures for illegal buildings. Israel does not have a special legal framework, and the only way to legalize illegal building is through conventional building permits; and Spain, via jurisprudence, has opened the possibility for illegal building by using the legal framework of "fuera de ordenación", created by the planning system for a different purpose.

Each country’s policy on illegal building is analysed, where appropriate, under the following topics: (1) Portrait of National Illegal Building, (2) Legal framework for illegal buildings, (3) Institutions, (4) Permitting and enforcement, (5) Consequences of illegal building under the planning system, (6) Enforcement tools and (7) Real estate based measures.

The conclusion identifies both similarities and variations of the countries’ laws, policies and institutions, allowing a perspective of how three different Mediterranean countries deal with the common problem of illegal building.
Communities' Rights to Initiate a Plan: Israel and the UK

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Keywords: communities rights | public participation

Abstract
Worldwide there is a growth in requests to participate in the planning process. There is an increase of people who want to be involved in development decisions that affect them. However in practice, communities often find it hard to influence decisions and have a meaningful say (Innes and Booher 2004, 2010, 3-4). Public participation is very often limited to accessible information and ad hoc processes, while the power to plan lies with the planning bodies.

In Israel, until 1995, only planning committees had the authority to initiate a plan, and land owners had limited rights to initiate detailed plans. Amendment 43 enacted in 1995 added the right of whoever had an interest in the land to submit a plan. This vague definition opened a debate about who should have the right to initiate a plan: land owners, in the first instance, or perhaps this was an opportunity for communities to get involved and initiate plans for their neighborhoods. In 2002 the Israeli court gave its approval to an agreement between the planning committee and Ein Carem local community in Jerusalem, giving the community the right to submit a plan for their neighborhood.

The UK government moved forward introducing the right of neighborhoods to plan through the Localism act 2011, which came into effect in April 2012. Neighborhood planning gives communities the power to make a development plan and to decide what they want their neighborhood to look like, where new homes and offices should be built and what they should look like. In practice, an increasing number of communities in the UK have taken up the right to produce a plan. By August 2013, 3 plans have successfully been brought into force by the local planning authority (https://www.gov.uk).

In this paper I will compare the right to initiate a plan in the UK and Israel, discussing the following themes: who has the right to initiate a plan? The role of the planning bodies; and how it is implemented in practice.
Incorporation of Best Management Practices into Hydraulic Fracturing Regulations

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Keywords: hydraulic fracturing | best management practices | state regulation

Abstract

In the United States, hydraulic fracturing (fracking) is fueling a tremendous boom in natural gas production. Hydraulic fracturing extracts natural gas from previously unreached reserves by utilizing pressurized liquids to fracture shales containing natural gas deposits. Supporters of fracking tout lower energy prices, new jobs, and increased energy independence as direct benefits. Yet fracking has many detractors as critics claim that the process can release substances that harm the environment and humans. In response to these concerns, states with significant fracking activity have developed legislation to introduce rules into an industry lacking a uniform governing body of standards. However, state laws and accompanying regulations are not doing enough to protect human health, the environment, and property rights of those proximate to fracking operations. To be truly effective, state legislation needs to facilitate the development of a cohesive list of best management practices (BMPs) that proactively minimizes egregious activities accompanying fracturing.

Federal water pollution regulations depend on BMPs to help control discharges of water pollutants. In a similar manner, BMPs for fracking activities could assist governments in proscribing practices and activities that release too many pollutants. Through a framework of regulations designed to ensure adequate safety conditions for surrounding populations and properties, BMPs would help fracking companies structure their activities to minimize externalities. This paper analyzes proposed and existing BMPs for the hydraulic fracturing industry and the degree to which current state laws and regulations incorporate these practices. State rules will be evaluated against the list of BMPs to understand the efficacy of existing regulations. Drawing on proposed standards from local governments, nongovernmental organizations, and interested stakeholders, recommendations will be developed for employing BMPs to maintain the integrity of local environments. The paper will recommend inclusion of effective BMPs in future state regulations to ensure compliance and protect the environment. As hydraulic fracturing becomes increasingly utilized in other parts of the world, the recommendations will assist governments in reducing damages that can accompany unregulated petroleum-drilling activities.
Does Urban Regeneration Benefit Everyone? A Study of the Urban Renewal Project Surrounding Areas in Taiwan and its Impact on Quality of Life and Potential Property Right Violations

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Keywords: urban regeneration | living quality

Abstract

Urban regeneration has widely been practiced as an effective tool for revitalizing decadent urban areas to ensure overall living quality in Taiwan since the late 1990s. One of the major incentives is the floor area bonus policy. By 2012, 324 urban renewal projects had been approved in Taiwan, and nearly 85% of the projects were located in the Taipei metropolitan area. Among those projects, approximately 30% extra floor area spaces were obtained. According to the Urban Renewal Act 1998, for those "designated urban renewal areas", the floor area bonus may go up to 150% of original zoning plan. Thus, increasing concerns have been raised regarding the potential consequences of overload carrying capacity resulted from floor area incentives. (Lee, 2007) However, past research mostly focuses oneither issues among stakeholders "within" urban renewal areas, or on the positive benefit generated by urban renewal projects. Citizens who reside outside the boundary of urban renewal areas were rarely concerned.

Due to the fact that after redevelopment, the overall urban texture and spatial context will be changed fundamentally, the scope of influence will definitely be extended to surrounding areas beyond the urban renewal areas. In fact, there are increasing complaints about the negative impacts of urban renewal projects from the residents in surrounding areas, such as deteriorating traffic, sky view and sunlight. It confirms that the property rights of surrounding areas could be violated with the completion of urban renewal projects. We further reviewed current urban renewal regulations in Taiwan, and identified the fact that rights of residents living outside the urban renewal areas are ignored by the current regulations, a situation which contradicts the core concept of urban renewal to improve public interests. Accordingly, the possible negative impacts for residents outside urban renewal areas will not be taken into account during the official review process unless complaints were specifically filed.

In this study, we first explore the possible negative impacts of urban renewal project surrounding areas by conducting questionnaires from quality of life and residence satisfaction perspectives. Three completed urban renewal cases in Taipei city have been selected. Through in-depth interviews with planners and residents in the surrounding areas, this paper posits that residents in the surrounding area of urban renewal areas should be involved as stakeholders legally and urban renewal regulations should response to the possible impacts.
Bribery in the Planning Domain: Towards an Effective Planning Theory

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Keywords: corruption | land-use planning | rules

Abstract

This contribution deals with the issue of corruption in the land-use planning domain. Corruption is an endemic feature of governments and public authorities at all levels, in many countries (it occurs not only in countries traditionally considered to be more corrupted, such as Italy, Greece or countries in the Global South, but also in France and the United States, for instance). According to some estimates, a significant amount of corruption is related to the land use planning domain. In 2010, according to Transparency International, 20% of the worldwide corruption was associated with land use services, and 17% with registry and permit services. With extremely rare exceptions, planning theory has never dealt with this issue. It could be assumed from this, that even if corruption is a relevant factor in the field of planning, it has no relationship to the characteristics of a certain planning system; therefore, there is no reason to study it from the point of view of planning theory. However, we argue that a precise causal nexus exists between the spread of corruption and the characteristics of a certain planning system. Corruption does not concern only the domain of virtue ethics (i.e. individual ethics); it also concerns the domain of “ethics of the rules”. The level of corruption is a function of the honesty and integrity of both public officials and private individuals; however, holding such factors constant is a function of the (substantive and procedural) characteristics of the rules and institutions.

After having described the different forms of corruption in the planning domain, this study analyses the determinants of corruption in the land use planning field: the existence of a discretionary power, which can allocate resources in a discretionary manner; the existence of relevant economic rents associated with this discretionary power; the relative bargaining power of the briber and bribe; and the riskiness of corrupt deals. It illustrates what principles lead to less corruptible planning, and what technical tools can be utilized to reduce the incentives of corruption – in particular, the transfer of development rights and the use of an identical building index for all areas involved in a plan are analysed.

The authors’ idea is that planning theory can provide a relevant contribution to the fight against corruption, so it is necessary that the issue of corruption became a central topic when we assess the strengths and weaknesses of a planning system. It should be at least as important as other topics (e.g. sustainability, equity and participation), which are considered, nowadays, to be unavoidable.
The Moral Hazard Problem of Development in Vulnerable Coastal and Flood Plain Areas

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Keywords: moral hazard  |  flood plain management  |  Insurance  |  land use planning

Abstract

People are drawn to water, but intense urban development in coastal areas and flood plains is a major social problem. Global climate scenarios predict rising sea levels and more intense storms. It is still difficult to derive relatively firm projects from existing models, and the issue is especially complicated in the closed Mediterranean Sea. Nonetheless, there is a relatively firm consensus that intense development in vulnerable areas should be discouraged and that new development in these areas should reflect advances in building technology to minimize the adverse impacts of sea level rise and intense storms. Governments find it difficult to implement these recommendations for many reasons. One of the primary reasons is moral hazard behavior. Moral hazard behavior occurs when people undertake risky activities knowing the adverse consequences will be minimal. This is an acute problem in coastal and flood plain areas in the United States because of the Federal Flood Insurance program and the long tradition of providing engineering solutions which offer the false hope that structural barriers can prevent all flood or sea-level rise damage. Until recently, subsidized flood insurance has been available to property owners in vulnerable areas. Flood insurance was supposed to encourage local governments to deflect development of vulnerable areas, but it often allowed development in these areas. The combination of structural protection and insurance provided little incentives for communities to consider risk-based policies as the European Union's Floods Directive requires. In 2012, Congress revised the program to require actuarial rates for properties in highly vulnerable areas. The hope is that this approach will deter moral hazard behavior and encourage local communities to develop new risk-based development strategies for coastal areas and flood plains. This paper will test this assumption by examining selected local government responses to floods, intense storms and projected sea level rise.
Cores and Floors: Human Dignity and Private Property

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Keywords: human dignity | private property | land use rights

Abstract

Human dignity is closely connected to rights (Feinberg 1970). This connection is particularly puzzling with regard to human dignity and private property. Consider the following case: In 2008, the United Kingdom nationalized Northern Rock, a bank and mortgage lender owning about GBP 24 billion as a result of bailout measures financed by the Bank of England. In an application to the European Court of Human Rights, the shareholders claimed that the government had breached its obligations under Article 1 of Protocol No. 1 by nationalizing Northern Rock without paying adequate compensation. The court asserted that compensation can help restore a fair balance between the interests of a bank’s private owners and the public interest in protecting the financial sector in the United Kingdom. The court declared the application inadmissible, however, because the government needed to avoid moral hazard: Other banks should not think that the UK would reward them for their financial blunders (European Court of Human Rights, 10 July 2012, Grainger et al. v. UK, para. 42).

The financial crisis surely has changed the way many people think about economic liberty, private property, or the invisible hand of the markets. This change often remains superficial, however. How else is it possible that the European Court of Human Rights seriously considers whether one of the major players in the collapse of the mortgage market can rely on its human right to property? Is the human right to private property not supposed to protect and promote human dignity with a view to the economic safety and liberty of individual persons?

The answers to such questions can be found in the roots of the human right to private property (Jacobs 2013). Locke has asserted that natural persons have a right in their body and may appropriate land and other natural resources. This right to acquire private property would be limited to what a man needs because it would be »useless as well as dishonest to carve himself too much, or take more than he needed« (Locke 1698 II § 51). The core of private property is defined by human dignity and existential needs: »Men, being once born, have a right to their Preservation, and consequently Meat and Drink, and such other things as Nature affords for their Subsistence« (Locke 1698 II § 25). Regarding a government’s obligations towards private property, this core not only defines a limit to government restrictions on private property. It also tells the government how much property every person needs to be able to enjoy an adequate standard of living (Article 11, para. 1, ICESCR). The paper will discuss the relationship between human dignity and the core and floor of private property with regard to planning and the uses of public and private spaces.
The Role of Land Use and Occupation in Adapting For Climate Change in the City Of Sao Paulo, Brazil: Creation of Risk Scenarios and Perspectives

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Keywords: climate change adaptation | urban law | City of Sao Paulo

Abstract

The history of urban development in Sao Paulo is not only a history of land use and development, but also a history of water. Along five centuries, with different impacts, the 300 water bodies in the city have threatened its citizens and guided urban policies in a way that they – except from the two main rivers, Pinheiros and Tietê – are now canalized (and invisible) in the underground, with people living on the surface.

With climate change and changes in rainfall patterns, which is bringing more intense and more frequent rainfall episodes, the true nature of the City is becoming visible to all: every year, between November and March, the chaos is established. Both the poor and richer areas are affected. The periphery, home to 40% of Sao Paulo's population, is usually characterized by the risk of landslides. In the centre, the risk is severe flooding, which may not characterize a disaster, but is indeed a case for adaptation.

As stated above, these risk scenarios are not only due to climate change; it is indeed part of the history of planning decisions for the city. In this sense, this presentation aims to introduce aspects of land use, development and occupation in the city of Sao Paulo under the climate change adaptation scope, having as a basis: (i) historical moments in planning decisions; (ii) changes in climate patterns with the current perspectives for a changing climate; (iii) the Brazilian Urban Law system; (iv) the Municipal Law for Climate Change, passed in 2009, specifically on its chapter for land use and occupation. With these pillars, it is intended to contribute to the debate of how different cities are prioritizing and planning for climate change, as a step for further analyses on the intersection of urban law and climate change plans for cities.
Governance and Environmental Law: It Takes Two to Tango

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Keywords: governance | environmental law | contextualisation

Abstract

Society in general, and territorial structures in particular, are becoming increasingly complex. As a result, network governance is often put forward as a steering philosophy that is capable of guiding urban development better than traditional government centred planning. In this paper, governance is associated with the emergence of new area and place specific arrangements, that are characterised by less regulation and hierarchical steering, and more cooperation. The literature suggests that such governance is better equipped in dealing with and integrating multiform interests and providing tailored solutions (Ostrom, 1990). In addition, network governance contributes to increasing public support (Edelenbos, 2005), to creative 'problem solving' and to the integration of local contextualised knowledge in decision-making procedures as opposed to generalised expert knowledge (Fischer, 2000).

As a steering philosophy network governance – characteristics: horizontal relationships between actors, joint framing and storytelling, negotiative and accepting uncertainty – clearly is different than legal discourse, which is overwhelmingly hierarchical, instrumental as well as prescriptive and aiming at providing legal certainty. This paper addresses the tensions that emerge in urban development processes when a network governance approach is confronted with European and national environmental regulations. The following questions will be addressed: 1) how do actors form negotiative networks? 2) how do they arrive at joint area and place specific territorial strategies? 3) how do they seek to safeguard public environmental standards? 4) how do they work with and around existing environmental regulations, and to what extent do these regulations block innovative approaches which ultimately seek to safeguard basic environmental norms in a more contextualised than generic way? Evidence is derived from seven in depth case studies of urban development in the Netherlands, France and England, which explore the tension between network governance and environmental law (see: http://context.verdus.nl/pagina.asp?id=1413 )
Multi-level Governance and the Contextualisation of Legal and Policy Norms: Amsterdam IJburg and Haarlemmermeer Westflank, the Netherlands.

Sebastian Dembski, University of Amsterdam, Erik Louw, Delft University of Technology, Bas Waterhout, Delft University of Technology

Keywords: planning and environmental law | large-scale urban extensions | multi-level governance

Abstract

In the Netherlands, national planning played a very important role for local development for a long time. Currently this is questioned. Yet Government can play a very important coordinating role with respect to projects of national importance by helping to contextualise the vast body of national legislation and policies with local needs. In this paper we look at two cases of large urban extension in the Amsterdam metropolitan area in relation to environmental legislation. In both cases multi-level governance played a crucial role in the coordination of the projects. While IJburg originated from the Fourth Memorandum on Spatial Planning of the late 1980s, the Westflank finds its origins in the aftermath of the Fifth Memorandum on Spatial Planning, about one decade later. Amsterdam IJburg is a new urban neighbourhood, which in its final stage, will consist of 18,000 houses. It is constructed on several artificial islands in the IJmeer to the east of Amsterdam. The planning of IJburg interfered with new national policies for an ecological network and the European Birds and Habitat Directives. The integrative development of the Westflank trying to realise a sustainable urban development project addressing housing, water management, green infrastructure and mobility issues encountered restrictions related to Schiphol airport, landscape protection and national energy infrastructure. The cases show that it is not necessarily legislation and policies as such that hamper development, but the interplay between national and local governments as well as the coordination between and even within government ministries. The paper will reflect on the potential role of national government in providing mechanisms to facilitate urban development projects at the local level.
Agricultural Activities Versus Urban Planning: Can the Two Cohabit?

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Keywords: agriculture | landuse | planning

Abstract

Israel is a world leader in agricultural technology, particularly in farming in arid conditions. Israeli agriculture thus relies on an “induced”, rather than “natural”, comparative advantage, one built on knowledge and technological progress (OECD).

The influential role of agriculture on Israel’s national economy, although small (1.5% of the GNP), is impressive. As a sector which operates in the peripheral areas, protects the natural environment, landscape and land, it also acts as a lever for other economic branches. Israel’s agriculture is unique amongst developed countries in that nearly all land and water resources are state-owned and that agricultural production is dominated by co-operative communities.

Despite this unique land regime, Israel today is also very much a country where the ethos of private property dominates both legally and politically. Indeed, in the land that is leased out in urban areas, a “creeping privatization” has occurred over the years (Alterman, 1999). A land reform bill that was passed in 2009 will gradually turn these rights in the urban areas into de jure private property. But those who hold national land for agricultural purposes - including residential and industrial areas in the rural sector- have dramatically less rights than their urban counterparts. They are largely kept out of the reform process. There is a longstanding social and legal dispute regarding the rights that should be given to the lessees of the rural sector.

Israel is also a country with a very centralized planning system. Statutory land-use plans are attempts at both setting long-term planning policy and defining planning rights. The country is characterized by the strong influence of top-down land use policy whereby planning principles and policies are formulated at the national level and issued as laws and directives for implementation at the local level. In this way, Israel can be grouped with other countries that share a relatively high degree of national-level strategic planning. Chief among these planning tools was Israel’s 1965 Planning and Building Law, which established agricultural land preservation as a national objective and instructed planning authorities to integrate it into their review of all plans (Alterman, 1997; Hananel, 2010). National legislators also established the Committee for the Protection of Agricultural Land and Open Spaces, whose powers were equal to and beyond those of the National Planning Board, Israel’s highest planning body.

All in all, the combination of state-owned land and strict planning regime, both aiming at controlling and even preventing the development of "non-agricultural enterprises" on farm land, create some surprising limitations on Israeli farm life: one such example is a set of Israel Land Authority (ILA – the body that manages and controls the state owned lands) regulation as well as planning bodies and court decisions trying to define what consists as "agricultural" use of farm land and what is not, regarding the growing and keeping of animals such as horses and dogs. In this paper I will try to show that trying to define such a narrow and distinctive line may prove a bit ridiculous and carry with it some unreasonable consequences.
How the South African courts’ concept of Property Rights Stand in the Way of Sustainable Development

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Keywords: sustainable development | property rights

Abstract

A modern view of property sees property from a rights perspective, instead of from a duty perspective. Property is often described as a bundle of rights, which rights may be restricted or regulated (in some instances even taken away) by the state. The duties of holders of property rights are often neglected or left only for discussions on neighbour law, where the rights of the neighbouring owners clash. Other than that, we regard the law of property as the area of law that sets out what an owner’s rights are to her property, the boundaries of ownership and the remedies an owner has in case her rights are infringed upon.

While the right to exclude is often regarded as the most important aspect of private property, this right is not absolute. It may be, and almost always is, limited. The South African Constitution provides for the protection of property in the Bill of Rights, by safeguarding owners against arbitrary deprivation of their property as well as expropriation lacking a public purpose or without compensation. When interpreting the property clause, both the protection of property interests and the legitimacy of state interference must be weighed against each other within the (transformative) framework provided by constitutional principles and values. Alongside of property, the Constitution provides for the protection of the environment.

A definition or understanding of property as individual entitlement is problematic from an ecological perspective, since the interconnectedness between land and the ecosystem, or the ecological whole, cannot prosper on individual notions of ownership. Instead, holders of property rights need to understand how they fit into the ecological whole and realise their collective responsibilities. This raises the problem of how property laws must be developed or understood to, on the one hand protect property rights, but on the other hand to not do so at the cost of ecological integrity.

This paper will look at the ways in which the South African courts interpreted property rights in an ecological context, and whether there are more eco-friendly ways of understanding property rights.
Planning Agreements: A cross-national study and evaluation

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Keywords: agreements | planning | privatization

Abstract
The public sector always looks for resources and funding for purchasing land, constructing public buildings and operating public services. The literature reveals that agreements made between local governments and private developers, in different countries, are commonly used as a tool for obtaining public services. This phenomenon is worth noting because while legal and planning systems differ from one country to another, agreements exist, to a greater or lesser extent, in many countries. "Agreements" are any settlement made between a private entity and a public institution, during planning assessment.

The research starts off from a review of trends of privatization and the changing roles of government and the public sector. Development agreements can fall within the definition of privatization tools, and as such, raise some related legal, social and economic issues. This research draws on theoretical and general literature and criteria of privatization to evaluate the different legal arrangements for negotiating and signing planning agreements in selected countries.

This research presents a current view of the use of agreements in planning law and practice in three countries: England, New South Wales in Australia, and Israel.

In the three countries, we looked at the legislation, court decisions, and available information on agreements made in practice over time (surveying protocols of planning decisions and contracts posted on the web). In addition, we asked, to what extent do municipalities enunciate and publish policy documents to guide their practices.

The main findings are that local municipalities in the three countries have been signing agreements with private entrepreneurs for a long time. In England we investigated the practice in 15 municipalities, comparing findings (by others) from the early 90's to our own current findings. In this country, which has had a statutory basis for agreements since the 1940s, we found a steady rise in the percentage of planning authorizations connected to agreements. From 1-3% in the 80’ – 90’ to almost 5% of all applications for planning permissions. If we only look at applications for larger projects (to be decided by the full planning committees), the percentage rises to 27% on average. In NSW, the use of “voluntary planning agreements” has had a specific legal basis since 2005. Even for this relatively short time, we were able to locate about 60 agreements. In England, municipal policy documents are not legally mandatory, yet have achieved a degree of “maturity” and are indeed developed by most municipalities to reflect local needs and policies. In NSW policy documents are required by law but tend to be routine and non-reflective of local needs.

Israel – probably typical of most countries in the world - has no statutory basis for signing Planning Agreements. Yet in practice, this is probably a wide-scale practice (legally anchored in public contract law or permit conditions). Until recently, the court rulings have not been definitive, still allowing some leeway for such agreements. However, a recent dramatic ruling by the Supreme Court, has closed the door for planning agreements, at least for now.

To evaluate the laws and practices in the three countries, we used criteria that indicate the degree of legitimacy of planning agreements. These include: a formal legal basis; instruments for shared knowledge, flexibility in defining the current public interests; clear
49, 99 or 999 years and the illusion of freehold tenure.

Dominique Fischer, University of the South Pacific

Keywords: land tenure | leasehold | continuum of tenure forms | housing access | dead capital | cooperative

Abstract

Land tenure options should be considered along a continuum between the extreme of Fee simple full ownership and occupancy at will.

It will be suggested that leasehold options could be the optimal form of allocating land. Generalizing leasehold tenure would facilitate the transition from traditional ownership to westernized forms of full legal titling; it would seamlessly solve the problems of enforcing land taxation, it could reduce the gender and social class disparities in land access and mostly, it would eliminate the principle obstacle to housing accessibility.

In polar opposition to the popular de Soto’s conception that the provision of property titles free "dead capital" it will be argued that Land (and home) ownership is, in fact, a considerable source of frozen capital that could and should be used more productively. It will also be illustrated that Cooperative forms of Land and Housing ownership could be attractive options to the difficult realities of customary ownership.
Let's Exclude Exclusionary Zoning - The Inevitable Combination of Courts, Government and the Public

Iris Frankel-Cohen, Technion, Rachelle Alterman, Technion

Keywords: land use | exclusion | mitigation of exclusionary planning regulation

Abstract

Often a brief glance at a residential area or neighborhood tells a whole story. While a neighborhood of single family dwellings surrounded by lawns probably tells the story of upper-middle class residents, an area of badly maintained multi-family buildings probably represents low-income residents, and may also indicate the presence of minorities or new-comers. These narratives tell another story - that of spatial segregation that differentiates people, both in terms of socioeconomic status, and often also in terms of race or color, marital status or religion.

While spatial segregation may have economic or cultural causes, it is often influenced by land use regulations. These regulations aim to create a better standards of living for the dwellings and their surroundings, or a better environment. However, they also affect housing prices and affordability.

These regulations, whether exclusionary zoning or other exclusionary provisions, have been both implemented and criticized by different countries. A variety of solutions have been offered to hamper their affect, including the legal review of planning decisions, policies or rules set by authorized governments and the civil cry for fair housing opportunities. The Mount Laurel cases of the New Jersey Court have had a dramatic influence on the housing market in New Jersey and perhaps beyond. Planning Policy Statements with respect to Mixed Neighborhoods or Affordable Housing affect the British housing market, and domestic housing legislation affects all. There is also a growing awareness among the public of the segregation danger inherent in land use regulations, and consequently a civil demand to restrict spatial exclusion.

Israel and its cities provide a modest example of the dynamics between the power to segregate on the one hand, and those people who resent exclusion, on the other. However, it also provides hope. The Israeli story demonstrates the role of judicial review, and the effect of national policy and legislation. However, above all, it demonstrates the effect of civil protests and their ability to change the governmental discourse, and even planning practice. Our presentation will review the evolution of the Israeli planning law on this issue, against the backdrop of the housing market during the years when exclusionary zoning emerged in some Israeli cities. It will review also legislative and governmental methods for mitigating this phenomenon, as well as the effect of the 2011 civil protests on Israeli housing policies.
Multi Owned High-Rise Housing: New Challenges for Property Law

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Keywords: property rights | housing | high rise | housing management

Abstract

At its incipience in the 18th century, the main task of property laws was to protect private property. Since then, however, multi-owned housing became common. The need to manage common property has posed new challenges to property law. These challenges are intensifying as the number of multi-owned high-rises housing increase worldwide.

The proposed paper sheds light on the major role property law plays in determining consequences of multi-owned housing. It set the basis for new legislation suited for current-days issues, trends of privatization, capital accumulation and the quest for a just city.

The shared aspects of multi owned housing shares some attributes with the concept of “the commons”. Although the academic interest in the commons has expanded, it is rarely linked with multi-owned housing. Questions regarding the degree common property is affinity to multi-owned housing have hardly been addressed.

The proposed paper tackles some deficiencies in property law in addressing issues posed by multi-owned housing. To ground this analysis, the paper reports on research that analyzes the provisions about multiple owned housing in 5 countries: Hong Kong, Australia, the UK, one of the USA states, and Israel. Such systematic comparative analysis has not yet been reported.
Regeneration or Gentrification? Property Rights and housing rights aspects of Turkish urban renewal law

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Keywords: Turkish Urban Renewal Law | regeneration-gentrification | property rights | housing rights | European Court of Human Rights

Abstract

The ruling AKP Party of Turkey, a country with a growing economy and a high population, has started to renew major cities through Ministry of Environment and Urbanization (Çevre ve Şehircilik Bakanlığı) and Housing Administration (TOKİ) which is directly affiliated with the Prime Ministry. Municipalities also gained new powers to renew some regions of cities with the aim of reducing disaster risks. To this end, the Turkish Parliament has enacted several specific acts/laws and inserted several new provisions into existed legislation. On the basis of legislative amendments, major constructive projects have been started, both by the public and private sectors.

However, all the regions and dwellings selected for regeneration were/are valuable and mostly located in the city centers. People living there have generally belonged to the marginalized part of population, such as Roma people, internally displaced or migrant Kurds, and in low income brackets. Applicable legislation prevents those inhabitants returning the dwellings from which they evicted, for so-called "regeneration purposes". Accordingly, doubts have arisen as to whether Turkish urban renewal policy aims to regenerate unhealthy settlements or to gentrify these settlements, with a view to sustaining the economic growth.

In addition to these doubts, urban renewal legislation raises several human rights considerations, including property rights and housing rights. According to legislation, the consent of the property rights holder the demolishing and re-building the dwelling to is not necessary under certain circumstances for. A more dramatic example of the legislation is the power of public authorities to shut down the electricity, water and gas of habitants without their consent. Procedural safeguards of the habitants are also damaged by the mere existence of the legislation. For example, it is legally impossible to obtain a "stay of execution" from the court.

Accordingly, one may argue that the applicable legislation to the renewal breaches several human rights, such as the right to property and the right to housing. Not only do the Turkish Constitution of 1982 and international human rights conventions imply this conclusion, the jurisprudence of the European Court of Human Rights and European Committee of Social Rights, and decisions of the Committee of Economic, Social and Cultural Rights also shed light on the human rights violations of Turkish urban renewal law and practice.
From Spatial Planning towards Land Policy? An appraisal of the evolution of Swiss spatial planning regulations

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Keywords: spatial planning law | land policy | policy analysis

Abstract

In Switzerland, federal, cantonal and local states' intervention in spatial planning mainly rests on the Spatial planning law of 1979 (including subsequent revisions). The public problem identified by this public policy is the unsustainable use of land, including problems with sprawl, shrinkage of agricultural land, etc. To tackle this public problem, the policy proposes a causal hypothesis focusing on landowners as a target group. Their liberty to develop their parcel needs to be restricted in order to fight against uncontrolled urbanization. This calls for a clear delimitation of buildable and non-buildable land through zoning ordinances (main intervention hypothesis). This causality model introduced by the spatial planning policy remains in force.

However, standard land use plans (such as zoning plans) tend to be used more and more in conjunction with other policy instruments. In order to become more active in spatial development, local authorities utilize different policy instruments stemming from private law (public-private partnerships, non-monetary compensations, public property) or public law (inciting instruments, information) to complement standard planning instruments (binding or non-binding types of plans).

How can this shift toward strategies relying on a broader array of spatial development instruments be interpreted? In our presentation we defend the point of view that we are facing a progressive shift from spatial planning to land policy, despite the fact that land policy is not yet defined as such in the Swiss legislation.

In our presentation we demonstrate our thesis in four steps: Firstly, we deconstruct the traditional spatial planning systems by using an analytic model of policy science (Knoepfel et al. 2007). Secondly, we use the same model to analyse the recent trends observed in planning practice. Thirdly, we define “Land Policy” based on a survey of (mainly German language) planning literature dealing with this concept (e.g. Davy 2012, Kötter 2001). Fourthly, we appraise current evolutions by merging the results of the two analyses and discussing whether these tendencies can be considered a trend towards land policy.
Implications of the new Climate Protection Law in North Rhine-Westphalia, Germany

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Keywords: climate protection | regional policy | climate protection plan

Abstract

The federal state of North Rhine-Westphalia in Germany adopted a new Climate Protection Law in 2013, which is regarded as an important link for filling the gap between the Climate Protection Policy of the German Federal Government (Gruehn 2013 a) and local climate protection initiatives, such as the master plan ‘Energy Transition 2025’ of the City of Dortmund (Gruehn 2013 b), which is located in the heart of North Rhine-Westphalia. One of the most outstanding elements of the new law is the implementation of a new planning instrument, the Climate Protection Plan, which is not only aiming at supporting climate protection goals, but also aiming at integrating needs of adaptation to climate change into a holistic concept. Thus, the objective of the Climate Protection Plan is not only to harmonize conflicting interests of climate protection versus adaptation to climate change, but also to integrate, harmonize and solve conflicts between a broad range of different stake holders, including public authorities as well as private persons and institutions. Hence, the new policy will necessarily lead to conflicts with private property rights, which have to be solved. The paper reflects implications of the new law on decision making processes, especially with regard to existing spatial planning or environmental planning instruments. Synergy effects and constraints will be pointed out. Finally, the paper makes recommendations for practice and further development of the Climate Protection Law.
Careful What You Measure: Comparing relationships between planning and the housing market in Australia and the United Kingdom

Nicole Gurran, University of Sydney, Faculty of Architecture, Design and Planning

Keywords: planning regulation | housing market

Abstract

The question of how planning systems impact on housing markets has inspired much policy debate in many nations, and a large and growing international literature. This paper builds on this work by asking whether particular planning system characteristics matter, when measuring impacts on housing production and price, and when defining policy responses to supply problems. It focuses on two nations; the United Kingdom (UK), where the planning system has long been implicated in significant housing supply problems; and Australia, where concern about planning as a supply constraint has emerged in response to a growing affordability crisis.

International research on planning and the housing market is situated at the interface between planning regulation, housing, and real estate studies, and has been dominated by contributions from the UK (Ball, 2010, Bramley, 1999) and the United States (US) (Gyourko et al., 2008, Glaeser and Ward, 2009). While both bodies of research have been influential, given the significant differences in planning systems, international implications are unclear. Australian planning combines elements of both nations – evolving from the discretionary British model but retaining land use zoning and relying on the fixed development controls common in much of North America. This makes it feasible to explore the ways in which both types of planning constraint – procedural and regulatory – might affect housing output in different ways, under different systems. Therefore this paper examines potential indicators of planning system constraint that might be appropriate for measuring impacts on housing supply, with reference to the literature and to specific data sets available in both Australia and the UK. This analysis suggests that relationships between planning and housing supply may differ significantly between nations, with implications for both research and policy design.
Coastal Management and Planning under Australian Federalism: Local pressures and innovation

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Keywords: coastal planning | integrated coastal zone management (IZCM) | Australia

Abstract
Australians have had a long love affair with the beach. More than 85% of the nation lives in coastal cities or towns, and growth in the peri metropolitan areas spanning six state capital cities, is predominantly along the coastline. Further afield, retirees, alternative lifestylers, telecommuters, and economic migrants have sought refuge from urban sprawl in seaside villages and coastal towns, bringing significant environmental, social, and economic challenges akin to those reported in coastal areas experiencing growth and change in many parts of the world (Glaeser, Kannen et al. 2009; Deboudt 2010; Lester 2013). Under Australia’s federal system, the national “Commonwealth” government has limited responsibilities for the environment but has increasingly adopted high level policy development and environmental protection functions; while the states and local governments have struggled to integrate their various roles in relation to coastal management, urban planning, and environmental assessment. All three levels of government officially endorse principles of Integrated Coastal Zone (ICZM), however, legal and policy interpretations and implementation approaches differ. This presentation explores the current legislative and administrative frameworks for coastal management in Australia, contextualized in relation to non metropolitan settings, where a range of social and economic pressures exacerbate existing threats to sensitive coastal ecologies and landscapes. It highlights the tensions associated with ICZM within a context of competing drivers for urbanization (second home tourism, retiree migration, and speculative development), and political contests over growth and environmental protection (Gurran 2008). Within this complex setting, some local governments have been particularly innovative in their approaches to planning and management in the coastal zone.
Can Centralization, Decentralization, and Welfare Go Together? The Case of Massachusetts’s Affordable Housing Policy (Ch. 40B)

Ravit Hananel, Tel-Aviv University

Keywords: affordable housing | exclusionary zoning | Massachusetts | low- and moderate-income | welfare | centralization | decentralization | state-local government relations

Abstract

With the world’s rapidly growing population and the recurrent crises in the world markets in recent decades, many societies worldwide are suffering from a massive housing crisis. The 2007 collapse of some of the largest global financial institutions and markets has made the housing crunch even worse. Although it differs from one place to another, it has been characterized globally by a severe shortage of suitable and affordable housing. In many Western, developed countries, a growing number of people have fallen behind on rent or mortgage payments, many have lost their homes, and others have had to put up with poor living conditions.

Consequently, many states and cities around the globe have begun to develop inclusionary housing policies. Inclusionary housing is a means of using the planning system to create affordable housing and foster social inclusion by capturing resources created through the market place.

This paper focuses on an interesting and early example of inclusionary housing policy, which was enacted in Massachusetts in August 1969. The law, which is known as the Massachusetts Comprehensive Permit Act, the "Anti-Snob Zoning Act," or simply 40B (the relevant section of the Massachusetts General Laws), was intended to break through the exclusionary, "snob" zoning that was commonplace in United States suburbs at the time and to open affluent suburbs to low- and moderate-income residents by encouraging the construction of affordable housing statewide.

The act is a unique combination of centralized state power and local-government authority. The paper analyzes 40B and the modifications it has undergone over the years (both substantively and quantitatively) in light of the relation between centralized state power and decentralized local-government power with regard to planning. The findings suggest that under certain conditions a policy that combines centralization and decentralization of power can provide the greatest benefit to low- and moderate-income residents.
Bare Land Condominium

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Keywords: condominium | land | homeowner's associations

Abstract

The proliferation of condominium legislation has facilitated the subdivision of property interests in multi-unit buildings in many jurisdictions around the world. Condominium legislation enables a particular combination of rights: private rights to an individual unit within a multi-unit building, an undivided share in the common property associated with the building, and a right to participate in the governance of the private and common property. In some urban centres, condominium is becoming the most prevalent legal architecture of ownership.

The Canadian province of British Columbia introduced condominium legislation, under the moniker of strata title, in 1966. Treated warily at first by developers, financers, and purchasers, strata title is now ubiquitous in the province’s cities, as it is in many cities across Canada. In addition to facilitating the subdivision of ownership in multi-unit buildings, British Columbia’s legislation also enabled the subdivision of ownership over bare land. Known as “bare land strata title,” the legislation allows for the particular combination of ownership rights within condominium (private interests in identified parcels, undivided shares in the common property, and the right to participate in the governance of private and common property), but without a building or other physical structure. Instead of subdividing property interests within a building, bare land condominium subdivides property interests over land.

This paper describes the legislative changes that created the possibility of bare land condominium in British Columbia and then maps the use of the legal form within a number of municipal boundaries. In doing so, the paper asks whether bare land condominium operates as homeowner’s associations in other jurisdictions, and is subject to the same critiques, including concerns that these legal forms facilitate suburban sprawl and exclusive enclaves or gated communities.
Conditional Property Rights in Planning – Reflections on Time and Scale of Property

Thomas Hartmann, *Utrecht University*, John Sheehan, *University of Technology Sydney*

**Keywords:** property theory | planning and property rights | lock-in situations

**Abstract**

Every time a planner draws a line on a plan, willingly or unconsciously, property rights are affected. Contemporary planning theory often criticizes law and property rights as being too inflexible to cope well with uncertainties and wicked situations (see for example discussions around collaborative planning or actor-network theory). They are blamed for creating lock-in situations. Hartmann and Needham (2012) conclude that for planning, property rights are both, inevitable and desirable. They claim that reflections on law and property rights are essential to cope with current and future challenges of spatial planning. However, they leave open the question of how property rights needs to be reconsidered.

In this contribution, an attempt at such reconsideration is discussed based on the idea of property rights as bundles of rights. Ostrom distinguishes five sticks of the bundle of rights: access, management, withdrawal, exclusion, alienation (Ostrom 2007). Two aspects are added to this conception of property rights: time and scale.

Property rights are usually assigned forever; there is no expiration date on a right. Are there situations in planning where it might be appropriate to assign some of the sticks of the bundle only temporarily or under certain conditions to owners of resources? This is the time aspect, which will be discussed. The second aspect, scale, is derived from aboriginal property rights, where some rights may remain (as in most conceptions of property rights) with individual landowners, but some belong to a group or other layers of society (see e.g. John Sheehan on “deep property”). So, it might be worth thinking if for example in a neighbourhood the right to withdrawal, for example, belongs to a community instead to individual landowners, but the right to exclusion is held by another group of people, whereas the right to manage belongs to individuals.

This might in particular in times of environmental changes and increasing socio-economic dynamics an interesting notion of property in spatial planning; but it can be an interesting thought experiment for existing spatial planning, but also for emerging fields such as underground planning, planning for the resources of the arctic or outer space. However, it challenges existing conceptions of property and spatial planning. But in which way? This is thus an explorative contribution to the debate on property theory in spatial planning.
Implementing the European Flood Risk Management Plan

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**Keywords:** European legislation | floods directive | land and water governance

**Abstract**

In response to the extreme flood events of recent decades, the European Union released the Floods Directive (2007/60/EC). Like recent European environmental law in general (e.g., Water Framework Directive, Air Quality Directive), the Floods directive tends to focus on a regulation’s ends instead of its means (Albrecht 2007; Breuer 2007). This performance-based approach follows the models of French and British Administrative Law. It is supposed to strengthen the integrative character of environmental policies and overcome sectoral institutionalism (Durner & Ludwig 2008).

Accordingly, the directive is relatively imprecise with respect to the procedural aspects of implementing it; the burden of interpreting and specifying the regulation remains on the executive and judicative estate (Reinhardt 2008). As a consequence, the directive is implemented quite differently in different member states and even within member states (e.g. in Germany each state follows own proceedings with implementing the new instrument). This contribution will discuss the different interpretations and implementations of the Floods Directive in various European member states. Does the European regulatory approach indeed improve integration of European flood policy?

This will be analysed and discussed along the implementation of the Flood Risk Management Plan according to the Floods Directive from 2007. This is a new introduced instrument which shall reduce “potential adverse consequences of flooding for human health, the environment, cultural heritage and economic activity, and, if considered appropriate … on the reduction of the likelihood” (Directive 2007/60/EC: AVII.2). Member States need to have those plans ready by 2015. Cases that will be evaluated, come from the UK, the Netherlands, France, and two federal states in Germany (North Rhine-Westphalia and Rhineland-Palatinate).
Revising the Planning Law in Estonia

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Keywords: planning law | postsocialist planning | Estonia

Abstract

Our research focuses on the rebirth of Estonian planning law after the societal transition from socialism to capitalism. After the collapse of the socialist command economy, Estonia established a Western style spatial planning framework in 1995, when the Planning and Building Act was enforced. The Soviet-era centralised spatial planning system was abruptly abandoned, and standards and norms guiding the spatial development abrogated. The new planning system followed Nordic models of democratic, collaborative planning that introduced compulsory public hearings and displays. The introduction of contemporary spatial planning was lead by specialists, architects and planners, however no substantial input was asked of legal experts. In 2003, the planning and building regulations were separated into two different Acts but no major changes were made in planning principles.

More than 15 years of contemporary planning practice has revealed the weaknesses of the current legal framework. The overall system of four interdependent planning levels and public compilation of planning documents is well established and works fine. The problems have turned out to be mostly in the details – the legal system and the planning specialists interpret terms in the Planning Act differently. This has given rise to a number of court decisions that are unexpected for the planners, while they seem logical and justified to legal experts.

In 2008, the Ministry of Justice started the process of synchronising the laws concerning spatial matters – this applied mostly to the Planning Act and Building Act but also, for example, to laws on environmental matters. Following analysis of existing Planning Acts and similar laws in corresponding countries, hearings with interest groups were carried out in 2010-11. In 2012 draft new laws were presented. The draft of a new Planning Act upset the planning community as the law was built up in a different way and used the logic familiar to the legal specialists but alien to the newly established Estonian planning tradition.

The presentation gives an overview of different approaches to planning law writing in Estonia. The contradictions between legal and popular, “everyday” texts are pointed out and the explanations for such conflicts highlighted. Currently, the new Planning Act is in the process of discussion and the final result is expected to be ready in the middle of 2014.
The Impact of Culture on Regulation and Urban Changes: The case of Tel-Aviv's city center

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Keywords: regulations | historic preservation | heritage | TDR +representation

Abstract

The White city of Tel-Aviv was declared a World Heritage Site in 2003. It represents a unique urban tissue planned by Patrick Geddes. The site includes more than 3000 buildings in an early modern style architecture locally named the Bauhaus. The name represents the influence of the famous German school on the new Jewish immigrants who adapted its ideas to the local climate and culture in Palestine.

In order to achieve the goal of preserving such a site, one of the largest collections of unique Modern architecture on the one hand, and enabling the city to continue on the processes of growth and densification on the other, the municipality of Tel-Aviv created new approaches towards the questions of culture and urban context. One of the main features of the planning context of the city was the lack of a national financial support and weak legal foundations.

In September 2009, the new 2650b plan was approved by the government, enabling the implementation of an innovative approach towards the cultural built values of the city. The plan, which became the new prototype for planning, includes these main features:

- The possibility of additions to existing buildings; on rooftops, apartments in cellars, and others.
- A TDR mechanism which enables continuity of development with the full conservation of 200 buildings with high heritage values.
- A system of inspection and regulation for the market of building rights, which includes the municipalities financial support by serving as a transitional system for the process.

The presentation will include a short historical and cultural brief of the site, its deployment in the whole city, a description of the new regulatory systems, their advantages and disadvantages, some examples of parallel cases in the world, and new statistics on the current implementation of these ideas. The presentation will also show the impact of these changes on citizens' approach to the city and the new court problematics.
The Dark Side of Planning with Youth: An Exploration of the Potential for Co-optation When Planning for Climate Change with Young People

Dawn Jourdan, University of Oklahoma

Keywords: youth | human rights | climate change

Abstract

Progressively, since the 1960s, planning practice has sought to be more inclusive. Embracing a human rights approach, planners have sought inventive ways to reach out, educate, and empower disenfranchised groups including racial and ethnic minorities, the poor, the disabled, indigenous peoples, and women, among others. The American Institute of Certified Planners Code of Ethics and Professional Conduct which governs planning practice in the United States mandates that: "Participation must be broad enough to include those who lack formal organization and influence" (American Planning Association, 2009). This mandate has been interpreted by some to include the rights of young people to participate in planning processes. There is an emerging literature that chronicles the ways in which youth have been engaged in planning practice (Frank, 2006). In the U.S., young people do not have enforceable rights to participate in local decisionmaking processes.

The primary right of the child in the U.S. legal system is the right to protection (Russo, 2010). The child's right to protection includes the right to be raised in a safe and caring environment with access to education, health care, and sustenance (Russo, 2010). Parents and others acting in local parentis are obligated to provide for the child. If a child's right to protection is violated, a court is likely to review the deprivation in an effort to determine what is "in the best interests of the child." The child's rights expand as they mature. Other nations have challenged this paternalistic perspective (Jourdan, 2010).

Recent conversations about the connection between human rights and climate change, emerging out of the dialogue related to the critique of Agenda 21, have reinforced the importance of the dialogue about the rights of young people to participate in decisions that will invariably affect them and future generations. Just as planners seek to invent new ways for youth to participate in decisionmaking, groups such as the Tea Party challenge such efforts as cooptation. This article explores the arguments made by the Tea Party regarding the dark side of involving young people in planning processes related to the topic of climate change. The article chronicles and evaluates the implications of the efforts that seek to involve youth as change agents in the climate change dialogue.
**Women’s Land Rights as a Land Policy Goal**

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**Keywords:** women’s land rights | land policy | gender | equality | discrimination | exclusion

**Abstract**

Women’s land rights are human rights, as guaranteed under the International Human Rights system, which provide for an enabling framework for the entitlement of every individual. Significant to the discussion in this paper is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which has given the most extensive attention to equal land rights for women, and requires that States Parties “shall ensure women the right to equal treatment in land and agrarian reform as well as in land resettlement schemes” (Art 14).

According to Article 16 of CEDAW, land tenure reform must ensure women’s property rights during marriage, at divorce and in the event of death of the husband.

Within the international bill of human rights namely, the Universal Declaration of Human Rights (UDHR), and the two binding Covenants, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), a number of articles are connected to access to land (UDHR, Art. 17, 23, 25; ICESCR, Art. 6, 7, 11, 12.) The UDHR and ICESCR protect the right to an adequate standard of living; and ICCPR protects the right to privacy.

Universal human rights have several implications for land policy: access rights to vital land uses, promoted by Human Rights Law, confer minimal property on every human owning land (Davy 2012). Minimal property is a legal claim against State Parties under Art 11, ICESCR, but still only a moral claim based on the universal declaration (Art 25 UDHR). UDHR covers belonging both as exclusion and inclusion; providing a basis for addressing inequalities and disadvantages women face in land ownership towards the realization of the fundamental human rights.

Special attention with regard to the right of women to land follow from the UN Women’s Conference in Copenhagen in 1980, which highlighted the exclusion of women from ownership of land i.e. women owned 1% of land, while constituting 50% of the World’s population. On the other hand, the literature indicates that women are excluded from owning property, including land, or they do not enjoy the same rights as the men (African Land Policy, 2009) despite the fact that a wide range of human rights instruments address women’s rights and argue for their participation on an equal basis with men, not only formally, but as a substantive right.

An analysis of how women’s land rights have been dealt with at different levels by different actors, in different land policy discourses indicate different and diverse orientations in the way women’s land rights are promoted, which has wider implications on land policy goals, outcomes, the main discussion and analysis in the paper.
You Don't Know What You Got 'Til It's Gone: A Communications Strategy For Explaining Property Rights To The Public

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Keywords: property rights | regulatory takings | Canada

Abstract

Legislative initiatives recently introduced by the Government of Alberta in the areas of land use planning and natural resources law have highlighted a great deal of confusion among the public with respect to the definition and scope of "property rights". Explaining a complex legal institution such as property is challenging enough in any jurisdiction; it is particularly daunting, however, in Canada, where the courts’ reluctance to develop a robust doctrine of regulatory takings and the lack of constitutional protection for the right to property often result in a mismatch between public expectations and the law of the land.

The Alberta Property Rights Task Force wrote in its 2012 Report, “For landowners, leaseholders and freehold mineral owners, the land and minerals under their feet represent far more than a means to make a living. They also represent a way of life.... Albertans want certainty when it comes to their property rights – certainty about what those rights are; about the rules for how industry and government must respect those rights; and about what must happen, financially and legally, if those rights are infringed or impacted.”

The Alberta Land Institute, based at the University of Alberta, has commissioned a team of legal researchers to prepare a "plain language guide" to property rights to serve as a resource for stakeholders, policy makers, and land users in general. Experience has shown the need for such a resource and its potential to defuse political tensions and allay misguided concerns that threaten important land use programs. The paper describes the approaches and communication strategies devised by the researchers. It is hoped that this initiative will benefit other jurisdictions where property rights are given to contention.
Housing Rights Development in EU Law

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Keywords: housing rights | European Union | minimum core obligations

Abstract

Housing rights emanate from socio-economic rights but often have civil and political rights origins. Common law courts often waver in enforcing social rights, striving to assimilate the nuanced and costly concepts of housing rights into their customary reasoning. Yet, even defining minimum core obligations has proven fraught and controversial. It is obvious that state action at macroeconomic level is required for general implementation of these rights. Across Europe, there is a defined legal tradition of housing rights standards underpinned by legislation and case law, within both public and private law. Today, the EU Charter of Fundamental Rights has the potential to develop a harmonized minimum core of housing rights. It can transcend arguments about separation of powers, resource limitations and tedious legal definitions of minimum standards within international socio-economic rights debates. Building on normative standards of European welfare States, and the EU itself, a new enriched guide for the interpretation of housing rights is possible.
De-Commodification as a Challenge for Spatial Planners

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Keywords: de-commodification | homelessness | land use rights

Abstract

Nowadays, commodification, for example in the form of privatisation and de-regulation, has become a non-word for many scholars, particularly with respect to basic human needs like housing. The term de-commodification, on the other hand, has not yet been brought into the spatial planning discourse. This paper tries to fill this gap. It links the term de-commodification with spatial planning and emphasises the significance of land use rights, in particular for people affected by inadequate housing.

Drawing from the popular book of Cøsta Esping-Andersen (1990), “The Three Worlds of Welfare Capitalism”, de-commodification got onto the agenda of many scholars in the field of welfare state theory. De-commodification, in Esping-Andersen’s understanding, is the emancipation of the people from the markets. Homeless persons do not participate in the formal housing market. Scholars as well as policy makers often debate the question how homeless person can be integrated into the formal housing market, in other words: how they should be commodified. In this paper, I want to bring such policies into question by presenting forms of de-commodification as solutions for homelessness. While commodification emphasises the meaning of property rights, de-commodification highlights the potential of land use rights.

The paper is rooted in the interdisciplinary research project FLOOR (Financial Assistance, Land Policy, and Global Social Rights, www.floorgroup.de). FLOOR examines human rights and global social policies from different perspectives. My research is part of subproject FLOOR C, socio-ecological land policy that focuses on the relationship between the poor and the land (Davy, 2009). The ideas presented in this paper are based on a paradox experience I made by exploring homelessness in Hamburg. Although the access to housing in Hamburg is difficult – if not impossible – for many people, homeless persons from all regions of Germany and even Europe migrate to Hamburg. Why? The social safety net in Hamburg offers many land use rights for homeless persons. There exists a huge amount of facilities that reply to basic needs, for instance health care facilities, soup kitchens, clothing stores, night shelters, and many more. I will not claim that the sum of these measures guarantees an adequate standard of living for homeless persons. They are, however, a suitable example to think about the potential of de-commodification policies for people affected by inadequate housing.
Privatization of Housing and Residential Land in Russian Cities: Legislation and Transaction Costs

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Keywords: land legislation | privatization | transaction costs

Abstract

It is now 23 years since the start of Russian land reform. Its target was “land redistribution for creating conditions of the equal household development, formation of mixed economy, rational using and protection”. During the period more than 100 legislative documents of different level and field about the land questions were enacted. The most important and crucial direction of the new laws was securing private land ownership. Legislative activity was carried towards determining and regulation of rural land privatization, privatization of land as a part of state enterprises and privatization of the land used by citizens. Urbanization going on in Russia makes the last two processes extremely important in reference to residential areas.

Despite the long period the reform goals are achieved only partially – 8% of the whole territory of the country are owned by corporates or by citizens, 15% of the territory are involved into land deals. Only 20% of residential areas are privatized. Why the results are not impressive? Among other reasons such as small effective demand, obsolete land evaluation system, etc. there are transaction costs, “which in general impede and in particular cases completely block the formation of markets”. From this point of view the state legislative system is looked at by institutional economists as a monopolist of coercive power, useful for reduction of transaction costs.

To look at the correlation between transaction costs of urban private land deals and legislation alterations in Russia during the last 23 years it is reasonable to divide the costs into three groups – costs of private ownership defense, costs of ownership provision, costs of ownership implementing. The first ones occur in case of entrenchment on a right. The re-registration cost of the land ownership caused by the new state registration system (implemented in 1998) and incurred by the owners can be named as the second-type ones. The third group includes expenses for land plots preparing for the deal, as the requirement for the document set are constantly changing.

By changing the land legislation and regulation Russian government tried to normalize the land market. The turning point was in 1998 when the new land institutes were implemented to harmonize all the previous formal land documents, land plots measurement and formation system. In reality transactional costs raised severely depending on the length of land ownership and type of urban land plots which are privatized.
Abstract

Land use planning systems, and planning documents within this system, have a dual function. On the one hand, they produce programmes for future development, plans for action. On the other hand, they have a regulative function in relation to building and land use. Bridging these functions is an issue in planning systems. There are different ways how these tensions can be resolved. The present paper investigates how bridging these functions plays a role in the current debate about the new integrated Environment and Planning act (Omgevingswet) in the Netherlands. This act aims to integrate all kinds of laws in relation to planning and the environment including the just renewed Spatial Planning Act. The paper will analyse this debate in three episodes. Firstly, the proposal to make such a law and the view of the Dutch Council of State (Raad van State) on it. Secondly, the intervention by the Association of Dutch Municipalities (VNG: Vereniging van Nederlandse Gemeenten) in this process demanding a larger role for plans, and thirdly, the debate around the ‘test version’ (toetsversie) of this law, which, prior to the decision of the Council of Minister to send the bill for advice to the Council of Estate, has been sent to a selection of stakeholders to get their opinions.
Integrated Coastal Zone Management in Greece: the related legislative framework and its influence on policy making and implementation

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Keywords: seashore | coastal area | public space

Abstract:

Greece has one of the highest percentages of coastal zones in Europe. Coastal areas and seashores are characterized as “public goods”, protected by Article 24 of the Greek Constitution. Along the 15,000 km long Greek coastline, population density is more than double that of the national average, and local development is mainly based on activities related to the sea. There is a constant increase in tourism, with major financial and social significance for the country. The resulting construction tends to be uncontrolled. Transportation infrastructure (harbors, ports, marines), fisheries, aquaculture activities and agriculture on coastal rural areas, are sectors of socioeconomic significance as well, which simultaneously exert pressure on the coastal environment.

The controversy stemming from the coexistence of the need for high protection on the one hand, together with the potential for economic development of the Greek coastline on the other, is reflected in the related legislation and its implementation. A web of Acts tends to void the public character of the seashores, and an approach of “economic” priority seems to prevail, mostly under the pressure of profit-seeking political and financial actors. Furthermore, the fragmentation of legislation, the absence of rational policies, and ineffectiveness at the operational level, are all factors which further fail to restrict illegal construction. The result is inexorable financial exploitation, putting the protection of these vulnerable ecosystems at risk.

The present paper examines the development of legislation concerning coastal areas in Greece, and analyzes its objectives. An assessment is then attempted of its implementations up to the present, within a framework of the social domain where social, political, and economic forces interact with the administration and the judiciary. An initial form of the present paper was developed in the framework of MARE NOSTRUM, an EMPI CBCMED project at the beginning of 2013. Under normal conditions, this could also reflect today’s reality. Nevertheless, a year after the initial report, in an attempt to tackle the consequences of the current economic crisis in Greece, many laws and institutional frameworks related to ICZM have been replaced, modified, and/or altered. An additional aim of this paper—besides updating the ICZM related legal and institutional framework—is to assess the efficiency of this process of haste in legislating, and examine its consequences in the domains of policy making and implementation.
Dispute Resolution Approaches and Community Relations in Condo-ism: Why don’t we agonize over condominium disputes?

Rebecca Leshinsky, Australian Catholic University, Clare Mouat, Univesity of Western Australia, Colm Brannigan, Humber College, Institute of Technology and Advanced Learning

Keywords: dispute resolution | condominium | agonism

Abstract

Cities are facing a growth in high-rise living (condo-ism) bringing new expressions of urban lived experiences. With condo-ism becoming an entrenched part of urban living, inevitably disputes will arise between condominium stakeholders (including internal neighbours, tenants, owners, managers, and service providers). In order for condominium communities to run harmoniously, there is a need for efficient, effective and inexpensive dispute resolution. In this paper we report on two comparative jurisdictions – Victoria (Australia) and Ontario (Canada) – that offer reciprocal learning opportunities for advancing condominium dispute resolution models and processes. We use empirical findings from a study critically analysing the Victorian condominium dispute resolution process (Leshinsky et al, 2012) and an overview of Ontario’s collaborative approach to their ongoing staged condominium law reform process (Canada’s Public Policy Forum 2013). In progressing alternative dispute resolution processes, the paper concludes by suggesting that agonistic theory may have a high-valued place in condominium living generally and dispute resolution in particular. Specifically, the authors propose that reconsidering conflict might transform community relations and how we learn to disagree in a manner that enhances existing theories and practices of collaborative community approaches for law reform and urban change. This has significant wide-reaching interdisciplinary applications across planning, urban design, property law and communities both real and virtual.

Keywords: coastal act | property rights | land use | seashore regulation | transitional regime

Abstract

The former Spanish Coast Regulation Act 1988, passed precipitously and with a great dose of political demagogia, was a general nationalization of the coastal zone area. It declared that all land and constructions which remained in the protection area (200 meters inside) were to be declared common goods, and all the private constructions were to be transformed into public permits within 30 years, without the possibility of any transmission or reform. Moreover, all previous licensees or land uses under the protection zone were to expire in 30 years with no compensation.

During the 60's and 70's, the urbanization of the Spanish coast constituted “massive” development under the economic tourist model, the so called “sun and beach” began to constitute one of our main economic resources.

Did this regulation damage one of Spain's main economic resources? How did it affect private property owners and investors?

The extension of coastal urbanization/urban development achieved such an intense level of development that the 1988 legislator had to implement a wide variety of exceptions in order to prevent the nationalization of vast amounts of urban coastal resorts and villages. It therefore reduced the protection area from 200 to 20 metres in so called "urban coastal land" (so defined in the Land Use Plan).

Nevertheless, the 1988 Act established a very strict regimen towards private constructions and land uses in the protection zone/area. This severe regime, has had a perverse effect, the unprotection of the coast, because of permanent legal conflicts, as well as the difficulty of realistically applying the extreme regulation of the 1988 Act.

The new 2013 Coastal Act tries to install a modicum of common sense into a regulation that has not developed the desired. Sensu contrario, it has afforded an enormous “sensation” of insecurity and uncertainty to private owners and investors. At the same time, the lack of economic resources invested in public coastal managers has deprived dangerous coastal zones of real protection (despite the fact that a plan for purchasing coastal in danger was passed in the late 90's).

The new regulation arrives at a time of crisis in order to solve two important problems:

The insecurity created for all owners whose permits will be finalized in 2018.

To give a direct response to the EU Parliament Report Auken which made a very pessimistic evaluation of the uncertainty and insecurity of Spanish coastal regulations.

The legal technique of this patchwork Act is far from being what its title meant it to be, a complete seashore/coastal zone regulation. It’s more of a transitional Act in times of crisis, in the disguise of a so called and well received “Sustainable Development Act”. However, we'll see that its economic effects (preservation of industries, employments and constructions) have been well received by the private sector.

This paper will also present the way in which private property rights have been managed in these regulations, and in comparison with other regimes, we will underline how Spanish regulation avoids the “takings” test with a very “Lingle” interpretation of the law. The content of coastal private property rights is subordinated to the extent of what the Coastal Act implements, so that compensation may be required when the regulation changes.

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**Justifying Planning Decisions: Institutional response to planning objections in Israel**

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**Keywords:** public interest | urban citizenship | institutional discourse

**Abstract**

Our new research aims at mapping and analyzing institutional legitimations of planning decisions in Israel, by tracing answers to objections handed in eight central and peripheral cities in 2009-2012. Submitting objections to new planning schemes forms a central pillar of public participation in most western countries, and in Israel it is the only legal and mandatory channel of institutional planning hearing. Detailed institutional responding is also required, and the Israeli Planning Law obligates planning committees to explain and justify all their positive and negative decisions. Drawing on recent research literature on planning legitimating and urban citizenship, we aim at conducting a discourse analysis of the written explanations, as a prolific research arena for understanding how the very notion of public interest is defined and articulated in different cases, and what ethical rationales lead Israeli planning. We believe that while justifications of particular decision draw on economic, legal, architectural and environmental reasoning of the public interest, analyzing the incremental discourse highlights prime justificatory notions deeply related to issues of urban citizenship. Based on diverse quantitative and qualitative methods, we trace the ethical and institutional schemas in relation to socio-spatial issues, and focus the following questions: 1. How is the public interest defined and shaped in the institutional response? Is there a set of hegemonic justifications in the planning institutional discourse? How government conceives its responsibilities' to serve the public interest? What is the common balance between property rights and social rights? What types of third party rights or development prospects are often highlighted? 2. What variations are evidenced in the patterns of planning justification? Are there variations according to the type of objections, the geographic area or to the socio-spatial status of the objectors? Can we identify different degrees and patterns of closeness and openness towards particular social groups, social issues or citizen's demands? Do justifications regarding development transactions vary along the socio-spatial continuum of center/periphery? 3. What can we learn on the level of discursive communicability in the planning institutions? What are the degrees of openness to extra-institutional perspectives? How do the planners present the planning institutions, its roles and its governmental position? Which type of terminology is used in justification: disciplinary, vernacular, legal or other? The presentation will provide the structure of the research, methodological and theoretic reasons as well as early findings.
A Property Rights Approach to Parking Supply

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Keywords: parking | parking norms

Abstract

Local authorities heavily shape the provision of parking in their cities. They not only tend to manage and regulate on-street parking supply, but also directly determine off-street parking provision in relation to new developments through statutory plans and planning permits. The rationale behind the use of minimum parking norms is the fear of free-rider behavior among developers of real estate. Since parking supply is expensive, developers are likely to provide the private optimum, rather than the amount that would be socially optimal, so the argument runs.

But parking norms may not be the solution. Shoup (2005) has critically reviewed the parking norms in the US context, as well as the underlying empirical evidence base. He argues that minimum parking norms also generate substantial external effects. Minimum parking norms often drive up the supply of parking, increasing the costs of parking provision. Since most parking next to workplaces is provided free of charge to the users, these costs are passed on to consumers. Shoup (1999) argues that the external cost of parking in cities may well be greater than all the other external costs related to car use combined.

The aim of the paper is to develop an alternative approach to parking provision in relation to new urban development, drawing on the work of Shoup (2005) and Wilson (2013). Drawing on the property rights theory, the argument starts from the observation that parking norms are an indirect result of missing markets in the domain on-street parking supply. The common assumption of freely available on-street parking supply allows developers to pass on part of the parking demand to the public domain. This cause of developers’ free-rider behavior also entails its solution. By taking on-street parking supply out of the public domain, it may be possible to create a self-regulating system for parking supply and demand, that does not require government regulation of the amount of parking. The paper discusses the conditions for the emergence of such a self-organizing parking market.

The paper will end with a discussion of the results of series of ongoing experiments into the impacts of parking deregulation on developers’ behavior. The experiments encompass games in which participants develop an office building and have to decide how much parking to provide, under conditions of uncertainty about demand. The developers are not restricted by parking norms, but can freely determine the level of parking supply. The games allow for increasing flexibility in the organization of the parking supply and explore the impacts of this flexibility on developers’ parking provision.
Planning with Gray Margins: Road 31 and the Israeli Bedouin in the Negev

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Keywords: Bedouin gray space | informality | road planning

Abstract

Recent decades have witnessed intensive discussion in planning literature on gray space and informality (e.g. AlSayyad, 2004; Yiftachel, 2009). From a spatial perspective it revolves primarily around gray settlements. We raise two issues of planning relevance: firstly, gray spacing may serve established planning processes despite their inherent contradictions; secondly, while roads are spatial entities and immanent part of planning processes, their analysis in planning theory and practice literature is marginal.

Our research deals with Road 31 in the northern Negev. Several dozen Bedouin settlements are located alongside this road, often on its immediate margins. The state neither recognizes most of them and their claim for land rights nor offers them any appropriate settlement alternative (Meir, 2005; 2009), making them thus a typical gray space. Recently the state has initiated a massive road upgrade project into a two-lane limited access highway. Under project instructions neither state planning officials and planning firms, nor Israel Road Company (the contractor), pursued any genuine Bedouin public participation. However, the IRC, treating Bedouin space abstractly, encountered Bedouin subjective spatial reality of whole villages, private homes and business establishments spread on road's expanded margins. In Bedouin view the upgrading is not meant for their wellbeing, inhibits seriously their life and, in the absence of formal public participation, makes them transparent. Therefore they refused to evacuate their places and cooperate with IRC. The latter, desperate to expedite the project towards its completion deadline, hired an informal "expropriation team" with profound acquaintance with Bedouin unique indigenous culture, society and polity. This unique mechanism, which is neither commensurate with official state policy of non-recognition, nor is under state formal support, facilitated intensive and creative negotiation and mediation with individual Bedouin families over financial and other terms of evacuation. The rate of success is very high, expediting the pursuance of the project considerably.

Our research reveals that only by leaving the informal Bedouin reality intact, through team's firm obligation for state avoidance from taking uni-directional radical measures in Bedouin property rights and village recognition issues, could the conflict be resolved satisfactorily and the project expedited, despite the formal policy of non-recognition. Paradoxically thus, informality as a temporary but permanent non-resolved situation may facilitate efficient dialogical mechanisms benefiting both sides. This insight carries important conceptual implications for understanding planning of gray spaces, as well as for understanding the special role of roads in this unique and complex indigenous socio-spatial system.
Defensible Development Exactions

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Keywords: exactions | takings | nexus | constitutional law | unconstitutional conditions | rational relationship | rough proportionality

Abstract

In 2013, the United States Supreme Court handed down Koontz v. St. John’s Water Management District in which it established new standards for determining the legality of exactions off-site improvements as conditions of approval. Although this is a decision only binding in the United States, it provides an especially rich factual background and analytic matrix by which the issue of the reasonableness, rationality, and defensibility of development exactions may be considered. The objective of this paper is to describe the Koontz decision to inform others unfamiliar with it and then to use the decision as the basis for a comparative analysis of development exactions generally and in selected specific countries.
Historic Preservation, Economic Incentives, and Politics- The Israeli Prism

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Keywords: heritage | historic preservation | statutory protection

Abstract

Current research into Israeli historic preservation policy tends to focus on the ideological, political and socio-economic factors that mold preservation of the built heritage. However, few attempts have been made to measure preservation policy and to inquire whether it is a growing phenomenon. To remedy that, the paper studies preservation policies in Israel by looking at development plans inclusive of heritage-protection mechanisms. This methodology can be employed by international scholarship to better understand heritage policies.

The analysis tracks down, surveys and categorizes hundreds of preservation plans approved by Israeli planning agencies, and quantifies the growth of preservation initiatives in Israel in the years 2005-2010. A learning curve is identified indicating how gradually more plans were introduced by localities and especially by major Israeli cities owing to an incentive-based approach, and local-regional cooperation. The increase in preservation efforts clearly suggests that fiscal constraints, institutional hurdles, contested pasts and existing heritage dissonances have not prevented continuous preservation efforts throughout the country.
Law and Planning: A Useful Alternative to Law and Economics, Law and Society, Law and Public Policy?

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**Keywords:** law and planning | law and economics | law and society

**Abstract**

Legal theorists and jurists have become enamored with the discipline of economics (or more precisely, neoclassical economics, see http://plato.stanford.edu/entries/economics/). U.S. Court of Appeals judge and academic Richard Posner, for example, has asserted that “economics is the instrumental science par excellence” (Posner 1995, pg. 15) and that he could imagine “the legal profession and judiciary buying into the idea that economics ought to guide legal decisions in all cases in which the Constitution or statutes do not speak unequivocally to the contrary...” adopting, in effect, “the methods of inquiry that define the economics community” (pg. 19). The “law and economics” school of thought is attractive because it offers a rigorous, clear-headed, often quantitative, and arguably non-normative basis of analysis for making public policy and legal decisions that are, in turn, “hard,” objective, rational, certain, and—to that extent—more defensible. It has become a well-established school of thought, codified as such through journals providing fora for fully developing and debating its precepts, most notably in the U.S. the American Law and Economics Review.

This hegemonic role in the legal academy (like that played by economics more broadly in the social sciences) has been thoroughly critiqued from within economics on a number of fronts (e.g., Bromley, 2006), as well as from within the legal academy itself (e.g., Sunstein, 2000, although even the critiques noted here are arguably apologies made in an attempt to reform and thereby save a law and economics perspective). It has also prompted counterpoint academic fora through journals such as the Journal of Law and Society and Harvard Journal of Law and Public Policy.

My twin thesis, to be more fully developed for this paper, is that, first, there may be room yet for another alternative school of thought—call it the “law and planning” school of thought—and that, second, it would be a good thing to promote such an approach. It would be good to develop an alternative approach to the study of the meanings and implications of law—particularly those at the intersection of law, public policy, and urban or city and regional planning, one encompassing but not bound strictly within a narrow, economics framework. It would also be good to provide a forum for more fully developing and debating those broader precepts. There is room for this because a quick review of all of the journals noted here suggests that each has published only sparingly work at the intersection of law, policy, and planning (I could find only six such articles published since 1997). There is need, I will argue, because planning offers an intellectual, analytical, and normative alternative and cure to what ails the law and economics movement, one that has not been advanced by the law and society or law and public policy movements.
Building Controls and Climate Change

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Keywords: Architectural management | building process | Local/municipal planning

Abstract

According to main trends towards year 2100, climate change implies a warmer climate with increased amounts of precipitation in the northern hemisphere. Adequate measures are requisite in order to avoid dramatic consequences to the built environment. The paper addresses how possible impacts of climate change in general, and moisture problems in specific, appear, and at what stage in the building process measures are most likely to succeed. Vulnerability and adaptive capacity to climate change in the built environment are depending on the legal framework, and its implementation in the early stages of the building process. How planning and handling of building applications may serve as important means in safeguarding climate and moisture related issues and adapting the built environment to climate change, is elaborated. Findings of two case studies are presented, and discussed towards a theoretical background. The paper concludes with a discussion of how climate change is maintained by a sample of participants of the Norwegian building industry and local authorities. Possible measures as to how impacts of future climate challenges and moisture problems in the building process may be attended to are outlined.

The paper is based on the author's ongoing PhD study. The methodological approach has been literature studies in combination with qualitative case studies. The PhD study is carried out as part of the SINTEF Building and Infrastructure program Climate 2000, funded by the Research Council of Norway and the in-house project Climate 2050. It is conducted at the Norwegian University of Science and Technology at the faculty of Architecture and fine art in Trondheim, Norway.
Social Justice, Real Prospects and State Action in Rural South Africa: An Exploratory Engagement in the Phokwane and Kheis Local Municipalities in the Northern Cape Province

Mark Oranje, University of Pretoria, Elsona van Huyssteen, CSIR

Keywords: social justice | human rights | rural South Africa

Abstract

Thirteen years ago, with a new suite of progressive legislation and policies having been put in place, Sandra Liebenberg (2000: 43), in a report on human rights in South Africa, in a ‘tentatively optimistic’ tone observed that, “The wide gap between the constitutional promises and the lived realities of millions of poor South Africans remains a constant challenge. The Constitution and new laws have provided the government and society as a whole with a number of effective tools with which to meet the challenge. Each sector has an important role to play, and must use these tools in a concerted effort to create a better life for all”.

While the glaring ‘gap’ between promise and reality has shrunk for some South Africans in primarily larger urban areas, it has by and large remained as wide as it was back then for millions of people eking out a life in rural South Africa (National Planning Commission, 2012). Despite this, government has retained a rhetoric in which progressive change throughout the country is promised, without seriously engaging (1) the prospects and possibilities of realising the ‘constitutional promises’ in every piece of the country, notably so the remote and sparsely populated rural parts, and (2) the State interventions and extraordinary and sustained efforts that would be required from all role players, but especially so the State, to ensure this.

In this paper, an attempt is made at exploring the difficult questions of ensuring social justice, development prospects, State intervention and collective endeavour in two semi-dessert rural municipalities, both with sizeable (1) tracts of farm land under irrigation, and (2) concentrations of people living in haggard conditions in peripheral rural settlements. As such, the paper explores questions about the prospect of real change in these municipalities based on (1) the world of policies, legislation, planning paradigms, templates, tick-boxes, vested interests, political will, intergovernmental relations and institutional cultures, and (2) the ‘lived reality’ on the ground. This microcosm is then used to reflect on the larger issue of achieving social justice throughout the whole of South Africa.
Towards a Global Standardization of Housing Rights: Comparing General Comment number 4 to the ICESCR's guidelines to adequate housing with national constitutions

Michelle Oren, Technion - Israel Institute of Technology, Rachelle Alterman, Technion – Israel Institute of Technology

Keywords: adequate housing | constitutions | comparative research

Abstract

The right to Housing is mentioned in article 11(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR)(1966) as a component of an adequate standard of living. The UN Committee on Economic, Social and Cultural Rights' substantive interpretation of the term 'adequate housing' was presented to ICESCR's State parties through General comment number 4 to the ICESCR on the right to adequate housing (1991). The Committee asserted that the concept of adequacy is determined by a variety of listed factors: legal security of tenure, availability of services and materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy. ICESCR state parties are required to take measures towards promoting the right to housing including domestic legislation. Moreover part 16 of the General comment specifically mentions that States where the right to adequate housing is constitutionally entrenched are of particular interest for the learning of the legal and practical significance of such an approach.

This paper will focus in the extent to which the listed factors determining 'adequate housing' and other required measures for their promotion mentioned in General Comment No. 4 to ICSECR, are reflected in national Constitutions with explicit housing rights. Using contents analysis and a comparative analysis method we compared across the national constitutions in order to learn about the existing variety of constitutional legislation.
The Road from Planning to Expropriation: A Cross-national Analysis of Australia and Israel

Nira Orni, Technion – Israel Institute of Technology, Rachelle Alterman, Technion – Israel Institute of Technology

Keywords: expropriation | time | property rights

Abstract

Comparisons between countries are intended to help the compared countries learn from each other. When comparing Australia with Israel we will need to decide who will learn from whom. Since Australia is a federation of states, we chose one of the Australian states for the comparison – the state of Victoria. There are similarities between the planning systems and the expropriation arrangements of the two compared states, Israel and Victoria. The planning tools in both systems are statutory schemes. When approved, these schemes are binding, unless amended by a statutory procedure. In both countries, a long period of time can pass between the approval of the planning scheme that designates land for public purpose and the actual transfer of the land to the public. We found out that during this time the landowners may encounter hardship and their property rights are harmed.

In our paper we compare the different ways in which the laws of Victoria and of Israel deal with this situation. We discovered that Victoria’s compulsory acquisition system has formulated a method which reduces the harm caused to the landowners by giving them greater control over the timing of the compensation. We believe that this method can be a model for other countries using the same planning system.

On the other hand, Israel recognizes the ongoing linkage between the landowners and their land after the expropriation, while Victoria does not. The linkage is expressed by the landowner’s right to get their land back if the public purpose is no longer needed. We evaluated both systems on the basis of the criterion of the balance between property rights and public needs.
Regulation of Building CCS Pipelines and “Public Interest” in the Finnish Land Planning Legislation

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Keywords: CCS | pipelines | land planning | land ownership legislation | public interest and energy infrastructure | Finland

Abstract

Carbon dioxide capture and storage (CCS) is a relatively new technology in the context of climate change mitigation strategies. Its legal and regulatory implications are not yet wholly developed. It is essential to identify legal gaps and obstacles that still need to be addressed.

There are challenges raised in the field of building regulatory issues and property law as well: these include for regulation of building pipelines for CCS transport, land planning legislation and land property ownership legislation.

Land use and community structure determine the places where energy consumption and production takes place. CCS infrastructures must be located next to the energy plant. It has been estimated that as much as 70% of delivered energy is subject to the influence of land use planning. Community structure and urban form also determines the potential for the utilization of waste heat from industrial and energy plants, and the potential for industrial symbiosis based on one company’s waste as the raw material for another company.

This paper will take a brief look at the regulatory principles and legislation in the European Union (EU) and in Finland concerning CCS from the point of view of building pipelines and also regulative framework of land planning of the energy infrastructure as a whole. Paper analyzes, if the use of CCS and then need of building pipelines could fall under concept of “public need” that is regulated in Act on the Redemption of Immoveable Property and Special Rights in the Finnish legislation. This concept allows redemption of property if concept of “public need” can be applied.
Conflicts over Preservation of the Built Heritage in the State of Victoria, Australia: Analysis of the Decisions of the Civil and Administrative Tribunal

Cygal Pellach, Technion - Israel Institute of Technology, Rachelle Alterman, Technion - Israel Institute of Technology

Keywords: heritage preservation | conflicts | appeals decisions

Abstract

The preservation of built heritage is a confusing and conflict-laden issue in urban planning policy and decision-making. The rationale for preservation is most frequently based on mix of aesthetics, ideologies or particular historic narratives. Dealing with the resulting conflicts can therefore be particularly challenging for judicial bodies, given the lack of ‘objective’ criteria in resolving the issues, as compared with other decisions in urban planning.

There is currently very little knowledge about how conflicts in heritage preservation are resolved by the relevant judicial bodies. Given that conflicts are an irremovable aspect of planning and heritage preservation, research into how they have – and continue to be – dealt with may assist with future decision and policy-making.

Our work therefore seeks to contribute to an identified gap in previous research through a comprehensive analysis of heritage conflicts through the decisions of the Victorian Civil and Administrative Tribunal (VCAT) – the appeal Tribunal for planning decisions in the State of Victoria in Australia. The methodology involves the content analysis of appeal decisions to identify key factual attributes, followed by statistical analysis to identify correlations between the key variables. Finally, the results are analysed both from a local perspective and from a cross-national perspective.

This research is part of a broader comparative research project. Previously, this same method was applied to the analysis of tribunal decisions in the UK, Oregon and Israel (Mualam and Alterman, in preparation). At the same time, the present research stands on its own and contributes to the existing knowledge regarding Australian heritage planning. This research will expand the comparative perspective and enrich the potential cross-national learning about preservation conflicts.

The range of conflicts in built heritage preservation in Victoria presents an interesting and useful resource for analysis, particularly given the relative ‘newness’ of Australia’s built heritage, the history of tension between ‘developmentalism’ and preservation and the widespread involvement of third parties in urban planning decision-making.

The results reveal various patterns in heritage decision-making by VCAT, including key variables which influence decisions. We are led to reflections on the value, structure and content of the relevant policy and regulations.
Efficiency-Equity Trade-Off in the Acquisition of Agrarian Farms for Industry: The Case of Indian Land Acquisition Act

Sony Pellissery, National Law School of India University

Keywords: efficiency | equity | industrial growth | poverty reduction

Abstract

Land acquisition for industrial growth in subsistence economies present a complex scenario of value judgements. At the core of complexity is the classical issue of efficiency-equity trade-off. Value question emerges since the planners and those whose land is being acquired for planning purposes see the future differently.

This paper analyses 167 land compensation cases where the Supreme Court of India disposed during the period of 2008-2011 on the claims of land acquisition. In 2013, the Government of India came with a new legislation on land acquisition. The analysis of these decided cases are in the context of the debates that took place in the formulation of new legislation. The new legislation was opposed by two types of groups: a) Group which argued for low valuation of land and lesser compensation so that industrial private firms could acquire land swiftly and faster economic growth could be achieved. b) Another group argued that any land acquisition should consider the equity principle and make sure the farmers who are displaced are compensated sufficiently. The analysis of the legislation in the light of recently decided cases helps us to appreciate how different value orientations are managed in the Act.
Planning Regimes and Resource Rights

David R Percy, *University of Alberta*

**Keywords:** planning resource rights | compensation cancelled amended resource rights | Land Stewardship Act | Alberta

**Abstract**

This paper will deal with the issues that arise when planning regimes are newly imposed on areas of land in which government has already granted rights to exploit natural resources. The Land Stewardship Act of the Canadian province of Alberta (2009) provides a case study of this phenomenon. Because the regulation of land use can affect and even negate previously granted resource rights, it is common to allow planning legislation to override resource rights. This paper examines the extent to which the Land Stewardship Act overrides resource rights in the interests of sound planning. It considers the limited circumstances in which Canadian common law requires compensation when resource rights are restricted or nullified by statute. In the case of the Land Stewardship Act, there was a large gulf between the rare cases in which the common law entitled the owners of resource rights to compensation and the inflated expectations of those owners. The difference between law and expectations came close to causing the downfall of the government and threatened to derail the planning legislation.

In the interests of preserving the legislation and its own existence, the government was forced to soften the language of the original Act. In particular, where planning legislation affects, amends or rescinds an existing resource right, it requires the government to make provision to provide reasonable notice to the holder of the resource right of any proposed compensation and the mechanism by which the compensation will be determined. This paper will describe the actual measures of compensation that are applicable in Alberta where planning legislation affects existing rights to a variety of resources including oil and gas, water and forestry interests. It will suggest that those measures are ad hoc and inconsistent. It will then examine whether there are principled grounds for awarding compensation without creating financial costs so great that they prevent the planning legislation from achieving its purposes.
Legal Regulation of Unauthorized Construction in the United States of America and in the Russian Federation: a Comparative Analysis

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Keywords: unauthorized construction | encroachment | demolition | Russia | United States of America

Abstract

In Russian law there is a special definition of an unauthorized construction: it is a dwelling, other building, construction or other immovable property which is built on a parcel of land that is not allotted for this aim under a certain legal procedure, or without necessary permits, or with a substantial violation of town planning and building norms and rules. Given the significant scale of illegal development in Russia and its draconian consequences, there is an urgent need to find ways for making such development consistent with law. For the purpose of finding solutions to the problems with illegal development in Russia this paper analyzes and compares the Russian situation with that in the U.S. from the angle of the legislative and the enforcement practices, the interests of developers, land owners, and other community members. As a result of such analysis and comparison the article gives practicable recommendations that worth to be considered to solve the problem, or at least to lessen its pressing character. The research is especially interesting as the problem of illegal development exists in many countries, but there is an evident lack of attempts to solve it on the interstate level.
Construction Regulation: Promoting Public Interests vs. Restricting Personal Freedom


**Keywords:** construction | regulation | building code

**Abstract**

Construction regulation, often in the form of a building code, is intended to protect public health, safety and welfare. The regulations or code become Law when formally enacted or adopted by the relevant governmental authority. Codes in most countries and jurisdictions have been developing and expanding over time and many have become quite complex.

Generally, construction regulation is accomplished through minimum standards of design and implementation for building and most, but not all, of the regulations achieve general consensus as they promote public interests and allow people to live together amicably. Recent trends in construction regulation reflect expanding public interests. They include, but are not limited to, earthquake resistance, fire safety, energy and water conservation, other green or sustainable building goals, waste reduction, harmony with the environment, historical preservation and special needs of particular groups in the population. These groups are persons with disabilities, the very young and the elderly. It can be said that many codes now have a cradle to grave perspective and seek to enable the active participation of all persons in the built environment.

The expansion of building codes, into new areas obviously has its costs. In addition to economic costs, there are restrictions to personal freedom, limitations on the way private property may be used as well space and design restrictions. When examining costs we need to consider the full range of impacts some of which may be in conflict. Furthermore the examination of economic costs should not only calculate the initial or installation cost but also life cycle costs.

When considering issues of liberty, personal freedom and free choice we also need to consider to what extent we protect people against themselves and how far we are willing to go to protect the actions of individuals no matter how extreme or limited from affecting others.

There has been some recent discussion of the "castle doctrine" mostly in the context of defending one’s property against intruders but it is also relevant to this discussion. The doctrine posits that a man’s home is his castle and therefore he can do as he pleases in his own home. Similarly, we should consider whether private actions may endanger family members, guests, neighbors or the general public.

The State of Israel is experiencing a housing crisis due to the spiraling cost of residences. Some of these costs are attributed to new construction regulation. We propose to examine and discuss various new realms of construction regulations in the context of individual liberty and costs. Are we perhaps going too far?
Innovative Approaches to the Mare Nostrum Project: Lessons from the United States

Keywords: coastal zone management | consistency | incentives

Abstract

Mare Nostrum is an EU-funded cross-border project exploring new ways of protecting the Mediterranean coastline. The project's primary goal is to contribute to bridging the policy-implementation gap between the ideals of Integrated Coastal Zone Management (ICZM) and its effects on the ground.

The EU context is similar to the federalist context in the United States. The United States have employed several innovative techniques to attempt to manage the coastal zone in that country. The primary laws involved in this innovation are the Coastal Zone Management Act (CZMA) and the Coastal Barrier Resources Act (CBRA).

The CZMA uses the consistency doctrine to encourage states to adopt coastal zone management plans that comply with the overarching guidelines provided by the national government. If the plan complies, the national government cannot act unless the actions are consistent with the plan. The CZMA also provides financial incentives and makes the national government a clearinghouse for information. The Act innovates by allocating responsibilities among different levels of government.

The Coastal Barrier Resources Act replaces the incentives to develop in flood plains found in the National Flood Insurance Program with a market-based approach that allows development, but removes governmental support. This combination of tools discourages development in the coastal zone while avoiding regulatory takings claims. The Act has reduced government costs due to disasters from flooding dramatically.

This paper examines the innovative tools employed in the Coastal Zone Management Act and the Coastal Barrier Resources Act and explores application of these tools in the Mare Nostrum project. The paper will provide a framework for implementation of these approaches in the EU context, as well as describing the advantages and disadvantages of the approaches.
Heirs Property- Issues and Solutions Across the World

Jesse Richardson, West Virginia University College of Law

Keywords: cotenancy | heirs property | partition

Abstract

“Heirs property”, “heirs’ property” and “land in heirs” are all colloquial terms that describe a form of ownership where at least some of the owners have acquired the property through inheritance. Often numerous and related owners hold the property as tenants in common.

Commentators identify two concerns arising from heirs property: the vulnerability (or displacement) concern and the wealth (or efficiency) concern. The vulnerability concern refers to the fear of being forcibly dispossessed from the property through a partition sale initiated by another cotenant, whether a family member or third party.

The “wealth concern” refers to the diminished ability of cotenants to use the land, whether to build a home, for recreation, for business, as collateral for a loan, or other reasons, due to the nature of tenants in common property. Many uses of the heirs property, like timbering or mineral mining, require unanimous consent of all tenants.

Included in the wealth concern is the fact that cotenants of heirs property find it difficult or impossible to borrow money against the property or lease the property. Further, “heirs property owners are not able to bid competitively at the partition sale auction because they are unable to secure any financing to make an effective bid and because they are cash poor.”

The effect of this inability of any of the cotenants to use the land with agreement of the other cotenants has been termed the tragedy of the anticommons. The tragedy of the anticommons results in the under-utilization of the resources, or “waste”.

The Uniform Partition of Heirs Property Act (“UPHPA” or “the Act”) partially motivates this research. The Act was approved and recommended for enactment in all states by the National Conference of Commissioners on Uniform State Laws in the United States in 2010. The author is conducting a survey of partition and other laws that impact heirs property and the provide remedies for owners of heirs property.

This presentation seeks to compare the issue of heirs property in the United States with the issue in selected other countries. The presentation will also detail remedies and solutions in various countries with the goal of using lessons learned to provide better solutions across the world.
Reform in the Planning and Building Law: Motives, Triggers, Targets and Solutions

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Keywords: building safety | Zeiler Committee | Planning & Building Law (amendment no.102)

Abstract

The Versailles wedding hall disaster (24.5.2001) was one of the worst building disasters in Israel's history: the floor of a wedding hall collapsed under celebrants' feet, dropping them three stories to the ground. 23 people were killed and 380 people were injured. As a result, a commission of inquiry was established to examine building safety, chaired by retired Jerusalem District Court president, Judge Vardi Zeiler. Among its findings, the committee report (Zeiler, 2003) warned the government that –

• The Planning and Building Laws are complex, not uniform and contain dozens of contradictions.
• The construction sector in Israel is in a state of chaos and that the construction industry is under-supervised in every respect.

It took quite a while – going through implementation and governmental committees - until the final government resolution, no. 963, approved a “Re-form”.

The study presents the “re-form” as a changeover, which comprises part of the course of action needed to be taken as response to critical problems caused by a "VICIOUS CYCLE"- as identified by Zeiler (2003). Following these insights, it will introduces the challenges and targets, faced and met by the Building Division [*], for taking the right turn towards re-forming a "SMART CIRCUIT”:

1. Streamlining, simplifying and improving service to the public;
2. Improving the quality of construction in order to ensure public safety in the built domain/places. But how can it be achieved? -

The paper will introduce some of the solutions – which have already been embedded in the Amendment No. 102 to the Planning and Building Law 2013 – in reference to the main two goals:

Firstly, achieving Efficiency by: (1) Shortening and streamlining the process of permissions for building application and compliance of construction; (2) Ensuring availability, accessibility and transparency of Planning and Building information and of Permit Status for any application via the Internet.

Secondly, achieving building Quality by: (1) Running a professional design and building control system (Building Control Bodies); (2) Regulating accessibility for all involved in the construction process.

Only time will tell if amendment No. 102 will be approved in the Knesset (Israel’s parliament) for the realization of a SMARTER FORM of Planning and Building in Israel.

[*] Established in the Planning Administration of Israel’s Ministry of the Interior, according to Zeiler’s recommendations.
Legal Issues of “De Facto Expropriation” and “Indirect Takings” in Turkish Planning Law

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Keywords: regulatory takings | indirect takings | de facto expropriation

Abstract

In order to respond to the fast-growing needs of society, Turkish public authorities have not only used expropriation in the regular sense, but continuously invoked de facto expropriation and other indirect takings methods. This legal issue became an important problematic area in Turkish Planning Law and practice.

It is frequently observed that Turkish public agencies take, occupy, or encroach upon private land for seemingly public interest-serving purposes such as to build roads, create parks, or develop other public uses, without following legal procedures established for expropriation and paying compensation.

When legal owners of such properties file lawsuits in courts, it is possible for them to choose one of the FOLLOWING legal remedies: “cease-and-desist order” or “action for compensation.” Nonetheless, since in most cases “restitutio in integrum” is not possible for a property which has already been subjected to public works, plaintiffs are compelled to bring an action for compensation.

Another problematic area in Turkish Planning Law is the failure of the public agencies over many (e.g. 10-15) years to start the expropriation procedures and pay an adequate compensation to the owner of a land although the property is reserved for a public use by a zoning ordinance. Once dedicated to a public use, a construction prohibition has to be imposed on the property. Thus, it becomes impossible for the owner to enjoy the rights and benefits derived from the right of property. Turkish administrative courts had consistently rejected the argument that “this failure of action was tantamount to ‘de facto expropriation’ and requires an adequate compensation”. Fortunately in recent years, courts have started to take into consideration the judgments of European Court of Human Rights and order that agencies should expropriate the property in question within five years. However, it is still uncertain how the owner of a property, whose rights had been restricted for a long time, can be remedied.

Accordingly, this paper shall address these issues in the light of property rights derived from the “Turkish Constitution of 1982” and “Protocol No. 1 to the European Convention on Human Rights” and propose offer that the standards established by the European Court of Human Rights concerning balancing the individual’s right of property and public interest in taking property, either legally or de facto, should be incorporated into Turkish Takings Law by administrative courts.
The Promises and Pitfalls of Legal Contextualization

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Keywords: sustainable urban development | legal contextualisation | governance

Abstract

The paper discusses the problem statement, the conceptual framework and the outline of expected findings (at interim stage) of the project CONTEXT (a research consortium coordinated by the University of Amsterdam investigating the relationships between planning and Law in urban projects of sustainable area development). The central question of the research is: How can central regulation be matched with interactive local policies in such a way that it enables legitimate and effective strategies of collective action with regards to sustainable development in areas of urban transformation? The innovative potential of contextualization is sought in the ‘legal legitimacy and a sense of commitment among those to whom law is addressed’ (Brunnée & Toope, 2010). We will explore the potential of general rules to guide area development while simultaneously enabling local actors to make optimal use of context specific considerations, resources and knowledge. This is what the proposal understands ‘the contextualization of legal norms’ to be (van Rijswick and Salet 2012).

The initial findings indicate four types of conditions that influence contextualisation:

- The quality of regulation as such (general and durable norms versus instrumentalism);
- Relational analysis: focusing on the ways legal rules are formulated and subsequently applied in different spheres of government (such as the European, the national and the local);
- The temporal characteristics of the relationships between policy and law (often unbalanced relationships in highly informal preparatory stages and legal hairsplitting in operational stages), which is closely related to social-political actor constellation of urban transformation;
- The different roles government assumes (conditioning versus producing orientation of government).
Development Rights Supply as the Commons: An Experimental Study

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**Keywords:** development rights | common-pool resource game | negotiation experiment

**Abstract**

In order to stimulate transit-oriented development in the Netherlands, an initiative has been launched to combine the procurement of public transport concession with development rights for area development around station areas. This combination would provide an incentive to adjust real estate development and public transport to each other. In addition, the development right would give an opportunity to the owner to have more revenues especially from the profits or gains that can be generated from real estate development. It is expected that a development right will have even more economic value, and hence can generate extra revenues for its owner, when it is transferable or can be sold to another party.

However, there is a problem in assessing the value of the development rights. One problem is due to the uncertainty of the future real estate market. Another imperative problem arises because of the fact that when there is an oversupply or no scarcity of development rights in a concession area, the value of the development rights would decrease which then will make the development rights a less attractive option. The oversupply problem can emerge if municipalities in the concession area cannot cooperate or are not able to coordinate in issuing the development rights. This requires considerable negotiations among those municipalities.

In this study, we carry out an experiment to simulate the negotiation among municipalities to supply development rights and also to determine the equilibrium of the distribution of development rights over different municipalities in a concession area in order to have scarcity and also to avoid an oversupply of development rights. An adaptation of game theoretical modelling based on common-pool resources is applied to test under which conditions land and property owners are willing to cooperate in supplying development rights.
Developments in 3D horizontal land sub-division in Israel: Legal and urban planning aspects

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Keywords: 3D land registraion | sub-surface ownership | multi-level planning | expropriations

Abstract

Since the beginning of the last decade, there has been an inter-disciplinary development of the concept of three-dimensional sub-division of the underground space. The idea initially was developed by researchers from the geodesy and survey fields and later adopted by legal scholars. Behind the idea lay a general assumption that such a sub-division allows efficient economic exploitation of underground space. Such exploitation is particularly attractive in Israel because it is a small country with a large land shortage in the high demand areas. In recent years, the utilization of underground space in Israel has become more critical, due to the growing exposure of Israel to ballistic threats from different directions.

The Israeli government took the idea seriously and established teams to develop the concept in different fields: legal, surveying and urban planning. The purpose of this article is to introduce the conceptual developments over the last decade in both the legal and the urban-planning fields. In the legal arena - the Ministry of Justice drew up a draft legislation and developed models of change in land registry. Israeli courts have begun to develop different aspects of the 3D concept: Supreme Court issued a landmark ruling, which adopted the concept and ruled that from a constitutional point of view such a division is necessary to minimize damage to private property. In addition, the Supreme Court expressed its position regarding fiscal implications of this division on local and state level taxation and on the assessments of real estate value. Lower courts had the opportunity to apply these fundamental rulings in the context of large transportation projects in Tel Aviv and Jerusalem.

In the field of urban-planning, significant progress has been made in developing the principles of multi-layered and sub-surface planning and the preparation of a National Master Plan 40 is ongoing. The program's two premier goals are the improvement of protection against attacks and improve the utilization of sub-surface. It establishes substantive criteria for planning multi-layers, such as: distinguishing between different uses, according to their suitability for human stay under the land surface; planning routes for underground infrastructure; distinction between the periphery and the center. In addition, procedures developed for engineering review of horizontal ownership division. This article will describe the new developments that have taken place in Israel on these issues over the last decade.
Deconstructing a Planning Regime: A Property Rights Critique of the NSW Approach

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**Keywords:** community participation | appeals | strategic planning | development

**Abstract**

The Environmental Planning and Assessment Act 1979 and the Land and Environment Court Act 1979, comprise a legislative duo providing statutory control over the use of public and private property in the most populous state of Australia, New South Wales (NSW). Statutory planning in NSW arguably commenced in 1948 with the Cumberland Planning Scheme Ordinance which was in turn based upon pre-War English town and country planning, and is generally regarded as the foundation for much Australian planning.

Since 1979 the NSW planning regime has matured into a complex exclusory zoning system, which has been further developed through case law to the point it is arguably the poster child for statutory land use planning in Australia. However, a new planning regime is now evolving in NSW which is intended to be less prescriptive and more adaptive to the growing population demands of the State.

In this critique, it is argued the well tested 1979 regime ought not to have been completely replaced with the new legislation which reduces community standing when consent authorities consider applications for development approval including major projects. It is argued in this paper that public participation in the evolving statutory planning regime ought not to have been reduced merely to produce questionable increases in timeframes to gain development approval.
Housing Rights: Closing the Gaps, Creating a Narrative

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Keywords: housing rights | positivism | narrative | teleology | adequacy

Abstract

This paper seeks to address some of the conceptual problems that surround the idea of housing rights. Much discussion of housing rights seems to base itself on various statutes, instruments and the like. These however are, fundamentally, merely positivistic and cannot be the basis for a considered understanding of housing rights. It will be argued that there is then a 'gap' between the 'values' implied in housing rights discourse and the statutes. This gap needs to be filled conceptually with a more robust jurisprudential account. The paper will seek to clarify that housing rights are second order rights - to be contrasted with first order rights and therefore need a more careful grounding as an appeal to absolutes or contradictions will not work. This paper will argue however that there is a way to close this conceptual gap. Human rights traditionally appeal to the 'value' of human beings. Whilst this idea of 'value' is not without difficulties it seems strongly arguable that an Aristotelian sense of 'flourishing' and human worth requires at least the essentials for human life to be established. Thus we arrive at the idea of adequacy in housing, a topic that has already achieved some attention by scholars. The problem with adequacy is that it can lack definition. It is suggested that developing the idea of a 'narrative' is a way forward here. A deleuzian narrative attempts to place housing rights and adequacy within a cultural and temporal framework thus providing a meaningful base for discussion and the scope for a bottom up approach by circumventing overly broad claims to 'universal' standards that are practically meaningless in a world where economic viability varies so greatly. A narrative approach therefore works within the contexts of a given society, a given ethnic or socio-economic group and a given period of history and allows for a more fruitful discussion of housing rights than arguing for improvable and unachievable universals.
Planning Law vs. Property Rights in Greece: an Ongoing Conflict

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Keywords: planning law  |  property rights  |  takings

Abstract
The takings issue, either caused by expropriations in the context of urban planning, by increased protection of natural, coastal, forest and cultural environment or by interventional state policies and persistent land use control, is widely spread in the Greek civil practice. During the past decades Greek state services and agencies have taken for granted that private property is to burden by the weights of urbanisation. Moreover, after the amendment of the Greek Constitution in 1975 private property suffered a wide scale of injuries and restrictions due to environmental protection and a constitutional obligation for land use plans. After 1975 one after the other, institutional frameworks were revised in the direction of the encumbrance of private property thus confirming that property rights in Greece were treated rather as social than individual rights.

Compensation tools in Greek planning law are mainly restricted in the cases of land deprivation due to common expropriations. However Greek courts still hesitate to grant compensation rights to landowners who suffer under “de facto” expropriations due to the extensive land use control and environmental protection. Although the European Court of Human Rights has adopted in many cases a different approach to secure a fair balance between public interest and private property, both Greek Administration and courts are slow and reluctant to adopt the jurisprudence of the ECHR. It is characteristic to mention that the Greek judiciary system still insists on denying the economic injury of “out-of-plan” property in the basis that traditionally through the 20th century “out–of-plan” areas are destined solely for agriculture and livestock.

Furthermore, during the 1990’s and 2000’s the planning system in Greece became overregulating and overloaded with several layers of inflexible and offensive, towards private property, plans.

In Greece nowadays, under the pressure of the economic crisis, the ongoing conflict between planning law and private property is more critical than ever, due to the urgent need to exploit the country’s resources, so as to develop public and private land. Therefor the revision of the Greek planning law emerges as a necessity and a challenge. Can we secure a fair balance between them?
Legal Resilience and the Concept of “Good Faith” in Making Coastal Planning Decisions in Australia

Keywords: coastal planning law | good faith | statutory immunity

Abstract

Recent debate about coastal land use planning and management has focussed on the concept of resilience, including engineering resilience (Davoudi. 2012) and socio-ecological resilience (Lloyd et al. 2013). An important dimension of resilience in coastal planning and management is the need to develop resilient planning and management processes for coastal land use, capable of withstanding claims in tort.

Planning decisions by public authorities relating to coastal land uses may create future liabilities. Decisions to allow development on land potentially vulnerable to coastal hazards can render public authorities such as local councils liable to actions for nuisance or negligence (Lipman & Stokes. 2011). Successive Australian state Governments have sought to mitigate the exposure of local councils to actions in tort relating to coastal land being affected by coastal hazards via statutory immunities. An enduring component of statutory immunity for local councils in relation to coastal hazards has been the obligation for councils to act in “good faith” in undertaking their statutory functions. Yet, there is little statutory guidance as to what the obligation to act in “good faith” means in practice, and how councils can demonstrate that their decision making processes have satisfied this obligation.

This paper will examine the development of the concept of “good faith” in statutory immunities for local councils in relation to decisions affecting land potentially vulnerable to coastal hazards. This examination will involve an analysis of relevant source materials, including legislative instruments, parliamentary debates and case law. Using a case study approach, the paper will explore the nature of the obligation to act in good faith in relation to coastal hazards.

The paper will conclude with a discussion of potential strategies that councils might consider to ensure that their decision making processes in relation to land potentially vulnerable to coastal hazards meet a threshold of legal resilience to tortious liability, and satisfy the obligation to act in “good faith” to attract immunity from legal action in tort.
Local Law and Public Awareness as a Means of Preserving Polish Rural Landscape in the Sudety Mountains area.

Zbigniew Tyczynski, Wroclaw University of Technology

Keywords: rural planning | regional architecture | cultural landscapes

Abstract

The article discusses the issue of preserving national heritage consisting of traditional rural landscape and regional architecture along the Polish-Czech border in the Sudety Mountains area. Over the last decade, unrestricted construction projects and liberal spatial planning in rural areas on the Polish side have caused irreversible cultural and environmental changes by destroying unique traditional settlements, which had been coexisting for centuries in symbiotic relationship with nature.

The article focuses on the architectural micro-region of Klodzko in Lower Silesia, Poland, which is one of four micro-regions identified in the long-term research of vertical architecture and traditional rural landscape in the Sudety Mountains. The author is basing his analysis on the aforementioned research as well as on his own research and studies in the attempt to diagnose different problems resulting in spatial chaos (caused also by a recent phenomenon of suburbanization of the region) as well as social consequences of the indifference to the centuries-long traditions in architecture and rural development. The author is presenting his preliminary research in four main areas: changes in the rural landscape after the World War II visible in comparative studies of archive materials and the current situation; influence of the planning regulations and other legal instruments; public awareness and the role of inhabitants in shaping their own space; and finally the present condition of historical settlements. In order to bring to light the degree of damage caused by new construction projects on the Polish side of the border, the author is comparing the studied area to a similar region in the Czech Republic, where the regional rural architecture is protected under the local law.
Innovating Spatial Development Planning by Differentiating Land Ownership and Governance. The INDIGO Research Proposal

Pieter Van den Broeck, KU Leuven, Annette Kuhk, KU Leuven, Frank Moulaert, KU Leuven

Keywords: ownership regimes | governance of the commons | critical institutionalist approach

Abstract

This presentation explains the scientific objectives, conceptual framework and expected outcomes of the research project INDIGO. The project responds to contradictions in planning practice between the protection of environmental resources and economic growth and development. It approaches this contradiction from the perspective of land ownership, use rights and governance. Flanders - characterized by a small-scale and fragmented spatial development with a concomitant, highly privatised and fragmented ownership structure - is a case in point. INDIGO aims to: understand how spatial development planning in Flanders is structured, by which ownership regimes and governance dynamics; understand which specific institutional arrangements define the governance of the Commons and how innovative institutional arrangements can be designed beyond the governing of private-collective or private-public dualisms; explore how spatial development can be improved for equitable and ecologically sustainable spatial organisation and development, by differentiating land ownership regimes and their governance and by renewing relationships between planning and ownership; improve (methods of) participation and co-production by scientists and stakeholders as creators of the new ownership regimes and governance modes. The project sees property and property rights, as a governance issue and part of the institutional dynamics of collective action regulating the claims over and the uses of land. Land is thus governed through a diversity of ownership regimes constituted by actors and selective institutions (incl. constitution, property law, land and real estate markets and values, planning systems, tax systems, financial systems, ownership discourses, …) beyond the typology of public, open access, club and private goods. Commons - as common pool resources plus the rules and sanctions attached to them - thus cover a wide array of ownership regimes between private and collective.
Private-Private Cooperation in Urban Regeneration Projects

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Keywords: private-private cooperation | urban regeneration

Abstract

Traditionally urban regeneration in the Netherlands has been based on either ‘public-led’ development projects, with the municipality in a leading role in the development, or public-private partnerships, with the municipality and one or more private developers closely working together in the development project. Usually, municipalities had (and still have) a very substantial role in these projects, not only in the planning process, but also in financial terms. For various reasons, the effectiveness of these development models is now being questioned. Many projects have come to a standstill. The on-going financial and economic crisis can partially be hold responsible for this, but shortcomings of the development models have been suggested as a cause of the problems as well (Buitelaar, 2011; Janssen-Jansen et al., 2012; Van der Krabben & Jacobs, 2013). Moreover, apart from the possible shortcomings, municipalities have now become very reluctant to take a role as investor to the extent they were used to. As an alternative development model private sector-led and private-private partnerships have been put forward (Heurkens, 2012). In the context of this paper, we define private-private partnerships as the collaboration of two or more private developers in an urban regeneration project, both in organisational and financial terms. Recently, the ministries responsible for planning in the Netherlands, in cooperation with several Dutch universities, have launched a national pilot program to experiment with innovative private-private partnership in urban regeneration. Ten pilot projects have been selected as part of this program.

In this paper we address the question to what extent private-private partnerships for urban regeneration can be effective, in the context of the present Dutch planning system. Regarding this effectiveness we analyse two different aspects: (1) how effective are private-private partnerships in the process of purchasing the necessary land and properties in the redevelopment area, and (2) to what extent can the public interest be protected properly and, related to this, can cost recovery of public works take place? To answer these questions we will, first, study the international literature on private-led urban regeneration projects. Second, we will analyse to what extent Dutch planning law ‘supports’ such a private-private partnership. And third, we will discuss the results of the pilot projects. We conclude that planning law, in its present form, lacks the right instruments to deal properly with private-private partnerships in urban regeneration.
A Solution Without a Problem?: New regulation on land readjustment in the Netherlands

Hendrik van Sandick, Ministry of Infrastructure and the Environment

Keywords: land readjustment | land policy | spatial planning

Abstract

For urban land readjustment so far no regulation has ever passed parliament in the Netherlands. It seems the Dutch managed to get things done without formal regulation or felt no need for land readjustment for developing building sites or facilitating urban renewal. Recently though the minister of Infrastructure and the Environment has announced that she will propose legislation to parliament. The proposal will be an amendment to the draft of the Law on Environmental Planning, which is now reviewed by the Council of State.

Three questions will be answered in this paper.

1. How did the Dutch manage so far?

We will start with a short historic overview of urban land policy and the role of urban land readjustment in The Netherlands.

2. Is there a need for legislation on land readjustment?

First a short overview of the usual elements of land readjustment is given. Is it aimed at assembling land or is it also aimed at renewal and improvement of buildings? Is it initiated by the municipality or land owners? How is the process organized? Then the pros and cons of urban land readjustment are described. Finally two types of land readjustment (adjustment of vacant plots and urban renewal) are tested against the existing problems in The Netherlands.

3. Which factors helped create a need for legislation on this subject now?

Among others three factors seem plausible. 1. There is a severe crisis in urban and land development. Action has to be taken. 2. Urban land readjustment has gained attraction because active land policy is under pressure. It’s one two new fads. 3. There is a strong lobby by influential policy advisors.

Finally, the paper will test the result against the garbage can model. The garbage-can theory (Cohen, March, and Olsen 1972) asserts that an organization "is a collection of choices looking for problems, issues and feelings looking for decision situations in which they might be aired, solutions looking for issues to which they might be the answer, and decision makers looking for work". Problems, solutions, participants, and choice opportunities flow in and out of a garbage can, and which problems get attached to solutions is largely due to chance. Though the theory was aimed at organizational behavior it could in my view also be projected on the policymaking process.
Coastal Preservation in The Netherlands

Keywords: coastal preservation | spatial planning | water management

Abstract

Over the centuries massive floods have swept the Netherlands, which borders in the west and the north on the sea. On January 30 1953 a great flood from the sea struck The Netherlands for the last time until now. This was the starting point for the famous Delta Works. This paper gives a concise overview of the current Planning and Environmental legislation in the Netherlands for coastal preservation. The main instruments are the Water Act and Spatial Planning Act of 2008.

Also important is the draft bill of the Environmental Planning Act (2013), which will integrate laws on water, spatial planning, environmental management and some other issues.

Another topic that will be looked at are property rights (as based in the Constitution and the Civil Code) and the necessary restrictions on property rights for public works like primary flood construction works other water management works. These restrictions include compulsory purchase (expropriation) and the obligations of owners of real estate to tolerate restrictions on their property rights.

This paper will end by discussing the following questions:

(1) is the legal system for coastal preservation adequate?

(2) which steps are taken in the integration of different sectors of environmental and planning law?

(3) has the balance between spatial planning and water management changed over the past twenty years?
Private Land Ownership as Constraint to Regional Spatial Development

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Keywords: land ownership | regional spatial development | The Netherlands

Abstract

Dutch governments have used public land development since the 1950s to keep grip on spatial developments. This happened in a manner that has been described before by Buitelaar et al. (2008) as “ownership-insensitive planning”. During the economic crisis, the risky aspects of the Dutch way of public land development became clear (Van der Krabben and Jacobs, 2013). This has stimulated debate on the suitability of public land development. Because the effect of the economic crisis is mostly visible on the local planning level, the role of regional authorities has been less intensively discussed. However, as a result of new legislation, provinces have increased possibilities on the land market since 2008.

This paper explores the strategic actions of regional planning authorities in the Netherlands (the provinces), during the economic crisis, and in relation to private land owners in planning projects. Both the way in which provinces act, their motives for these actions, and the way this behaviour affects the implementation of the plans, are discussed. We argue that the regional governments depended on their planning powers and land policy instruments, rather than involving land owners in development processes.

Via two case studies we show that provinces underestimated the role of land owners in these regional planning processes. The first case, The Oostvaarderspolder, shows how provinces overestimated the willingness to sell of land owners, and underestimated the difficulty to purchase a continuous strip of land. The second case, Bloemendalerpolder, shows how public-private partnerships have to renegotiate agreements as result of the crisis, and the role private land ownership plays in these renegotiations. We conclude that provinces underestimated the effect of external influences such as politics and economics on their planning affairs. Their deep-rooted conviction that ‘everything will turn out just fine, or we expropriate’, lead to risky land policy and land purchases. These risks could be (partially) limited by a different attitude in planning processes and different land policy strategies.
Rationalising Different Authorisations for Development - Lessons for South Africa?

Jeannie Van Wyk, University of South Africa

Keywords: development | authorisations | decision-making

Abstract

The South African Constitution dictates that Government is constituted by national, provincial and local spheres of government which are distinctive, interdependent and interrelated. Each of these spheres has executive powers over matters (called functional areas) that are specifically allocated to that sphere. These are listed in two Schedules to the Constitution. In this way matters such as ‘environment’, ‘regional planning and development’ and ‘urban and rural development’ are allocated concurrently to the national and provincial spheres. ‘Provincial planning’ is allocated exclusively to provinces. Local government has executive authority in respect of ‘municipal planning’. National government is responsible for matters such as ‘mining’ and ‘land’.

Problems arise when more than one sphere of government is responsible for making a decision in respect of a single development. Examples of developments where this is the case are numerous and include the establishment of a new neighbourhood, a mine or a casino. What is required in all of these examples is the appropriate land use right or zoning, which is a municipal function, and an environmental authorisation, which is a provincial responsibility. In the case of the mine a mining permit is required which is a national responsibility and in the case of the casino gambling and liquor licences must be issued by provincial authorities. In South Africa 16 – if not more – pieces of legislation set out procedures to apply for different permissions or authorisations. This is cumbersome and impractical. Despite the constitutional directive that the three spheres are enjoined to cooperate, practice paints a different picture and each decision-maker jealously guards his or her specific turf.

Some means of streamlining or rationalising the different processes is required, and South Africa needs to look further afield for solutions. Can systems such as those in New Zealand and the Netherlands where there is large measure of rationalisation provide guidance in solving some of the problems?
How I Stopped Worrying and Learned to Love the Koontz Ruling

Alan Weinstein, Cleveland State University

Keywords: takings | exactions | impact fees

Abstract

In June 2013, the U.S. Supreme Court's ruling in Koontz v. St. John's River Water Management District significantly extended the reach of the Nollan/Dolan standard of review. In this paper, I argue that while this decision does raise legitimate concerns on legal doctrinal grounds, particularly as regards courts' applying heightened scrutiny to legislative enactments, it's practical effect on planners and local elected officials should be positive. This view contrasts sharply with the hand-wringing "woe to us" reaction of the leadership American Planning Association. This paper shows that the APA's negative response is unwarranted. Koontz will certainly cause problems in the short run as all parties adapt to its new demands, and some parties seek to exploit the "leverage" they will perceive it provides. After this "break-in" period, however, Koontz will serve to enhance proper planning and, ironically, make well-conceived plans more, not less, defensible.
Planning Technical Urban Infrastructures – A Blind Spot on the Legislator’s Map of the Town

Martin Wickel, HafenCity University Hamburg

Keywords: infrastructure | urban water management | infrastructure planning

Abstract

Technical urban infrastructures in the field of traffic (roads, public transport), energy supply (electricity, heat) or local water management (water supply, waste water disposal) are of increasing importance for urban planning and development in the future. Aspects like changing demographics (Germany: the population is shrinking, but some cities are growing other areas are losing population disproportionally.) and the necessity to adapt to new phenomena of climate change (floods, droughts, more frequent occurrence of heavy rainfalls) make it necessary to plan infrastructures more carefully. In the past very often a build and supply approach was adopted. First the decisions about urban developments were taken, for example, a new quarter was developed. Only then the necessary infrastructures were added. Today, it seems necessary to consider the question of infrastructure development from the beginning. On this background it is surprising that – at least in Germany – in many cases (i.e. states) the planning of technical urban infrastructures is not covered by statutes but left to informal planning approaches. Although the need for planning is generally accepted there is a significant lack of legal framework.

Using the example of urban water management, the presentation will come to the conclusion that a legal framework is required. Only planning decisions are suited to accommodating interests that must be considered in the development of urban infrastructures. If the development of an infrastructure is the subject of a plan this will increase its visibility in the process of urban development. If the requirements of the development of the infrastructure are articulated in advance special attention must be paid to them. Furthermore, planning procedures can open up the process of infrastructure development for participation by the public, authorities and special interest groups. And finally, if hard decisions must be taken, such as decisions that incur costs on property owners, a coherent plan that reaches beyond the given case might be necessary to justify these decisions.

A rough outline of the key elements of a planning system for urban water management will be provided.
'Indigenous Peoples' in International and Local Contexts: Declarations, Land Rights, Practices and Dilemmas

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Keywords: indigenous | land rights | Negev Bedouin

Abstract

In 2007, the UN adopted a declaration on the Rights of Indigenous Peoples (UNDRIP). Although this document is not legally binding, it is widely perceived as the apex of international recognition of the special rights of indigenous peoples.

We address the development of indigenous concepts at both international and local levels, focusing on land aspects. Firstly, we examine the development of indigeneity in international law including various UN forums that promoted the concept toward the final Declaration. Secondly, we reveal the comments provided by several states upon their vote on the UNDRIP and what stands behind them. Thirdly, we explore the development of indigenous rights in Taiwan. And fourthly we discuss Israel's position toward the indigenous question.

Through our study we highlight dilemmas regarding definitions, sovereignty, and implementation with special emphasize on land rights. We relate to the nebulous nature of the definitions of indigeneity, the common limitation of this label to countries affected by Western colonialism from the 15th-16th century onwards, to the ambivalent attitude and the denial by some countries [such as China, India, United Kingdom, Turkey and others], the existence of indigenous peoples within their boundaries, and to the political use of indigeneity to achieve other goals. Tracing the progress and developments in the concept of indigeneity sheds light on how the growth in indigenous discourse has led to multiple levels of indigenous claims that create increasingly complex and politicized situations.
Public Choice and the Public Trust

Ryan Yonk, *Southern Utah University*, Randy Simmons, *Utah State University*

**Keywords:** public trust | law and economics | environment

**Abstract**

The public trust doctrine has been used throughout the history of the United States to establish public rights in navigable waters and on their shores in order to promote navigation and commerce. The doctrine has been expanded in recent years to include non-navigable waters, recreation and the broad category of environmental protection. This expanded view of the public trust doctrine is the basis for the claim that the public trust doctrine provides that public trust lands, waters, and living resources in a State are held by the State in trust for the benefit of all of the people, and establishes the right of the public to fully enjoy public trust lands, waters, and living resources for a wide variety of recognized public resources. The Doctrine also sets limitations on the States, the public, and private owners, as well as establishing the responsibilities of the States when managing these public trust assets.

Legal philosopher Joseph Sax claims, “Of all the concepts known to American law, only the public trust doctrine seems to have the breadth and substantive content which might make it useful as a tool of general application for citizens seeking to develop a comprehensive legal approach to resource management problems.” Thus, Sax and his followers argue that courts, legislators, and voters need to continue to expand the public trust doctrine fit a broad range of ecological goals—streams not only navigable by boats but by fishers, swimmers, and other recreationists; preserving areas in their “natural” state; wetlands; groundwater; artificially enlarged waters; wildlife; and stream, lake, and ocean access.

The public trust doctrine as originally applied and as it is applied today faces practical problems of definition, implementation, and unintended consequences. These problems are the natural consequence of pushing democratic institutions beyond their abilities to respond effectively and can easily lead to the fulfillment of Benjamin Franklin’s supposed definition of democracy, “Two wolves and a lamb voting on what to have for lunch.”

Democratizing resource management through the public trust doctrine leaves the wolves unfilled and the lamb on life support because the public trust doctrine is a policy that creates the illusion of “protecting” supposed public assets. The illusion is created by the very nature of public decision making processes. The public trust doctrine panders to the worst features of democracy and ignores the roles played by private property rights in a free society. The public trust doctrine encourages landowners to undertake preemptive habitat destruction and encourage their neighbors to do likewise. It encourages habitat destruction and animosity towards regulators. It creates negative incentives for landowners and perverse incentives for government regulators.
Legal Refinement of the LADM Standard: More classes or extended code lists with better defined types of Right, Restrictions and Responsibilities?


**Keywords:** land administration | ISO standard | semantic legal model

**Abstract**

To provide legal security in property rights/land tenure and support efficient land use planning, one needs a well-functioning system of land administration. In other words good land administration is the basis for sustainable land management and a stable and efficient land market.

Although property rights and procedures vary considerably between jurisdictions, the underlying data model to support land administration was found to be quite similar. Therefore, a decade ago, several of the authors of this paper initiated the process of coming to an international reference standard for land administration, the so-called Land Administration Domain Model (LADM). LADM is a framework for describing interest in land according to internationally agreed concepts and terminology and makes it possible to categorize interests in land (in specific jurisdiction) regardless of the origin in different legal systems. This not only enables the improvement and further development of national systems of land administration, but also supports international communication and exchange of data. In 2012 the LADM became an international standard, ISO 19152.

The LADM is based on “right”, “restriction” and “responsibility” (RRR) classes, which can apply to land, but also to buildings, network utilities, and 3D volumetric spatial units. Based on a number of earlier publications, such as (Paasch 2012), (Paasch et al 2013) and (Hespanha et al 2013), this paper explores the need and possible approaches to a more detailed classification of property rights, by either adding more subclasses for specific sets of RRRs, clustered after their legal or societal characteristics (e.g. common rights, latent rights, customary rights or informal rights as explored by (Paasch et al 2013)) or by the extension of code list values in LADM for a more refined classifications, or both. Options to ‘define’ code list values are: 1. describe with natural text, or 2. additionally encode an hierarchical structure to code list values, or 3. develop an ontology of the code list values, such as ownership, lease, etc. However, in all options it is non-trivial to define formally basic legal concepts such as ‘ownership’.

We will further investigate these aspects, including the decision when to add new classes and when to extend the code list values. In case of code list it will be further explored what is good approach to define the values.
Urban Growth Management in the Portland, Oregon Region -- A Forty Year Experiment

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Keywords: urban growth management | planning law | urban growth boundaries | regional planning

Abstract

For forty years, the State of Oregon has had a unique planning law regime. While the system arose out of concerns over the loss of resource lands, from the beginning urbanization control was a significant evolution factor.

According to the 2010 census, the City of Portland’s population is 583,776 and Oregon, 3,831,074. The Portland Region, which includes Southwest Washington State, has a population over 2,225,000. A significant portion of Oregon’s population is concentrated in a relatively small area -- 257,645 acres or 104,265 hectares – which requires analysis to determine whether urban growth management aspects of the State’s Planning Program are equal to acknowledged success in preserving resource lands.

The Oregon planning system provides for an "urban growth boundary," separating "urban" land (which may be developed intensely), from "rural" lands devoted to resource uses (such as farming and forestry) and some large-sized residential parcels. Planning policies also require sufficient lands for residential, commercial, industrial and employment uses for a twenty year period (but allow for further urban land designations beyond that for up to fifty years), a priority system which uses resource lands last (though provide for certain circumstantial overrides) and allows changes in existing urban growth boundaries (which separate urban and rural lands) based on demonstrable need for more and evaluating impacts of meeting that need among various alternatives.

With planning law a branch of administrative law, the question arises as to the courts role versus administrative agencies upon reviewing plans and growth management regulations. A legislative expectation of deference to policy decisions of state, regional and local governments certainly exists. Nevertheless, there are detailed requirements before an urban growth boundary may be established or changed. The result, needed for findings and articulated policy interpretations, assures necessary facts are present and interpretations are consistent with applicable regulations. Legislative pressure from business and homebuilder groups cause frequent boundary reviews with "Metro," the regional agency responsible for growth management, undertaking lengthy urban growth boundary status analyses as well as politically unpalatable alternatives of growing "up" with more intense uses or "out" (extending the boundary to rural lands, even to the ire of resource users).

Given Oregon’s growth management regional approach, a system evaluation offers lessons to other regions on what works, and what does not.
Indigenous Challenge to a Legal Doctrine: Bedouin Land and Planning Rights in Israel/Palestine


**Keywords:** indigenous | Bedouin | Israel | Palestine | land

**Abstract**

Abstract: Framed within the issue of indigenous and minority land and planning rights and transitional justice, the paper analyzes recent legal challenges launched against a long standing Israeli ‘dead Negev’ doctrine, which has made it all but impossible for traditional land holders to gain legal ownership. The doctrine has also caused the classification of many Bedouin localities as 'illegal' in Israeli regional plans.

Israeli legal doctrine maintains that lands held by indigenous Bedouins before 1948 should be classified as 'mewat' ('dead' that is, empty) and consequently be registered as state property, similarly to the ‘terra nullius’ approach used in other settler societies.

This doctrine stands behind the on-going dispossession of Bedouins in the Negev and the West Bank, which has caused decades of deprivation, poverty and pervasive criminalization, as well as modernizing state-planned urbanization for about half the Bedouins.

The paper presents a systematic analysis of the various pillars of the ‘dead Negev’ doctrine. It shows how Israeli courts link contemporary denial of property rights to the alleged inaction of the Bedouins' ancestors during Ottoman and British regimes. The state refuses to recognize the autonomous legal system under which Bedouin managed their land prior to the Israeli regime.

The discussion of the paper contributes to the understanding of the interaction between law and planning to theories of the legal geographies of settler societies, and to the on-going struggle over democracy and human rights in Israel/Palestine.
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