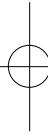

Comparative Urban Planning Law





Comparative Urban Planning Law

An Introduction to Urban Land
Development Law in the United States
through the Lens of Comparing the
Experience of Other Nations

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Southwestern University
School of Law

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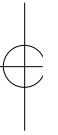
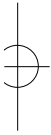


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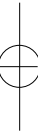
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Preface

Each year, and for more than a decade, I have been traveling to Europe to participate in the Traveling Land Use Seminar sponsored by the Property Law Forum at the University of Southern California (U.S.C.) Law School, led by comparativist George Lefcoe. The seminar takes place in different cities each year and during the seminar we study the city with city officials and local university professors, tour new projects with developers and city officials, and meet to compare the American experience. After a few years, I found that I was extending my trips to visit more cities, and taking additional trips during school holidays or during sabbaticals, to retrace the steps of my earlier trips to view completed and mature projects. Without a conscious curriculum modification, I found myself frequently introducing experiences from abroad in my classes in Land Use Law and Housing and Community Development Law. The response of my students has been extraordinary. Students are engaged by discussions of alternative strategies, cultures, and experiences, and are more willing to critically look at American policy through international comparisons. As part of my travels, I try to capture my experiences through photography, and gradually I have generated various slide shows on topics such as European social housing, brownfield redevelopment, sustainable and green architecture and planning, and transit-oriented development. The slide shows of my latest trip are now an annual event at my school, not simply with my land use students, but particularly with first year students who are now eagerly looking toward land use law. I have also taken the shows and my international comparisons that I have published,¹ and found receptive audiences at schools of law, planning, and geography at U.C.L.A., U.S.C., the Universities of Dortmund in Germany and Utrecht in the Netherlands.

As a result of the success of my efforts at injecting international experiences into the teaching of housing, redevelopment, and land use law, I set out to produce a set of mate-

1. James A. Kushner, *A Comparative Vision of the Convergence of Ecology, Empowerment, and the Quest for a Just Society*, 52 U. Miami L. Rev. 931 (1998); James A. Kushner, *Growth for the Twenty-First Century: Tales from Bavaria and the Vienna Woods—Comparative Images of Urban Planning in Munich, Salzburg, Vienna, and the United States*, 29 Urb. Law. 911 (1997), reprinted as modified, 6 Southern California Interdisciplinary L. J. 89 (1997); James A. Kushner, *Planning for Downsizing: a Comparison of the Economic Revitalization Initiatives in American Communities Facing Military Base Closure with the German Experience of Relocating the National Capital from Bonn to Berlin*, 33 Urb. Law. 119 (2001); James A. Kushner, *Social Sustainability: Planning for Growth in Distressed Places—the German Experience in Berlin, Wittenberg, and the Ruhr*, 3 Wash. U. J. L. & Pol’y 849 (2000), published in *Evolving Voices in Land Use Law* Ch. 13 (Germany) (Washington University Journal of Law & Policy 2000); James A. Kushner, *A Tale of Three Cities: Land Development and Planning for Growth in Stockholm, Berlin, and Los Angeles*, 25 Urb. Law. 197 (1993).

rials that would allow a systematic study of the range of issues that would be stimulating to students and fun to teach. Written judicial opinions are very much an American and an English tradition, and the written opinions from non-American or non-Britain and its former empire members, are not typically translated. Thus, I have relied most heavily on my own narrative on the American planning law comparison and the use of edited excerpts from law and interdisciplinary literature that typically focus on comparing planning issues from a non-American jurisdiction with the American experience.

It should be understood that this book does not attempt to present a summary of the current laws and policies affecting land development and urban planning throughout the world. Instead, the idea is to offer contrasting experiences, particularly legal, and to offer a sufficiently diverse view of a problem to appreciate the value of looking to the experiences of other lands and to receive an expansive sense of strategies and mechanisms to comprehend and influence the impacts of alternative law and policy. Some of the readings have been chosen—not because they reflect the current law of the jurisdiction described, but because it best underscores the relationships I seek to highlight, the interface between alternative comparative laws and systems, and the efficacy of public policy.

The narrative summary of American land use law running throughout the book is accurate and contemporary and I am committed to maintaining it. However, it is highly abbreviated so as to permit the appropriate balance with comparative materials. The narrative also frees the instructor from having to spend a significant portion of class time describing the American law affecting each issue. Instead the materials should allow class time to be centered on larger and more focused policy questions arising from contrasts and comparisons. The narrative also allows students in advanced classes who lack the benefit of having taken a basic land use law class to catch up and enjoy the class with greater confidence.

The materials can be used to teach a basic land use law course in a law, planning, geography, or other urban issues class by the instructor who prefers a heavy policy orientation, or it could be used to teach an upper division class or seminar that can be even more policy focused with less attention to the basic American planning jurisprudence. It is my hope you will agree that these materials are compelling, raising critical questions about planning and planning law alternatives. The book notably includes many readings designed to create controversy in the classroom, excitement, incitement, entertainment for the reader, and a generally accessible *reader* for any student of urban issues, urban sprawl, and urban development. For many years I have taught a seminar on Housing and Community Development in which I stress social equity issues: homelessness, affordable housing access, economic development, transportation, housing discrimination, segregation, and urban revitalization. After many classes, along with the students, I went home saddened by the awful suffering of those struggling within and those struggling to enter the government's "safety net," and the frustration of reform. What I discovered was that if, without ignoring or masking reality, I could introduce a theme of optimism, and present readings and ideas that offered hope, that students became more engaged. Curiously, I noticed this change at the same time I was introducing comparisons from other nations. This result was particularly enhanced where I was able to present images of European social housing and brownfield revitalization. I have focused on this theme of optimism and I have sought to offer through these materials a sense of my own optimism for the future, for an enhanced quality of urban life through intelligent planning and policy formation, and legal mechanisms that embrace these goals. Most importantly, I hope that this book reflects my belief that through the tools

of planning and planning law employed throughout the world, that efficacious instruments have been provided for transforming and improving the human environment and experience.

This project could not have been undertaken without an extremely long list of friends and colleagues, including developers, city officials, and academics abroad that have welcomed me to their communities and have provided me with an extraordinary education. It was also supported by financial assistance from Southwestern University School of Law and my friend and dean, Leigh H. Taylor. I must also thank Linda Whisman, the Director of Southwestern's Law library and her fabulous research and acquisitions staff that scour book lists and periodical indexes for international and comparative land use scholarship, continually adding to our extraordinary specialty collection. Southwestern's library, which happens to be the most beautiful law library in the world, housed in the world-renowned Art Deco Bullocks Wilshire building in Los Angeles, was the recipient of the Donald G. Hagman Memorial Collection which contains much of Don's incredible collection of comparative land use and zoning materials. I would also like to thank Dean Matthew Spitzer of the U.S.C. Law School for the wonderful support and treatment I received during my visit in 2002 and Associate Dean Scott Altman, who supported me and my plan to teach these nontraditional materials, allowing me a laboratory to test drive the book. I know that the book is much better for the effort. There are so many exciting discussion topics for each chapter that classes were never boring. The materials are so keyed to current events that students would come to class with agenda proposals based on newspaper stories or the interface with their personal study of a foreign land use system. I structure the class around each student choosing a topic and analyzing the problem or question by comparison of the American experience with that of another nation, typically comparing problems in an American city and a foreign city, looking to local and national legal and planning environments and solutions.

I also want to thank my students who are my inspiration as well as my hope for the future. The students in my Housing and Community Development Law Seminar at Southwestern University School of Law who have written their research papers on comparative planning topics have engaged me and informed me of the intricacies of the law and policies of other nations. In addition, since the 1980s, I have employed an army of assistants researching the real estate and land use laws and experiences of every region of the world. I also want to thank the receptive students in Jan van Weesep's urban geography class at University College at Utrecht University, the planning students of Klaus Kunzmann and Ben Davy at Dortmund University, and those of Tridib Banerjee at U.S.C.'s School of Policy, Planning, and Development, who have convinced me that there is a very wide and receptive audience to the ideas contained in this volume. I also wish to thank the students in the U.S.C. Masters of Real Estate Development German Planning and Development class of Susan H. Kamei that I taught in and accompanied to Berlin and the Ruhr in 1999. I also wish to thank the students in my class on Comparative Land Use at the U.S.C. Law School during my visit in 2002, who enthusiastically and appreciatively put up with the inaugural test flight of these materials.

Finally, and without a doubt, the most significant reason why this book has been published is because of Keith Sipe and the incredible family of Carolina Academic Press. Keith has suffered through three editions of my textbook on Housing and Community Development Law, putting up with my co-authors, a who's who of prima donna problem authors who think contract submission dates are "advisory." Nevertheless, when I came to him with an idea for a book for a course that no school offers, and no discipline teaches, he instantly agreed to publish. I have been heartened by the number of

teachers in urban affairs, urban planning, geography, as well as state and local government, and land use who are enthusiastic about the project and would gladly teach such a course but for the lack of materials and the rather exhausting undertaking to collect and contrast not just more than one system, but a taste of the world.

Although before this project my work has largely centered on the United States and Europe, I have sought to include comparisons and materials from Asia, Africa and the Americas, I have sought to include the questions of sustainability, globalization, and the local, regional, national, and international perspectives affecting social equity. I hope Keith is rewarded for his courageous underwriting of projects that may not carry a promise of financial success but are simply interesting. If you have any questions or comments e-mail me at jkushner@swlaw.edu. If you have written, or have read a piece that should be included in the next edition, please send me a citation. Anyone who can send me a citation to a current updated discussion of any jurisdiction described or discussed in the book will be thanked when I include it in the next edition. If you have any complaints contact Keith. Although I have been collecting and editing materials for several years, I wrote the textual materials while living at University College at Utrecht University in the Netherlands and in trains crossing Germany in 2001, and completed the final edit after teaching each chapter at the U.S.C. Law School during my spring visit in 2002. Of course this project would not have happened without the support of my family who with relatively good cheer leave me to my projects.

Los Angeles

2002

