

## Guest editorial: comparative research at the frontier of planning law

### The case of compensation rights for land use regulations

Rachelle Alterman

Center for Urban and Regional Studies, Technion – Israel Institute of Technology, Haifa, Israel

#### **Abstract**

**Purpose** – This paper aims to present the merits of cross-national comparative research as a method for pushing the frontier of knowledge about planning laws. Since in every country there is usually some dissatisfaction with its present planning laws or certain aspects of them, cross-national research can open an arena of alternatives based on real-life experiences. To demonstrate this argument the paper focuses on a shared dilemma – how should the law handle the negative effects of some planning decisions on land values. This case is used to demonstrate both the comparative method and the usefulness of comparative findings. The conclusions point out the opportunities for cross-learning.

**Design/methodology/approach** – The overall argument about the comparative research draws on the author's extensive experience in conducting cross-national research on a variety of issues in planning laws. The research on compensation rights reported here draws on the author's recent book which analyses the laws and practices in 13 countries. To ensure a "common platform" for comparison, the author developed a method based on a set of factual scenarios and a shared framework of topics. A team of country-based researchers conducted the legal analysis, and the team leader conducted the comparative analysis.

**Findings** – The 13-country analysis shows that there is a great variety of approaches to compensation rights around the world and a broad range of degrees, from no compensation at all to extensive compensation rights. There is no "consensual approach". The search for similarities based on region in the world, legal family, cultural background, density or demography, shows that the differences cannot be "explained" on the basis of these variables. The degree of political controversy on this issue also varies greatly. The breadth of laws and practices offer a range of alternative models to enrich local debates.

**Research limitations/implications** – Any comparative research on a new topic is bound to be exploratory. There are not yet any established theories in planning law (or in comparative research) from which hypotheses can be derived and tested. However, the large sample of countries, covering 40 per cent of the OECD countries (at the time), and the careful shared method have likely produced reliable findings.

**Originality/value** – Most of the comparative research that the author has conducted over the years charted new grounds in both its topics and its comparative breadth. The paper reports in brief on cross-national comparative research on compensation rights. The full research, on which this paper draws (published as a book in 2010), is the first to look at this specific issue globally with a large 13-country sample of OECD countries.

## **Introduction**

Since the world's first national planning law was enacted in the UK in 1909 (McAuslan, 2003), the vast majority of countries across the globe gradually enacted laws for planning and regulating land use – most recently the post-communist countries. Although planning laws are not always applied and enforced (especially in developing countries), in most advanced-economy countries – the members of OECD – planning laws are a major force in the economy and society.

Planning laws potentially affect more aspects of our lives than many other laws: they are multi-faceted pertaining to many areas of people's day-to-day lives; they aim for the long range and have multi-generational outputs; they apply to real property which is the major part of most people's investments; and they can and do create major socio-economic distribution and redistribution of wealth. Planning laws produce decisions that affect where people may live; how neighborhoods will function and what will be their socio-economic profiles; where businesses may locate and the distribution of employment opportunities; the implications for people's travel behavior; the location and physical quality of public services, and the sustainability of the environment.

### **Cross-national comparative research in planning law**

In many countries there is perennial dissatisfaction with whichever planning laws hold at a given time. Legislators and practitioners face difficult challenges in formatting laws and regulations that meet their own objectives, no less in engendering a satisfactory degree of support among stakeholders and interest groups. In some countries, such as in the UK, the frequent reforms and revisions reflect chronic restlessness within this field of law.

#### *The purpose of comparative research*

Despite the many differences from country to country, planning laws across the world do play many similar functions and are called upon to resolve similar meta-dilemmas. Given the perpetual quest for better laws and practices, one would have thought that an energetic "knowledge trade" would have emerged whereby planning law scholars and practitioners from many countries would routinely seek opportunities to exchange knowledge about alternative approaches. This is not the case. To date, not much systematic comparative research has been conducted in planning law. Until 2007 there was not even a truly international academic platform for exchange among planning-law scholars<sup>1</sup>. The launching of the International Journal of Law in the Built Environment two years ago has provided an important venue for such research publications.

Even though the state of theory and method in comparative research are still at a rudimentary stage, comparative research can give a significant "push" to the frontiers of knowledge in planning law. The findings of comparative research may also have practical utility. They enable cross-national learning about alternative legal approaches and "solutions" to the inherent dilemmas that confront legislators and lawyers who are always in quest for better solutions. Such mutual learning does not necessarily imply direct transplantation of specific legal approaches. Laws are grounded in legal systems and reflect public policies, socio-political conditions and cultural milieus that cannot be replicated (Mamadouh et al., 2002). But since there is frequently a quest for better, more just, or more operational planning laws, and since the variety of alternatives is usually not intuitively apparent, the capacity to learn systematically from other countries' laws and their implementation is a valuable policy resource.

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<sup>1</sup> The author is the initiator of the International Academic Association on Planning, Law and Property Rights, founded in Amsterdam in February 2007.

### *The challenge of designing methods for comparative research*

There is no single, agreed-upon approach for conducting comparative legal research. The authors of a leading textbook on comparative law note that comparative research is:

[...] a variety of methods for looking at law [...] The range and eclecticism of its methods is matched by the wide variety of its aims and uses. Cross-national studies have yielded important contributions to the understanding, practice, and reform of law in the last century. [...] In a world where national and cultural “difference” is often seen as posing a formidable challenge, comparatists hold up a view of diversity as neither an impenetrable barrier to comparison nor an aberration to be ignored or reduced, but instead as an invitation, an opportunity, and a crucible of creativity and dynamism (Mamadouh et al., 2002 at 13).

To date, much comparative legal research has been devoted to private law<sup>2</sup>. The state of research and method-building on public law related to property is especially rudimentary. The present study has a modest goal: to create a fundamental layer of knowledge that describes the various laws on regulatory injuries to land value and points out some similarities and differences. This basic level of comparative analysis has been called a “juxtaposition”, where the different countries are placed side by side. This level is suited to the present rudimentary state of knowledge in comparative planning law. There is no robust theoretical platform for deducting hypotheses and “testing” them.

The implications are that scholars in this field may not be able to identify convincingly the variables that could explain why certain specific legal arrangements in planning laws emerge in some countries and not in others, why there are convergences or divergences. Such “explanations” must await the time when more factual and theoretical knowledge builds up.

Comparative researchers should also consider whether they wish to go beyond a descriptive-analytical approach and adopt a normative or critical approach. At the current state of theory building and factual findings, a normative stand may be more problematic, as Dagan (2007) and other scholars have noted<sup>3</sup>.

The rest of this paper presents an example of how comparative research has been harnessed to enhance the understanding of one of the perennial – and universal – dilemmas in planning regulation and law. This is a 13-country research project is one of the largest-scale comparative studies conducted to date on any topic of planning law. The full research was published in the form of a book (Alterman, 2010).

### **Applying comparative research to a universally shared issue in planning law: compensation rights for reduced land values**

No land-use law in the world can evade the need to address the relationship between land use regulation and property values. The issue is universal, yet the solutions are domestic and local – each country on its own, usually in isolation from other countries’ experiences (even those of neighboring countries). Despite the importance of this subject for cross-national knowledge exchange, it has not drawn much attention from researchers.

At times the effects on property values are upwards, leading to increase in property values, at other times the effects are downwards, causing a reduction in current or future values. Understandably, the upwards effect is usually less controversial than the downwards effect. The latter is one of the “raw nerves” of planning law and

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<sup>2</sup> Alexander (2006, p. 17) also makes this point.

<sup>3</sup> Dagan (2007) also notes the limitations of comparative research for drawing normative conclusions.

practice. This issue can have extensive economic and social-justice implications and is at times a major impediment to the implementation of land-use planning and environmental policies. There are many answers to this dilemma – from an absolute “no” to compensation rights, to many degrees and nuances of “yes”. These may apply to a great variety of legal and factual situations.

How can the decision makers or legal scholars in a given country assess whether the specific degree of compensation rights (or their absence) in their domestic planning law is in fact on the more generous or restrictive sides? Systematic cross-national comparative research can provide the scale and the answers. I chose to study this topic extensively because it serves as a good illustration of the usefulness of comparative research. After four years of research, I published a book entirely devoted to this issue. It takes an in-depth and detailed view of the laws and practices of 13 national jurisdictions (Alterman, 2010).

The current state of comparative research on compensation rights

This research project is, to the best of our knowledge, the first large-scale comparative research devoted entirely to regulatory injuries. There have been several previous comparative publications, but they have covered fewer countries or pertained to topics only indirectly related to compensation rights. The seminal theoretical and comparative contribution directly focusing on the relationship between land use regulations and land values was published in 1978 in the USA (Hagman and Mischynski, 1978)<sup>4</sup>.

Interestingly, all the contributions surveyed were published by American legal scholars. Considering Europe’s quest for a “single market” and the importance of the free movement of capital – including real estate investments – one would have expected that European scholars would study the similarities and differences in regulatory injuries to land values and compensation laws across Europe. Yet, as surprising as this may seem, there has been very little comparative research on regulatory injuries and compensation rights in Europe. The major comparative project on planning law and institutions commissioned by the European Commission (1997-2000) does not cover regulatory injuries law at any depth<sup>5</sup>.

### **The research question**

I asked each country researcher on the team to address the following main question:

Under your country’s laws, do landowners have the right to claim compensation when a government decision related to planning, zoning or development control causes a reduction in property value (but not including actual expropriation)? If so, what are the legal and factual conditions that a landowner must meet to claim compensation? And how extensive are such claims in practice?

Injuries to property values caused by land-use regulations may fall along a continuum – from no injury at all to a reduction of all or most of the property’s value. This entire range was within the scope of this research. However, this research project does not encompass every possible topic related to regulatory injuries. The focus is on regulations related to land use planning, not on all types of regulations that may affect property values. The limitation accords with the core subject of the law on regulatory injuries as historically viewed in most countries. Thus, some types of environmental regulations that are not part of land use planning are not systematically covered.

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<sup>4</sup> The seminal theoretical and comparative contribution directly focusing on compensation is titled *Windfalls for Wipeouts* (Hagman and Mischynski, 1978). For a detailed list of previous research contribution, see, Alterman (2010, p. 7).

<sup>5</sup> European Union, European Commission (1997-2000). Schmidt-Eischstaed’s (1995) book is another important European comparative analysis of planning laws, but it too does not cover regulatory injuries.

## **The variables for selecting the jurisdictions for study**

In carrying out comparative research on planning laws, the researcher usually will not have the privilege of relying on prior theory or previous findings from which to derive a set of hypotheses which can be supported or refuted. There is, therefore no basis for drawing a statistically random sample of countries.

In designing the sampling of countries, my overriding assumption was that the common denominator would be, that all countries selected would all belong to the group of countries with an advanced economy and a democratic regime. Determination of “eligibility” for membership in this group need not be made by me; the OECD selects its member countries based on these criteria. The reason for including only advanced-economy countries was that in developing countries, the issue of compensation for decline of value due to planning regulation is not ripe for research. Although planning laws have been enacted in most developing countries, their implementation and enforcement are still at a rudimentary stage. In many developing countries, decision makers’ attention is focused on basic infrastructure delivery, and the major issue regarding property rights is compensation for actual expropriation of land.

Beyond this common denominator, the research strategy aimed to encompass as many variables as reasonable, and thus aimed at a sample size that is relatively large (relative to comparative research projects). There were also some practical considerations in drawing the sample of countries (access to information and to researchers who are proficient in English). The set of countries chosen should represent the majority of legal approaches to regulatory injuries among the world’s democratic countries with advanced economies.

In view of the pioneering character of this research, and the absence of solid theory from which to deduct the hypotheses and variables, I based the selection of countries on several “common-sense” assumptions about variables that may relate to differences in approaches to regulatory injuries. Will these variables indeed prove to be “explanatory”?

The variables were:

- Affiliation with a legal “family” (common or civil law)<sup>6</sup>.
- Unitary and federal jurisdictions.
- Is there constitutional protection of property rights.
- Location around the globe and degree of proximity to other countries in the sample (as an opportunity for knowledge transfer).
- Affiliation with different cultural-language groups.
- The common denominator: membership<sup>7</sup> in the OECD

## **The sample countries**

I selected 13 countries for comparative analysis. This is a large sample, at the time constituting 40 per cent of OECD membership. At this stage of knowledge-buildup, a large sample of countries was necessary in order to dispel assumptions that there is a single dominant approach outside the USA or that there is a “European approach” versus an “American approach”. My objective was to open the cross-national discussion to participants in many countries around the world.

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<sup>6</sup> For a general discussion of legal tradition in comparative research, see Glendon et al. (2007).

<sup>7</sup> At the time the research project began, in 2006, Israel was a candidate for the OECD, and became a member in 2010.

In view of the important legal and ideological changes occurring in the post-socialist countries, I wanted to include at least one country from that group, but one that is already a member of the OECD. Poland was chosen. Because Europe encompasses a major portion of the world's democratic, advanced-economy countries, the sample necessarily includes many European countries.

The 13 countries chosen included in the (non-random) sample are listed from west to east and south. They are: the USA, Canada, the UK, France, The Netherlands, Sweden, Finland, Germany, Austria, Poland, Greece, Israel and Australia. These countries are located on four continents. Nine are in Europe and are members of the Council of Europe as well as the European Union. Two countries are located in North America, one in Asia, and of course, one on the Australian continent.

The sample represents the two major legal "families". Five share the common-law tradition: the UK, Canada, Australia, the USA, and Israel<sup>8</sup>. The remaining eight countries – all located on the European continent – are civil-law countries. When looking at possible differences among the countries that belong to the two legal systems, I also assumed (based on prior comparative research conducted on related issues) that in the field of planning law there is enough of a common denominator across the legal systems to enable comparative analysis. The findings, summarized below, corroborate this assumption.

The set represents the two institutional structures – federal and unitary. There are five federal countries – the USA, Canada, Germany, Austria and Australia and eight unitary states. Among the federal jurisdictions there are variations in the degree of importance of the sub-federal law on regulatory injuries. In the USA, Canada, and Germany, the federal level is the most important for regulatory injuries law. Therefore, the focus of the chapters on the USA, Canada and Germany is on the federal level. Austria does not have any overarching federal law on regulatory injuries. Each of the nine states in this small country has its own statutory law and they differ significantly from each other. Finally, in Australia, in addition to federal-level constitutional law, state statutes are very important in regulatory-injuries law. The Australian chapter therefore reports on both the federal-level law and on one or two states selected by the author as generally representative.

The sample of countries includes jurisdictions with various types of protection (and non-protection) of property rights in general, and real property in particular. This topic is beyond the scope of the present paper<sup>9</sup>. Suffice here to say, that a direct linkage with constitutional protection can be seen only in one direction: the absence of any constitutional protection of property in Canada is indeed consistent with the absence of compensation rights. The great variety of wordings of constitutional protection in the other countries cannot be directly linked with the degree of statutory or case-based compensation rights. The constitutions have left a great degree of "tolerance" for varieties of degrees of compensation or non-compensation rights in the statutes and in court jurisprudence.

### **The research method**

Analysis of the laws of 13 countries in many languages is beyond the capacity of a single researcher. To carry out this research project, it was necessary to build a team of country-based researchers. For each country, I sought out a leading expert (or experts) on planning law who are well versed in English. The members of the research team were asked to provide an in-depth analysis in English of their country's laws and practices on regulatory injuries based on a strict set of guidelines that I developed.

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<sup>8</sup> Israel is regarded by comparative law scholars as a mixed system, but with strong attributes of the common law tradition (Glendon, Carozza & Picker, *supra* note 52, at 948 (about mixed jurisdictions in general) and 976-982 (about Israel).

<sup>9</sup> For a detailed analysis, see Alterman (2010, pp. 24-35).

The challenge of bringing the parallel analysis of all the countries onto a common platform was not easy. The details of the regulatory-injuries law in each country are complex and nuanced, and require in-depth knowledge of each country's law, jurisprudence and practices. Often, what a particular researcher assumed to be similar in other countries and therefore requiring no special explanation was in fact quite enigmatic to readers from other jurisdictions. I worked with the researchers to provide enough contextual information so that readers from other countries would understand the implications of a particular law or institution. There were also language barriers: in every country in the set, court decisions on land use law are published in the local language only. In some countries even the statutes have not been translated.

To enable comparative analysis, I developed a common framework and a set of guidelines for the entire team. Prior to developing the guidelines, I read the literature available (in English) on land use law and practice in each of the countries. Next, I conducted a set of preliminary discussions with each of the researchers. To ensure that each of the participating researchers would understand the guidelines in a similar way, I prepared a preliminary set of scenarios composed of types of regulations, types of potential injuries to property values, and types of contextual conditions. Through a "rolling" strategy I expanded or refined the scenarios and guidelines until they could encompass all the relevant law in each of the sample countries. The effort of coordinating and editing the set of papers proved to be a major challenge. In most cases, the county-based research reports underwent several rounds of editing by me or rewriting by the researchers, supplemented by personal meetings, phone or e-mail communication necessary for clarifications.

The comparative analysis was carried out by me, with rounds of comments by the country researchers. To digest all 13 reports, I first dissected them back according to the topics of the guidelines, appropriately revised to reflect the findings and supplemented by new "variables" that emerged from the analysis.

### **A glimpse into the comparative findings**

The comparative research method unraveled many surprising and counter-intuitive findings. None of the hypothesized "variables" proved useful in "explaining" the similarities and differences among the countries in the sample. Instead, the factual findings present a complex and fascinating picture of the laws and policies about regulatory injuries around the world. Here are a few glimpses into the findings. I will first report on some of the similarities and differences found, and then discuss how these relate to the assumed explanatory "variables".

### **Dispelling the mutual images of Americans and Europeans**

In academic and professional discussions one sometimes encounters Europeans who assume that there is an "American approach" to property rights, and the converse – Americans who contrast their own approach with an assumed "European Approach". Americans tend to view Europe as having a uniform approach to property and planning. The image among many Americans is that European countries as a group offer less protection of property rights than the USA. The image of many Europeans is that the USA is a property-owners' paradise. They assume that the "regulatory takings" concept in US law ensures broad compensation rights for injuries. Both images turn out to be far from correct.

The comparative research shows that these views are no more than legal stereotypes. The two images parallel the two sides of the philosophical debate over property rights. Many European practitioners and scholars imagine that US law is extremely protective of property, especially real property rights. They assume that regulatory-injuries law would offer landowners extensive protection from down zoning and generous compensation rights<sup>10</sup>. On the American side one often encounters the assumption that there is a "Europe

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<sup>10</sup> Thomas Roberts, the US researcher on the team refers to this conception (Alterman (2010, pp. 215-18).

approach” to real property law, that this approach is grounded in the social view of property, and that it grants lesser protection of property rights in case of regulatory injuries than US law.

The evidence from the 13-country study shows that both images are far from accurate. There is no “European approach” to regulatory injuries. This holds despite the fact that all the European countries in this study come under the Europe-wide constitutional canopy of the European Convention on Human Rights<sup>11</sup>. In addition, all countries in this study are also members of the European Union. Yet, the laws and practices of the nine European countries differ so greatly from each other that a “Euro-blind” reader may not have guessed their joint affiliations.

The findings show that the ECHR constitutional law has shown high tolerance for the broad range of degrees of compensation rights among the nine European countries and the variety of interpretations of regulator injuries law. The effect of ECHR jurisprudence so far has been modest: it has somewhat pared down the laws on the non-compensation side, but this effect is hardly discernible in domestic law. The ECHR has not influenced the laws of most European countries, whose laws fall anywhere on the one extreme edge. In other words, the mild convergence in Europe works to a modest degree to enhance property protection – contrary to the prevalent image of Europe held by Americans.

### **Large disparities in the intensity of public debate**

One of the surprising findings was the contrasting intensities in the public debates about the very same issue – the right to compensation for reduced land values. The intensity of the public debate is not even linked to the factual relative position of that country’s law on the comparative “scale” of degrees of compensation rights.

On this issue, the USA is the “outlying” country. Unlike most other countries, in the USA, what is called “regulatory takings” is a contentious, hotly debated topic, and is the heart of what has been called the “property rights debate”. This does not reflect the actual placement of USA law along the scale. In fact, US law falls mid-way along the scale because its regulatory takings law (as it is called there) does grant some compensation rights, but these apply only to situations of relatively high degrees of injury.

The takings issue in the USA has even occupied a place on the agenda of state-wide elections (and indirectly, Federal elections too). American landowners have brought many cases to the courts, and the “takings issue” has produced a large body of jurisprudence. American legal scholars have spent more research attention on this topic than any other topic in planning law: thousands<sup>12</sup> (!) of scholarly journal papers and scores of books have been written on this subject. Indeed, I hazard to guess (based on many years of readings of planning law publications around the world) that regulatory takings in the USA is the most-analyzed single topic in land-use law anywhere in the world, and that the US publications on this one issue consume more pages than all the scholarly writings on planning law in the entire world. But despite the large body of jurisprudence and scholarly analysis, the crucial legal question about the line separating non-compensable and compensable regulations in the USA remains blurred and highly contentious. This has left American regulatory takings law in a state of chronic uncertainty for all stakeholders (Juergensmeyer and Roberts, 2007).

Compared to the USA, in most other countries the issue is quite tame. Although decisions to “downzone” are obviously not popular anywhere, and disputes and controversies do arise at the local level, in no other country covered in the study had the regulatory-injuries issue become such a major legal and public issue at the national

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<sup>11</sup> Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, Art. 1, March 20, 1952, Europe. T.S. No. 9, available at: <http://conventions.coe.int/treaty/en/Treaties/Html/009.htm>.

<sup>12</sup> A Lexis Nexis search with both the terms “regulatory takings” and “land use” yields over a thousand items – beyond the engine’s tolerance.

level. Interestingly, the two other countries that fall mid-way along the scale – Austria and Finland – present the opposite degree of litigiousness: almost no claims ever submitted, and almost no jurisprudence. The low profile of this issue on the public agenda should not detract from the importance of cross-national learning; on the contrary – countries where the law on regulatory injuries does not draw much public controversy may harbor lessons for other countries.

### **Is there a trend towards global convergence?**

The findings show major differences among the regulatory injuries laws of most of the countries in the sample. There are hardly any signs of transfer of legal knowledge between countries. Based on the set of countries analysed here, one cannot point out either trends of divergence or of convergence; each country's law on regulatory injuries seems to follow its own track. The only trend towards convergence among all the countries is not on the realm of the law but alternative modes of compensation. In all the countries in the sample there is somewhat greater propensity for government authorities to rely on negotiated solutions to mitigate some of the adverse effects of regulations on land values, regardless of whether the law does or does not require formal compensation. This trend is part of a broader tendency towards more private-public partnerships, and is not specifically related to regulatory injuries law.

The only modest trend of legal convergence, discernable only with a magnifying glass, is found among European countries and is due to their legal connection with the ECHR. But this convergence is not toward the middle of the "scale" of compensation rights but, as noted, affects only the very extreme non-compensation doctrine which, in any case, is not prevalent among the sample countries.

Can the similarities and differences among the countries be "explained"?

The intuitive question to ask is: how can one explain the similarities and differences among the jurisdictions in the sample? As explained earlier, in the absence of enough prior comparative research on regulatory injuries or a relevant theory from which to derive criteria or hypotheses to guide the selection of countries, I relied on some common-sense variables, noted above. The findings show, that the differences among the countries cannot be "explained" according to any of these variables because there are significant differences within each grouping.

Belonging to the same legal family has not led to a convergence of the law on regulatory injuries. Eight of the nine European countries – all but the UK – are civil-law countries. This group of countries exhibits both extremes on the property-rights scale. The modest push towards convergence noted above is due not to the fact that the eight countries are of the civil-law family, but to the impact of the jurisprudence of the ECHR – a supra-national institution that "belongs" to neither family. The same picture holds for the five countries in the common-law group – the UK, the USA, Canada, Australia and Israel. These countries had links with British law at some point back in their legal history. The comparative findings show that there is no "British approach". Moreover, these five countries span the two extremes on the scale: Canada on one side (extremely restrictive) and Israel on the other (excessive compensation rights that overburden the public purse). The USA is somewhere in the middle. Whatever was these countries' history, today there are few legal similarities.

Nor will knowing whether a specific country is unitary or federal be of much help in predicting the country's stand on regulatory injuries law. The eight unitary states exhibit almost the full range of degrees of compensation rights for regulatory injuries: France on the one extreme and The Netherlands and Israel on the other extreme. The five federal jurisdictions also encompass a broad range: Canada takes the most extreme no-compensation stand among the countries in this research, with Australia a close next, whereas Germany is among the group of countries with generous compensation rights (though not as extreme as Israel or The Netherlands), The two remaining federal countries – the USA and Austria – take midway positions.

Another variable is geographic location. Are there similarities among countries located in geographic proximity to each other? One could have assumed that knowledge transfer would be more likely among closely located countries, particularly those with similar languages or culture, leading to a greater degree of convergence than between more distant countries. This assumption would be stronger if, in addition, there were cultural and language similarities.

These assumptions are not supported by the findings. Germany and Sweden are the only two countries where there are signs of transfer of legal approach (from Germany to Sweden). However, these countries are not located in greater proximity nor are closer culturally than some other countries in the sample where the laws are very dissimilar. Most striking are Germany and Austria, the USA and Canada, and The Netherlands and Flemish Belgium (the latter was not included in the study<sup>13</sup>). These countries are not only geographically adjacent, they also share the same language and many cultural elements; yet their laws on regulatory injuries are very dissimilar. Other pairs of geographic neighbors (with less cultural affinity) also do not show any similarities in compensation law: Sweden and Finland, The Netherlands and Germany, The Netherlands and France, and across the Channel – the UK and France or the UK and The Netherlands.

On the other hand, there is one surprising “odd couple”: The Netherlands and Israel. These countries have no geographic proximity, no shared language or cultural backgrounds, no shared legal history, and no evidence of any knowledge transfer.

As counterintuitive as this may see, the similarities are not due to any intrinsic attributes of the legal system, culture or location. Nor are they due to any transfer of knowledge by decision makers or scholars. The legislative and judicial processes that brought about the similarities occurred totally independently, and just happened to occur at a similar time.

Another hypothesis that comes to mind is whether there may be other explanatory variables, extraneous to the legal system. These may include country area and population sizes and thus population density, land use and urban patterns, or the pulse of development. The sample of countries does include a wide variety along these lines. For example, country and population sizes vary greatly: Australia, the USA, and Canada have very large geographic areas and relatively low-population densities, their regulatory injury laws differ significantly. Indeed, Canada and France have no geographic or demographic similarities yet display great similarities in their compensation-rights laws. Israel, The Netherlands, Austria (and Flemish Belgium) are small in size and have relatively high-population densities, yet have very different compensation rights (except for the case of Israel and The Netherlands). The rest have a large range of mid-sizes.

Based on the present set of countries, I do not see evidence to support that such extraneous variables account for the similarities and differences in compensation rights. Perhaps, further research may prove otherwise, but I am doubtful.

So, as inelegant as this may seem, there is no escape from concluding that, based on the current state of knowledge, there are no apparent explanations based on the usual assumptions about legal families, institutional structure or transfer of knowledge among proximate or culturally similar countries. This conclusion brings me back to the starting point for this paper: although the problem may be universally shared by all countries, each country has adopted a legal solution largely insulated from the experiences of other countries.

Where, then, should scholars look for explanation for the similarities and differences among countries? The address is probably not in the more intuitive variables – whether intrinsic to the legal-institutional system, or

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<sup>13</sup> For Flemish Belgium law see (title unofficially translated by me: Articles 84-86 of the Decree of 18 May 1999. “Providing for the organisation of town and country planning”. *Moniteur Belge* – 8 June 1999 – *Belgisch Staatsblad*).

extraneous, referring to objective constraints or challenges faced by a given country in its management of land use and development. The reasons how or why a particular legal approach to regulatory injuries is legislated or decided by the courts in a given country at a time is more a question for historians and political scientists than for lawyer. A particular legal orientation may reflect the views held by a particular political or legal leader at a particular point in time when there was an opportunity to mold the law (whether through legislation or through court decisions).

### **Learning from each other**

Here enters the potential usefulness of comparative research. The availability of comparative findings can contribute to legal changes by enabling knowledge exchange, without dependency on geographic or cultural proximity. This paper (and the book on which it is based) may affect the future evolution of the law on compensation for land use regulation in various parts of the world.

The issue of whether the public should compensate individual landowners for regulatory injuries by planning decisions is not about to go away in any of the countries studies. Whatever is a country's position along the compensation-rights "scale", there is local dissatisfaction (to different degrees). The issue is likely to continue to perplex legislators, judges, and planners. IN view of the great variety of approaches to compensation rights found around the globe, all sides in the ideological debates about property rights can find real-life examples of alternative models in other countries.

To date, the legislators and courts in each country have had to design laws and make decisions based only on their own experiences. The advantage of studying other countries' operating models is that these real-life laws and practices have been tried out and can be evaluated, without necessarily transplanting any specific approaches. Of course, transplantation of laws or policies into other legal-administrative and socio-cultural contexts is neither easy not always desirable. At the same time, comparative research can present decision makers with a variety of legal models and thus stimulate new ideas locally.

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