
Compensation Rights for Decline in Property Values Due to Planning Regulations: An International Comparative Perspective

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When property values decline as a result of land use regulation (but is not expropriated), should landowners be entitled to compensation from government? The issue is universal, yet in most cases, the solutions have been local-national. This paper reports on the finding of the first large-scale international research project on this issue. The project encompassed 13 countries - 9 EU-member European countries, and 4 non-European jurisdictions (including the USA). This group of countries represented a 40% sample of all OECD countries in 2010. The large representation of European countries reflects the actual membership of OECD where of the members countries are indeed located in Europe.

In the absence of prior comparative research there have been a lot of mutual misconceptions on this issue. The image among many Americans is that Europe has an almost unitary approach that offers less protection of property rights than the USA. The image among Europeans is that the USA is extremely generous in its law offering extensive compensation rights for what the Americans call "regulatory takings".

There are ostensibly good grounds for assuming that there would be a shared "European approach" Since the 1950s most European states have been sharing a legal canopy - the European Court of Human Rights with a specific clause protecting property, qualified by "the general interest"². Many European countries are also members in the powerful European Union. Thus, Europe has the potential legal and institutional mechanisms installed to develop a more uniform approach of property rights based on a shared ideology and values. A more uniform legislative and judicial approach to regulatory takings would also reduce uncertainties among landowners and developers who move across national borders.

The hypothesis was that in the group of European countries there would indeed be a trend of merger in the jurisprudence, laws and policies on regulatory takings compared with the non-European countries. The method of analysis relied on a rigorous comparative framework developed for this purpose. For each selected country, the analysis encompassed constitutional legislation, statutes, regulations, key

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² Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11, art. 1, Mar. 20, 1952, Europe. T.S. No. 9, *available at* <http://conventions.coe.int/treaty/en/Treaties/Html/009.htm>.

court decisions, and information about the de facto degree of compensation claims and awards. In addition, the relevant rulings of the ECHR were reviewed and their impacts were analyzed.

The surprising evidence from the thirteen-country study does not support the hypothesis. At present, there is no "European approach" to regulatory takings. The nine European countries exhibit the full scale of legal (and public-policy) approaches to regulatory takings, almost to the very extremes. A "Euro-blind" reader may not have guessed their joint affiliation. Furthermore, the differences among the European countries are as large as between them and the non-European set.

The paper discusses the possible underlying reasons for the retained disparities among European and other countries on this fundamental issue of land use law and property rights. The conclusions discuss the possible implications of the continued lack of uniformity and present some thoughts on possible conditions whereby some convergence may arise in the future.

No shared terminology around the world

There is no single internationally agreed term or concept to denote the law and policy regarding diminution of property values due to planning decisions. There is a plethora of terms ; only a few will be noted here. The term "regulatory takings" is used only in the USA (and scholars outside influenced by US law). This term is based on the language of US constitutional law. Likely, the most widely used term in English outside the USA is "planning compensation rights"³. In French the term is "indemnisation des servitudes d'urbanisme" (*servitudes* in this context has a different connotation than in English)⁴. Where land is actually taken away by government rather than regulated only, the Americans are alone in using the term "eminent domain", "condemnation" or "physical taking". The internationally used terms are "expropriation" or (in British-influenced countries), "compulsory purchase".

Terminology can also be misleading, unless one understands the broader legal context. The most striking example is the usage of the term "compensation", as translated into English by practitioners and scholars from countries with Germanic languages. They often use "compensation" in almost the opposite sense from its use in the context of regulatory takings: they refer to what *landowners* are obliged to give to the municipality (such as dedication of roads or allocation of open space for

³ Any book on "land policy" outside the USA will likely use these terms. See for example: JOHN RATCLIFF, *LAND POLICY: AN EXPLORATION OF THE NATURE OF LAND IN SOCIETY* . 17-22 (1976),; GRAHAM HALLETT. *LAND AND HOUSING POLICIES IN EUROPE AND THE USA: A COMPARATIVE ANALYSIS* , 13 (ed. 1988); (and throughout;?? I don't see another reference to him in this chapter. Leslie, is that what you meant?) NATHANIEL LICHFIELD AND HAIM DARIN-DRABKIN, *LAND POLICY IN PLANNING* (George Alen & Unwin, 1980).; Grant, *supra* note 7.

⁴ See the special issue of *Droit et ville* no. 48/1999 titled: "L'indemnisation des servitudes d'urbanisme en Europe".

environmental mitigation), rather than what the municipality is required to grant to the landowners⁵.

The USA's self-image of "regulatory takings"

The findings of the research show that the USA holds the world record in the complexity of its regulatory takings law, the amount of academic writing, and the intensity of public debate. This is one of the (ancillary) findings of a large scale comparative study of regulatory takings law. What light does this fact shed on American takings law and on the "property rights" debate? An international looking glass for viewing takings law can allow both sides either to find alternative models to support their own position (with appropriate adjustments) or to develop middle-of-the road approaches towards a rapprochement in this long-raging contest.

In every country where land-use regulations and development controls operate (the vast majority of countries today); they cause changes in the economic value of real property. The question addressed here focuses on the downwards effect – what Americans call “regulatory takings”: Do landowners have a right to claim compensation or some other remedies from the planning authorities? This topic addresses an inherent "raw nerve" of planning law and practice, bearing deep economic, social and ethical implications. However, not in every country does the issue generate the same intensity of legal and public debate as it does in the USA. On this count, the USA is starkly different from all 9 European countries in the sample and from the 4 other countries in other parts of the world.

The dearth of systematic comparative research on regulatory takings

Given the near-universality of the “takings issue”, one might have thought that the law of regulatory takings would be a prime topic for cross-national research. Surprisingly, an international survey of academic literature reports little comparative research on this topic⁷. The research project on which this paper is based is, to the best of my knowledge, the first large-scale comparative research that focuses specifically on regulatory takings. Interestingly, most of the other contributions, as well as the present one, were all published in the USA.

The seminal theoretical and comparative contribution that focuses directly on regulatory takings (as well as on the converse - value capture) is Hagman and Misczynski's 1978 book titled "Windfalls for Wipeouts"⁸. The book covers five English-speaking countries with advanced economies (the UK, Canada, Australia, New Zealand and the USA) and addresses both the upwards and the downwards effects of regulations on land values. The introductory chapter provides a now-classic framing of the issue, and

⁵ See for example, the usage in: Kristina Rundcrantz & Erik Skärbäck, *Environmental compensation in planning: a review of five different countries with major emphasis on the German system*, 13 (4) EUROPEAN ENVIRONMENT 204-226 (2003).

⁷ The survey of literature covers publications in the English language and partially in French as well.

⁸ WINDFALLS FOR WIPEOUTS: LAND VALUE RECAPTURE AND COMPENSATION (Donald G. Hagman & Dean J. Misczynski eds., 1978).

the rest of the book analyzes selected instruments designed either to tame the negative impact of planning regulation or to capture the windfalls and redistribute them. A recent important comparative work is Alexander's 2006 book⁹. It presents an in-depth study of constitutional property rights in three countries: the USA, Germany and South Africa, with some discussion also devoted to Canada¹⁰. Another important comparative study is Kotaka and Callies' edited volume (2002)¹¹ covering ten Asian-Pacific countries. This book reports on expropriation (eminent domain) law and, in some of the countries, also on regulatory-takings law. Another contribution to comparative regulatory takings is a law-review paper by Christie (2007) which analyzes three English-speaking countries: the USA, Canada and Australia¹². Finally, Kushner's 2003 book¹³ is a collection of excerpts from previously-published papers on a wide variety of planning-law topics, among them two brief items on regulatory takings outside the US - one on Germany and one comparing US and Swiss law.¹⁴

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 takings and compensation laws across Europe. Yet, there has been very little comparative research on regulatory takings among European countries¹⁵. This is not because European countries have similar laws on regulatory takings (they don't); it is simply because in most European countries the issue is perceived as not very salient.

⁹ GREGORY S. ALEXANDER, [THE GLOBAL DEBATE OVER CONSTITUTIONAL PROPERTY: LESSONS FOR AMERICAN TAKINGS JURISPRUDENCE](#) (2006).

¹⁰ Alexander's book focuses only on constitutional law, while in most countries regulatory takings law is largely governed by statutory law. This probably explains why Alexander's book does not focus on the law of regulatory takings, except in the discussion of the USA. See also Alterman (2010, id), Chapter 2: 24-35.

¹¹ TSUYOSHI KOTAKA & DAVID L. CALLIES (EDS.). *TAKING LAND: COMPULSORY PURCHASE AND REGULATION IN ASIAN-PACIFIC COUNTRIES*. (University of Hawai'i Press, 2002)

¹² Donna R. Christie *A Tale of Three Takings: Taking Analysis in Land Use Regulation in the United States, Australia and Canada*. 32 (2) *BROOKLYN JOURNAL OF INTERNATIONAL LAW*, 345-403. (2007).

¹³ JAMES A. KUSHNER, *COMPARATIVE URBAN PLANNING LAW* (Carolina Academic Press, ed., 2003). The countries covered differ widely from topic to topic, according to the availability of published papers

¹⁴ Kushner (2003; *id*) Chapter 7 pp. 163-196 is devoted to regulatory takings, but this chapter, as the other chapters, is not a systematic comparative analysis. The papers compare some aspect of American takings law with Italian, Swiss, German, or international law.

¹⁵ The major comparative project on planning law and institutions commissioned by the European Commission (1997-2000), hardly addresses regulatory takings. European Union, European Commission (1997, 2000), *The EU Compendium of Spatial Planning Systems and Policies*, Luxembourg, Office for Official Publications of the European Commission. Schmidt-Eischstaed's 1995 book is another important comparative analysis of planning laws, but it too does not cover regulatory takings. See: GERD SCHMIDT-EICHSTAEDT, *LAND USE PLANNING AND BUILDING PERMISSION IN THE EUROPEAN UNION* (Deutscher Gemeindeverlag Verlag W.Kohlhammer, 1995) (in English and German) .

The jurisdictions selected and the research method

Thirteen countries were selected for comparative analysis. A large and varied sample of countries was necessary for this pioneering research in order to avoid a predetermined focus on a particular model or on presumed convergences. In the absence of prior legal or social-science theory about hypothesized similarities and differences in regulatory takings laws, there was no room for any statistically valid random sampling of countries. Instead, I sought to select a wide spectrum of countries in order to span different approaches to regulatory takings.²⁵

The common denominator for all countries chosen is a democratic system of government, a reasonably working and accountable public administration, and an advanced (or fast-emerging) economy²⁶. All the countries selected are members of the Organization of Economic Development and Cooperation. The sample is large – it represented approximately 40% of all OECD members. I added the State of Oregon in addition to the federal USA due to its unique story, so that in total fourteen jurisdictions were analyzed.

Beyond the predetermined common denominator, I sought to include in the sample a variety of countries along four variables: Representation of both major Western families of law (common and civil law); global geographic location; sovereignty system (unitary or federal); and cultural-language groups affiliation.

To represent the two major legal traditions, the sample includes five common-law countries: the UK, Canada, Australia, the USA, and Israel²⁷ and eight civil-law countries – Netherlands, France, Sweden, Finland, Germany, Austria, Greece and Poland. The countries selected are spread geographically over four continents. Because Europe encompasses the majority of the world's democratic, advanced-economy countries, nine of the 13 countries are part of Europe. The sample includes both federal

²⁵ I of course limited my search to countries where I had located suitable scholars in the planning law field. See "Research Method" below.

²⁶ Developing countries were not included in this study because in most, planning laws are often bypassed (due to corruption or widespread noncompliance). Regulatory takings law, if it exists, is likely to be almost dormant (no claims filed). More onerous issues, such as outright condemnation of property, are in the forefront.

²⁷ Israel is regarded by comparative-law scholars as a mixed system, but with strong attributes of the common law tradition. On the one hand, precedence is a major source of the law and common law is still prominent in a few areas, on the other hand, statutory law is dominant in most fields of law today. See GLENDON, CAROZZA & PICKER, at 948 (about mixed jurisdictions in general) and 976-982 (about Israel). In the field of planning law, the British influence dates back to the British Mandate on Palestine from 1921 to 1948. The planning law is a direct derivative of legislation enacted during that time.

countries (the USA, Canada, Germany, Austria and Australia)²⁸ and unitary ones (the other eight). There are also several cultural-language groupings. For example, the USA and Canada, or all four English speaking countries; Germany and Austria, Sweden and Finland, and to some extent also the Netherlands, Germany and Sweden. Some countries are culturally stand-alones (in this sample) – France, Greece, Poland and Israel.

Analysis of the laws of thirteen countries is beyond the capacity of a single researcher. There are also language barriers, for example -- none of the non-English speaking country in the sample offers translations into English of court decisions in the planning area and only a few translated their planning legislation into English. Therefore, for each of the candidate countries, I invited a leading expert (or experts) on planning law to provide a detailed analysis of their country's laws and practices on regulatory takings. To enable rigorous comparative analysis I developed and tested a set of detailed guidelines based on a series of scenarios. The challenge of bringing the parallel analysis of all the countries onto a common platform was not easy. The details of the takings 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 author assumed to be easily understandable to readers from other countries was in fact quite opaque and at time even of opposite meaning. I worked with the authors to provide enough contextual information so that readers from other countries would understand the implications of a particular law or institution.

The scope of the research and the categories of regulatory takings

In this research I asked one overarching question and then divided it into several conceptual sub-categories.

The overall research question is:

Under each country's laws, do landowner²⁹s have the right to claim compensation (or some other remedy) when a government decision related to planning, zoning or development control causes a reduction in property values? 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?

As this question indicates, this study does not cover all conceivable types of regulations that may injure property values. The study focuses only on land-use related regulations. The law of eminent domain or physical takings also falls outside this study. Topics such as exactions and negotiated agreements are

²⁸ In the USA, Canada, and Germany, the federal level is the most important for regulatory takings law. Therefore, the analysis of these countries focused on the federal level. Austria does not have any overarching federal body of law on regulatory takings and each of the nine states in this small country has its own statutory law which differs from the other states. In Australia, in addition to federal-level constitutional law, state statutes are very important in takings law. We chose the state of New South Wales for analysis.

²⁹ Or holders of lesser property rights; countries differ on this question.

also beyond the scope of this research, and deserve comparative analysis³⁰. However, the jittery seam line between regulatory takings and eminent domain is included because it is a legal issue in many countries.

As every lawyer knows, regulatory takings are not a monolithic concept and have many variations. The international literature has yet to develop a general conceptual categorization. For the comparative study I classified regulatory takings into three main types. Although in this paper it is not possible to present the detailed comparative findings for each category, it is important to present the concepts:

- major takings
- partial takings: direct injuries
- partial takings: indirect injuries
 - caused by public development
 - caused by private development

Major takings versus partial takings.

Anyone acquainted with American takings law will recognize this distinction. I use “major takings” to refer to situations where regulation extinguishes all or nearly all of the property's value. Different countries use different terms for this situation³¹. In US jurisprudence (only), major takings are known as a “categorical” or “*per se*” takings³². In Canada, a major taking is sometimes called “constructive expropriation”³³; in the UK it is called “planning blight”³⁴. In Greece it may be termed “de facto expropriation”; in Poland - “planning expropriation”, and in Switzerland “material expropriation”³⁴.

³⁰ A comparative analysis of exactions in a few countries is included in my book PRIVATE SUPPLY OF PUBLIC SERVICES: EVALUATION OF REAL ESTATE EXACTIONS, LINKAGE, AND ALTERNATIVE LAND POLICIES (1988).

³¹ I have translated the non-English terms literally. For detailed analysis see Alterman (2010) Chapter 2 pp.xxxx.

³² See the chapter on the USA by Thomas E. Roberts, 215-228 in: Rachele Alterman *et al* TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATION RIGHTS (2010). or any text on takings in an American land use law, for example: DAVID L. CALLIES, ROBERT H. FREILICH, AND THOMAS E. ROBERT, CASES AND MATERIAL ON LAND USE 334 (4th ed., 2004.). US case law also recognizes a second type of categorical taking – a physical taking – but this is not relevant here. American jurisprudence draws a clear distinction between regulatory and physical takings and different principles apply. See Thomas E. Roberts, Tahoe-Sierra and Takings Law IN TAKING SIDES ON TAKINGS ISSUES: THE IMPACT OF TAHOE –SIERRA. 5-14 (Thomas E. Roberts ed., 2003)

³³ See Raymond E. Young, *Canadian Law of Constructive Expropriation*. 68 SASKATCHEWAN LAW REVIEW 345 (2005). The Canadian Supreme Court too has used the term “de facto expropriation”. Canadian Pacific Railway Co. v. Vancouver (City), [2006] 1 S.C.R. 227, available at <http://scc.lexum.umontreal.ca/en/2006/2006scc5/2006scc5.pdf>.

³⁴ Switzerland is not included in this book. See Enrico Riva *Regulatory takings in American law and “material expropriation” in Swiss law – a comparison of the applicable standard*, in COMPARATIVE URBAN PLANNING LAW, 167-173 (James A. Kushner ed., 2003)(1984)..

I chose the term “major takings” because it is intuitively understandable and is distinct from expropriation. Major takings contrasts with “partial takings”. I have refrained from using “full takings” as the natural antonym to “partial takings” because it might be confused with a physical taking or taking of title whereas in all the jurisdictions studied, including the USA, there is a legal line drawn somewhere between a physical or title taking on the one hand and a regulatory taking on the other. All 13 countries in this study do provide for some remedy in cases of major takings, but the threshold, contexts, procedures, and remedies vary significantly among the countries.

Direct versus indirect injuries.

The second and third types of takings are both "partial". They both refer to situations where property values suffer only a small or moderate decline. Where partial takings are concerned, there is much less convergence among the countries. The degree of compensation rights granted for partial injuries is therefore a much better "litmus test" than major takings for ranking the countries along the "scale" of compensation rights, as will be presented below.

The distinction between direct and indirect injuries is much less familiar to American readers. Direct injuries are caused by regulatory decisions that apply to the same plot of land that suffers the depreciation. This is the usual way in which regulatory takings are conceived. Indirect injuries conjure up a very different concept. They refer to regulatory decisions that apply to plots of land *other* than the ones suffering the depreciation. Indirect injuries arise from actual or anticipated negative externalities which cause depreciation in the value of a neighboring property. The legally recognized degree of geographic proximity between the cause and effect differs among countries. Indirect injuries often conjure up issues of distributive justice because their context is inherently unequal: Land plots which have gained more development rights cause the depreciation of other plots.

The concept of indirect injuries naturally brings to mind the law of damages. In a few countries, some types of damages from externalities caused by government regulation are also actionable under nuisance law. However, this study addresses only the realm of public law because it and not torts law is at the center of public debate about property rights.

More jurisdictions in the sample recognize the right to compensation for direct injuries than for indirect ones. This does not indicate that indirect injuries are necessarily of lesser economic impact. For landowners, indirect injuries may be substantial. In the few countries where there are broad compensation rights for indirect injuries, such rights are responsible for many claims and a heavy burden on public finances. In determining the rank-order of the countries I therefore took into account not only the law on direct injuries but also on indirect ones.

Publicly-caused versus privately-caused indirect injuries

Indirect injuries may be caused either by *developers of public infrastructure* or by *developers of private-type land uses*. Although these categories have a fuzzy conceptual boundary, the laws in some countries do make this distinction (applying somewhat different definitions). More countries grant compensation rights for indirect injuries stemming from government approval of public infrastructure (such as public roads, railways and airports) than from approval of private-type development. The latter

category is fully recognized as compensable in only two countries in the sample, not including the USA. In these two countries, claims for indirect privately caused takings represent a major part of all compensation claims.

A comparative ‘scale’ of compensation rights

The findings show that there is no universally consensual approach, nor even a dominant approach. The differences are multi-dimensional³⁵: They fall along each of the categories of regulatory takings defined above. In addition, there are many seemingly minor differences that may have great impact on the chances that a landowner may have grounds for a compensation claim and the chances of winning one. Such differences (not directly analyzed here) include the eligible types of tenure, the breadth of types of government decision that may trigger a takings claim, time limits of various kinds, and procedural accessibility factors.

The current US property rights debate focuses, to a large extent, not on a binary “yes” or “not” but on degree. The debate is about the appropriate balance between unimpeded government policy and unbridled private property rights, but there are great disparities in the balance points deemed appropriate. To facilitate cross-national learning, I developed a schematic uni-dimensional “scale” along which the laws of the counties studied could be roughly ranked (see Ill. 1). On one extreme edge of the scale there are “no compensation rights” at all; and on the other extreme are “extensive compensation rights” for every imaginable type of regulatory injury to real property. In order to place the different countries along the scale I merged into a single dimension (through rough qualitative, not quantitative analysis) each country’s relative position along the scale with respect to the various categories of takings law and the nuanced details and conditions.

No country in the sample falls at either extreme, but some counties’ laws come close to one of the two edges. The set of counties represents a broad spectrum of compensation rights. Each country's set of laws and policies differs significantly from every other's equivalent set. I had no difficulty in grouping the countries into three sets and in placing them on the scale: Countries with “narrow compensation rights”, countries with “moderate or ambiguous compensation rights” and countries with “broad compensation rights”. However, the internal order on the scale within each group is not cast in stone.

According to the findings of the research, the countries which I classified as having "narrow compensation rights" are; Canada, Australia, the UK, France and Greece. In the next category of "moderate or ambiguous compensation rights" in included Finland, Austria and the USA (most states), Finally, countries with "broad compensation rights" are Poland, Germany, Sweden, The Netherlands and Israel (the latter two are almost "tied" for the title of the most extreme compensation rights)..

The five countries in the group of “narrow compensation rights” recognize only major takings. The internal ordering takes into account the different degrees of compensation rights for major injuries. The most extreme “no compensation” country, Canada, barely recognizes even major takings as

³⁵ A detailed analysis of the differences is presented in Alterman et al (2010) pp. 1-90.

compensable, while the other four countries recognize such takings as compensable in different degrees and situations.

The group at the opposite side of the scale, the “extensive compensation rights” group, includes five countries. These offer compensation rights not only for major takings but also for a broad range of partial injuries. The ordering of the countries along the scale is based on the degree of additional constraints placed on partial takings claims, such as the threshold level of injury, the range of compensable government decisions and time limits. The two countries with the most generous compensation rights in the entire set – Israel and the Netherlands – could also be placed in a group of their own because they are the only ones that recognize broad categories of indirect injuries – including those caused by private developers. These two countries also set a very low threshold requirement for compensation and encompass a broad range of government land-use decisions.

The countries in the middle category, which include the USA, are characterized by legal uncertainty or inconsistency. They do offer remedies for major injuries, but regarding partial injuries their laws are unclear or inconsistent.

Constitutional protection of property rights and its relationship with regulatory takings law

An obvious question is whether property rights are constitutionally protected in each of the countries and how this is expressed in takings law.

In all the sample countries except the USA³⁶ there is a statutory law which defines regulatory takings, sets out the types that are compensable, details the procedural rules etc. Most of the countries in the set do have constitutional protection of property rights, yet statutory law about regulatory takings have been enacted whether or not property rights are constitutionalized. They intermediate between takings law and constitutional law. The question is whether one can discern a relationship between the degree of constitutional protection of property and the contents of statutory law and its interpretation by the courts.

The findings indicate that the differences among the thirteen countries in the law of regulatory takings are only partially attributable to the specific language of the constitutional protection of property³⁷. Such protection usually allows a wide margin of tolerance not only for differences in the law on regulatory takings, but to some extent even on expropriation (condemnation) law, as Alexander (2006) has shown³⁸.

³⁶ A small minority of US states have enacted statutes that grant statutory causes of action for a limited set of partial takings. These statutes have had a limited effect – excepting Measure 37 in Oregon until it was repealed. See the US chapter in my book by Thomas E. Roberts, 215-228 in Rachelle Alterman *et al* TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATION RIGHTS (2010). Other literature sources are: Joni Armstrong Coffey. *High Hopes, Hollow Harvest: State Remedies for Partial Regulatory Takings*. 39(3) THE URBAN LAWYER 619-632 (2007); Stacy M. White, *State Property Rights Laws: Recent Impacts and Future Implications*. LAND USE LAW AND ZONING DIGEST (July: 3-9, 2000)

³⁷ for country-specific analysis see Alterman 2010: 24-35

³⁸ Alexander,

These findings are not intuitively understandable. The comparative analysis shows that there is only a partial and uni-directional link between the constitutional standing of property and regulatory takings law. Such a link is visible only among the three countries where property is *not* constitutionalized - Canada³⁹, the UK⁴⁰ and Australia⁴¹. The laws of these three countries grant only minimal compensation rights for regulatory injuries. Even this uni-directional relationship has an exception: Israeli law has been granting landowners extensive compensation rights as a result of case law delivered before constitutional protection of property was enacted in 1992.

The reverse relationship, where property rights *are* constitutionalized, is weaker. The constitutions of ten among the countries in the set do protect property. Yet these countries' regulatory takings law covers almost the full spectrum of degrees of compensation rights (except for the most extreme non-compensable position). Obviously, statutory law and case law have created the differences among these countries' regulatory takings laws over the years. France⁴² has a famous and old legacy of constitutional protection of property⁴³, yet offers a very low degree of compensation rights for regulatory injuries, to the extent that French planning legislation says explicitly that compensation *may not be paid* for regulatory injuries. Greece⁴⁴ grant only minimal compensation rights for regulatory takings, and Finland⁴⁵ grants only modest and uncertain rights, yet both countries' constitutions do have a protect protection clause.

At the other end of the spectrum are the five countries with extensive compensation rights, including for partial takings (in ascending order - Poland, Germany, Sweden, Israel and The Netherlands). It is difficult to account for the extensive compensation rights in this cluster or for the differences within the group of countries based on the language of their constitutional property protection.

³⁹ See the chapter on Canada by Bryan P. Schwartz and Melanie R. Bueckert, 93-106 in RACHELLE ALTERMAN *et al*, TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATING RIGHTS (2010).

⁴⁰ The UK does not have a written constitution. Like all other European countries, the UK comes under the European Convention on Human Rights – see *infra*. In 1998 the UK enacted the Human Rights Act which brought into force most of the rights set out in the Convention. However, if a government authority is obliged to act in a certain way according to primary legislation – such as the planning act – this action would not be unlawful under UK law. See Michael Purdue's chapter on the United Kingdom, 119-137 in RACHELLE ALTERMAN *et al*, TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATING RIGHTS (2010).

⁴¹ Australia's constitutional property protection is indirect and weak in that it only empowers parliament to make laws "with respect to the acquisition of property on just terms". See my comparative constitutional analysis on Cluster 1 countries in Alterman (2010), 27-30; and the chapter on Australia by John Sheehan, 107-118 in RACHELLE ALTERMAN *et al*, TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATING RIGHTS (2010).

⁴² See the chapter on France by Vincent A. Renard, 139-148 in RACHELLE ALTERMAN *et al*, TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATING RIGHTS (2010).

⁴³ See my comparative constitutional analysis on Cluster 1 countries in Alterman (2010), 27-30.

⁴⁴ See the chapter on Greece by Georgia Giannakourou and Evangelia Balla, 149-167 in RACHELLE ALTERMAN *et al*, TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATING RIGHTS (2010).

⁴⁵ See the chapter on Finland by Katri Nuuja and Kauko Viitanen, 171-194 in RACHELLE ALTERMAN *et al*, TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATING RIGHTS (2010).

One of the most interesting findings about the relationship between constitutional law and taking law refers to the nine European countries in the sample. They are all bound by an additional, supra-national constitutional layer - the European Convention on Human Rights and Fundamental Freedoms (ECHR) of 1950. Article 1 of the First Protocol of ECHR provides for property protection, but qualifies it "with the general interest"⁴⁶. Yet this shared constitutional canopy has not brought about a significant convergence in the regulatory takings law of these nine countries, except to rule that extreme cases of major takings should be compensated or remedied in other ways⁴⁷. The "general interest" clause has not visibly affected the domestic takings laws, and four among the 9 European countries do grant extensive compensation rights for regulatory takings, including partial takings.

The features of US takings law from a comparative perspective

The comparative analysis has highlighted several aspects of US law on regulatory takings. These are: The mid-way position along the scale, the absence of statutory law to mediate and the direct application of constitutional law, several unique attributes of US takings law, the intensity of the property rights debate, and the paradox of extensive scholarly analysis. The saga of Measure 37 deserves an analysis of its own from a comparative perspective.

The mid-scale position along the scale

When viewed from a cross-national perspective, the most striking finding about US regulatory takings law is the glaring disparity between the intensity of the US "property rights debate" and the factual positioning of US takings law midway along the "scale" of degree of compensation rights for regulatory takings.

US takings law holds a middle seat both on major takings (known as "categorical" in the USA) and on partial takings⁴⁸. On major takings, US law is more or less in line with the majority of countries covered in this research. In some ways, US law is tougher on landowners by setting conditions that are difficult to meet. In other ways, US law is more generous (discussed below). On partial takings too, US law is

⁴⁶ Protocol 1, Article 1 says: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, in any way, impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties." Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 1, art. 1, Mar. 20, 1952, Europe. T.S. No. 9, available at <http://conventions.coe.int/treaty/en/Treaties/Html/009.htm>.

⁴⁷ For a more detailed discussion see Alterman 2010: 26-27, 84.

⁴⁸ For a concise summary of US takings law formatted for comparative analysis see Thomas E. Roberts, 215-228 in: Rachele Alterman *et al* TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATION RIGHTS (2010).

mid-scale. It joins half of the set of countries where partial injuries are compensable to some extent. But unlike its image, US law places a high quantitative threshold for partial claims as well as various preconditions that make it difficult for American landowner to win challenges for partial takings (except for a few state-law exceptions). The third type of taking – indirect injuries – is not recognized in US law at all, not even for indirect injuries induced by public infrastructure. On many counts, it is also fair to say that US takings law is also highly “ambiguous” and uncertain.

The unmediated application of constitutional law and the high level of uncertainty

Another key difference between the US and the other countries is the extremely prominent role played by constitutional law. In most other jurisdictions in this study, statutory law (whether on the national or sub-national levels) is a key player in takings law. Only in the USA is takings law decided largely by direct application of the Constitution. In the few states where there are "regulatory takings statutes"- Oregon excepted - these laws add only minor causes of action beyond constitutional law⁴⁹.

In interpreting the constitution, the US Supreme Court has refrained from making "bright line" rules, leaving many legal issues to be decided through case-by-case determination⁵⁰. The result is that US takings law is characterized by a high degree of uncertainty that both landowners and government agencies face whenever regulatory takings are challenged in the courts⁵¹. After many decades and a large body of jurisprudence, there are even some fundamental questions unresolved⁵².

⁴⁹Most of the state statutes only required government agencies to conduct a takings assessment prior to adopting a regulation, or to institute conflict resolution measures. The only exceptions are Florida and Oregon – and the record there too is disappointing for the proponents of property rights. See: Stacy M. White, *State Property Rights Laws: Recent Impacts and Future Implications*, LAND USE LAW AND ZONING DIGEST (July: 3-9, 2000). Hannah Jacobs (2007); and JOHN D. ECHEVERRIA AND THEKLA HANSEN-YOUNG. *THE TRACK RECORD ON TAKINGS LEGISLATION: LESSONS FROM DEMOCRACY'S LABORATORIES*. 1-2 (Georgetown Environmental Law & Policy Institute, 2008). Regarding Florida see: Joni Armstrong Coffey *High Hopes, Hollow Harvest: State Remedies for Partial Regulatory Taking*, 39(3). THE URBAN LAWYER 619-632 (2007).

⁵⁰ See the US chapter by Roberts, in: Rachele Alterman *et al* TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATION RIGHTS (2010). See also the following footnote.

⁵¹ Many American authors make a similar point regarding insufficient clarity and inconsistencies. See for example: DAVID L. CALLIES, ROBERT H. FREILICH AND THOMAS E ROBERTS. *CASES AND MATERIALS ON LAND USE* 380 (Fourth Edition; 2004) (henceforth "Callies, Freilich and Roberts"). See also: Edward J. Sullivan and Kelly D. Connor, *Making the Continent Safe for Investors – NAFTA and the Takings Clause of the Fifth Amendment*, Chapter 4, pp. 47-83 in *CURRENT TRENDS AND PRACTICAL STRATEGIES IN LAND USE LAW AND ZONING* (Patricia E. Salkin, ed., American Bar Association, 2004). At p. 67 the authors argue that the degree of certainty and uniformity intended by the Federal Constitution has not been accomplished in the field of takings law.

⁵² One example is the basic question of whether “the character or extent of the government action” – that is, whether the public purpose or public gain should be weighed against the private loss. One would have thought that after so many decades of jurisprudence a questions so fundamental to determine the underlying rationale of regulatory takings would have been settled. The 2005 ruling in *Lingle v. Chevron, USA, Inc.* (544 U.S. 528, 2005) .is deemed by many legal analysts to have provided a clear negative answer (see for example Roberts, 2010 *id*). However, even after this Supreme Court decision, some

In two more countries in the sample - Finland and Austria – a high degree of legal uncertainty still prevails. However, in these two countries, the reason for the uncertainty is that there have been very few claims and hardly any jurisprudence to interpret the language of the statute or its relationship with the constitution. American society is much more litigious. The unique feature of US takings law is that high legal uncertainty persists despite a huge body of jurisprudence extending over almost nine decades (however, the number of Supreme Court decisions on regulatory takings is not high in comparative terms).

Several other unique specifics of US takings law

On several counts, US regulatory takings law is more generous to landowners than the laws of most other countries in the set. However, while these aspects may expand the causes of action, they do not raise significantly the chances of winning a takings claim.

First, for the most part,⁵³ takings claims in the other countries can only be made when a government body *changes* an existing land-use regulation to a *more restrictive* category. Owners of farmland, environmentally regulated open space, or even vacant land that generates no income, cannot demand that the land be rezoned for a more lucrative use. The USA is the only country among the set where *refusals to upzone* or to grant a development permit can (theoretically) serve as grounds for a taking challenge⁵⁴. Although a challenge on these grounds is very difficult to win, the threat of one lurks in the background when US policymakers decide, for example, to institute an exclusive farmland zone.

Second, in most countries, regulatory takings, especially partial takings, are not an open-ended concept; a statute usually defines a limited set of government decisions which may entail compensation. The historic as well as the current core of compensable decisions in most countries revolves around "classic" land-use planning and zoning (not even all types of potentially injurious land-use decisions are necessarily included). For example, some environmental regulations may not be compensable. In the USA, because takings law is largely constitutional law, unmediated by statutory law, a regulatory taking may be ruled against any government decision, at any level and jurisdiction, and on any substantive

scholars remain dubious. See Michael Lewyn, *Character Counts: The "Character of the Government Action" in Regulatory Takings Actions*, 4 (2) SETON HALL LAW REVIEW (2010): 597-637.

⁵³ The exceptions are Finland and Greece. In both countries, the traditional law that applied to rural areas outside urban zones included, as part of property law, the right to build housing units within some limitations. The exercise of these rights, however, is fast shrinking when it is overridden either by urban zones or by declaration of environmentally protected rural zones. For Finland see Katri Juuja and Kauko Viitanen, in *Takings International: A Comparative Perspective on Land Use Regulations and Compensation Rights* 171-194 (Rachelle Alterman *et al* 2010) (2010); for Greece see: Georgia Giannakourou and Evangelia Balla 146-167 in

⁵⁴ See *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* 535 U.S. 302, 122 S.Ct. 1465, 152 L.Ed.2d 517 (2002).

topic. In the words of Justice Scalia in a recent US Supreme Court decision⁵⁵: “The takings Clause... is not addressed to the action of a specific branch or branches. It is concerned simply with the act and not with the government actor”. According to this view, even decisions of the judicial arm itself may constitute a taking⁵⁶.

The intensity of the US property rights debate

Perhaps the most prominent feature of US takings law is the intensity of the debate surrounding it.⁵⁷ An outside observer listening to the fervor of the arguments on both sides would get the impression that US law is extreme (on either side). The arguments of proponents of the “property-rights movements” would lead one to think that US law denies remedies even for major takings. While the arguments of spokespersons for the liberal, social-function view of property would lead one to assume that US takings law grants very generous compensation rights also in cases of partial and indirect takings with a low threshold level of injury.

In no other country in the sample has the issue of regulatory takings occupied a similarly prominent position in public opinion as in the USA. In no other country has the issue of regulatory takings become a major topic in national (or state) elections. In no other country has public opinion led to a legislative saga such as Oregon's extremist Measure 37 and then to its quick demise within only three years. Interestingly, in most other countries, the relatively docile status of the takings issue exists regardless of the position occupied by that country's takings laws on the compensation rights scale: whether on the very restrictive side (Canada, Australia, the UK, France or Greece); or on the broad-rights side (Poland, Germany, Sweden, the Netherlands, and Israel). The regulatory takings issue simply does not capture the interest of voters, politicians and scholars as much as it does in the USA.

⁵⁵ Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection et al. (2010). *Julie, I am not sure how this new should be cited.*

⁵⁶As an outsider I find this analysis surprising. I wonder which other countries' courts might reach a similar conclusion instead of simply reversing the decision of the lower court.

⁵⁷ The debate has produced many books and papers on both sides, often with vivid titles. On the property protection side an example is Land Rights: the 1990s' Property Rights Rebellion. On the property protection side see also: William Fischel's important book: WILLIAM FISCHEL, REGULATORY TAKINGS : LAW ECONOMICS AND POLITICS (Harvard University Press 1995; and E. Donald Elliott, *How Takings Legislation Could Improve Environmental Regulation*, 38 WM. & MARY L. REV. 1177, 1178 (1997). On the liberal, social-view side some examples are: JOHN D. ECHEVERRIA & RAYMOND B. EBY, LET THE PEOPLE JUDGE : WISE USE AND THE PRIVATE PROPERTY RIGHTS MOVEMENT (1995); HARVEY M. JACOBS STATE PROPERTY LAWS: THE IMPACT OF THOSE LAWS ON MY LAND (Lincoln Institute of Land Policy, ed. 1999); HARVEY M. JACOBS, WHO OWNS AMERICA? SOCIAL CONFLICT OVER PROPERTY RIGHTS,(University of Wisconsin Press. ed. 1998). Many other scholars have criticized the legislative initiatives of the property rights movement. See also Glenn Sugameli, *Takings Bills Threaten Private Property, People, and the Environment*, 8 FORDHAM ENVTL. L.J. 521 567-80 (1997)

The paradox of scholarly research

The combination of intensive public debate, the dependence of takings law on direct constitutional analysis, and the high level of legal uncertainty have generated what is by far the largest body of scholarly research and publications on regulatory takings anywhere in the world. A Lexis Nexis search using the terms "regulatory takings" together with "land use" yielded a larger number of items than the program was able to report. In total there are probably thousands of scholarly papers and hundreds of books which discuss the "takings issue". My guess is that this body of publications is several times larger than all the scholarly writing on the topic in all other countries and languages combined. Every new Supreme Court decision generates scores, sometimes hundreds of scholarly publications. Beyond quantity, this body of publications, as a whole, is characterized by a high analytical level, cross-disciplinarity, and innovation that I have not encountered elsewhere.

The paradox is that this huge body of knowledge has not contributed to the reduction of uncertainty but in some ways, to the contrary. Much of the scholarly analysis takes one or the other side in the debate and is "colored" by it. The result is that the immense body of superb scholarly analysis has not dissipated the persistent uncertainties inherent to US regulatory takings law; the reverse might be true.

The mutual images of Americans and Europeans

In academic and professional discussions one sometimes encounters Europeans referring to the "American approach" to property rights, and the converse - Americans who contrast their own approach with the "European Approach". The comparative research shows that these views are no more than legal stereotypes. The two images parallel the two sides of the philosophical debate on property rights. Many European practitioners and scholars imagine that US law is extremely protective of property, especially real property rights. They assume that takings law would offer landowners extensive protection from downzoning and generous compensation rights⁶¹. On the American side one often encounters the assumption that there is a "Europe 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 takings than US law.

The evidence from the thirteen-country study shows that both images are far from accurate (they may or may not hold for other spheres of property law). There is no "European approach" to regulatory takings. This holds despite the fact that all the European countries in this study come under the ECHR's constitutional canopy and in addition are members of the European Union. 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 affiliation. As noted above, the canopy of the ECHR constitutional law has shown

⁶¹ Thomas Roberts, the author of the US chapter, is well aware of this false image, and points it out. See pp. 215-228 in: Rachele Alterman *et al* TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATION RIGHTS (2010)

high tolerance for the variety of interpretations of regulator takings law. The effect of ECHR jurisprudence so far has been modest: It has pared down only the extremities on the non-compensation side, but has not influenced the countries whose laws fall anywhere on the scale except for the very extreme edge of “no compensation rights”.

The comparative findings also show that there is no unitary "British approach" to contrast with the US approach. The four countries with British law in their background in their past – the UK, Canada, Australia and Israel – span the two extremes on takings law: Canada on one side (extremely restrictive) and Israel on the other (excessive compensation rights). Today, there are not many similarities among these countries' laws on takings.

Possible models for cross-learning

Measure 37 was probably not the last time that proponents of property rights in the USA would propose takings statutes. At the same time, opponents of the property rights movement may wish to consider state-level statutory initiatives of their own with the purpose of helping to reduce the high degree of uncertainty that characterizes American takings jurisprudence so long as constitutional law is unmediated by statutory law. Within the federal structure of the USA there is much more room for "experimentation" among the fifty states than in unitary countries.⁶²

Both sides in the debate may find useful models among the countries surveyed in this study. The advantage of such models over start-up constructs such as Measure 37 is that the other countries' models operate in "real life" – for better or for worse - and can be studied and evaluated. Of course, transplantations of laws or policies into other legal-administrative and socio-cultural contexts are a risky business. At the same time, the survey of a large variety of legal models presented here may help to stimulate new ideas on both sides of the debate.

Models for the Social View side

Proponents of the no-compensation doctrine can find an assortment of approaches among the countries surveyed. The cluster of countries on the no-compensation side of the spectrum includes Canada, Australia, the UK, France, and Greece. France and Greece, however, would probably not be suitable models. Greece is unsuitable because its law on regulatory takings lacks internal consistency, and poor administrative practices have made its laws dysfunctional. France is also unsuitable because its planning statute explicitly disallows payment of compensation for any land use regulation and is likely too extreme to withstand US constitutional challenges.

Canada, next door, at the federal level presents, another extreme no-compensation doctrine which is at odds with US constitutional protection of property. However, some of the Canadian provinces have enacted more moderate statutes or administrative practices. These may well merit further study.

⁶² Although Germany too is federal, planning law is largely a national-level competence.

Australia is somewhat less extreme in its no-compensation doctrine. The Australian state statutes are more consistent than their Canadian counterparts in granting compensation rights for major ("categorical") takings. Especially interesting would be to look at the differences among the Australian states and evaluate their legal and public impacts. Since 2007, several Australian states⁶³ have begun a reassessment of their regulatory takings laws and the outcomes are worthy of follow-up.

Among the five countries in the narrow-compensation cluster, the UK is the most interesting model⁶⁴. UK law is the most coherent on the narrow-compensation side of the scale. Its pieces fit together into a consistent whole. The UK system is well worth further study by those who seek a legal system where there would be minimal compensation rights, yet where landowners would have a reasonable degree of protection in extreme situations. In the UK this balance is achieved with a greater degree of legal certainty than offered by US law.

UK law is able to strike this balance between private and public interests by bypassing the very notion of development rights. Thus UK law avoids most situations in which land-use decisions can cause a partial regulatory taking. A dramatic 1947 reform of the planning law removed all then-existing, unbuilt development rights. A one-time compensation fund was set up to cover claims.⁶⁵ From then on, statutory plans, which had previously functioned like US zoning, would no longer grant development rights. Thus there could no longer be a "downzoning". The right to develop (called "planning permission") would be granted case by case on a discretionary basis and would be valid for five years only⁶⁶. If government decides to withdraw a planning permission before the five years are up, the landowner has the right to full compensation for the depreciation in property value as well as to indemnification for specific out-of-pocket costs. In practice, revocations are made only when there is an overwhelming public consideration for a policy change and are very few nationally. Because under the UK system, permission to develop is considered and granted very close to the maturity of the development, government can adjust its policies and faces little uncertainty. Decades of practice show that the UK system "works" without overburdened the public purse.

Recognizing that property values might be diminished when land use plans – though advisory - designate land for some types of uses, UK law grants landowners two optional causes of action for making inverse-condemnation claims. One procedure, called "planning blight" is available when a local

⁶³ See for example: *Compensation for Injurious Affection*: Discussion paper. (Government of Western Australia - Land Reform Commission of Western Australia October, 2007). The state of Victoria also commenced on a reform track in 2008-9. Communication with Rebecca Leshinsky, Manager, Planning legislation review, Office of Planning, Heritage & Urban Design, Department of Planning and Community Development, Government of Victoria, Australia. Nov. 2008.

⁶⁴ I agree with Daniel R. Mandelker, *Afterword* in *Takings International: A Comparative Perspective on Oland Use Regulations and Compensation Rights* 365-366 (Rachelle Alterman *et al* 2010).

⁶⁵ Malcolm Grant, *Compensation and Betterment*, in *BRITISH PLANNING* 62-76 (Barry Collingsworth ed., 1999)

⁶⁶ PHILIP BOOTH *PLANNING BY CONSENT: THE ORIGINS AND NATURE OF BRITISH DEVELOPMENT CONTROL* (2003) ; Victor Moore, *A PRACTICAL APPROACH TO PLANNING LAW*. (Blackstone Press, 2005).

plan designates private land for a distinctly public use. The plan does not have to be officially approved and may even be diagrammatic. The property may still retain some beneficial use. The landowner only needs to prove that if sold, the property would obtain a price significantly below what it would have obtained without the designation for public use. The second procedure, called "purchase notice", is available for any land use designation, not necessarily a public use. The threshold condition, however, is more difficult to prove than for planning blight. The landowner must show that the property has no beneficial use at all and that the owners' request for planning permission had been refused. Planning authorities try to avoid blighting property, so the number of claims for major takings nationwide is very small.

Models for the property-rights side

Now to the other side of the debate. What can proponents of property rights take from this study? They should first heed the lessons from the Measure 37 experience, as detailed above. If new statutes are proposed, they must have a solid rationale and contain adequate internal checks and balances. Proponents of new state statutes have much to learn from the international experience. The survey showed that seven countries other than the USA have statutes that do grant compensation rights for some types of partial takings, not only major ones (Finland, several of Austria's states, Poland, Germany Sweden, Israel and the Netherlands). American proponents of property rights should, however, note that none of these countries recognize takings claims where there were no prior development rights. The underlying notion of all compensation laws is *reliance* on government decisions, not reliance on private wishful thinking.

Which among the seven countries can serve as useful models? The experiences of Finland and Austria leave too much legal uncertainty to be useful. Among the five remaining countries, the Netherlands and Israel are models that can help to foresee what mistakes to avoid. These countries' laws – though to a lesser extent than Measure 37 – have over-burdened the public purse with a disproportionate number of claims. Poland's law is still embryonic in practice. The most interesting models, in my view, are the remaining two countries - Germany and Sweden.

German and Swedish laws on regulatory takings are of the same vintage, with minor but interesting differences (this pair is the only one showing knowledge transfer). Both laws draw a clear distinction between major and partial takings and provide a high level of certainty on both. When property is designated for a public-type use (one that falls among a long pre-defined list), the landowner has a statutory right to full compensation by means of a 'transfer of title' claim that can be made at any time. There are no preconditions.

Under German and Swedish law, in cases of partial takings too there are rights to full compensation (beyond a *de minimis* level). However, there is a set of preconditions. Unlike US law on partial takings, where the precondition of showing "investment backed expectations" has no preset criteria and is to be determined case by case, the German-Swedish preconditions are predefined and easy to determine. The pivotal concept is a time frame (aptly called "implementation time" in Sweden). Compensation rights

last for seven years in Germany and for five to fifteen years in Sweden (usually fifteen). These time frames are counted from the time the development rights were initially granted, not from the date of approval of the injurious amendment (and are additional to the regular statute of termination). The idea behind the implementation time is to create a sharing of risk between landowners and the government body. The Dutch model too is based on the idea of a shared risk, but it has no preset time frame, thereby leaving uncertainty for both sides and more need for litigation.

The concept of reliance on government decisions underlies the regulatory takings laws of most countries, including the US. In the German and Swedish takings laws, the principle of reliance becomes transparent to both sides. Unlike UK planning law, German and Swedish laws are similar to those in most countries where statutory plans or zoning do grant (or take away) development rights. These two countries' laws grant full or almost full compensation rights when government changes its mind and downzones. At the same time, the German and Swedish models qualify this right by setting a time frame. It is based on the rationale that the public purse is not a timelessly open-ended insurance policy against a change in public decision. If landowners wish to be ensured that the development rights will not be restricted without compensation, the landowners should apply for a development permit before the preset time frame expires. Note that the development rights do not self-terminate; but if the landowners procrastinate they take the risk of a downzoning without compensation.

The concept of time-limited compensation rights has a potential ancillary benefit as a growth-management tool in high growth areas. "Normal" planning regulations across the world are notoriously bad at controlling the timing of private development decisions and planners everywhere seek ways either to regulate or to incentivize developers. In high-growth areas in the USA the implementation time frame can serve as a growth-management tool to encourage landowners to channel their development decisions into a specified time frame. The public authorities can thus better manage infrastructure investments, school thresholds, housing mix, or versatile employment opportunities. As a growth management instrument, the Swedish model has an advantage over the German model in that the time period is flexible and is determined at the time of each new plan-approval decision. Interestingly, neither in Germany nor in Sweden is the implementation period perceived as a growth management instrument. However, in Sweden there is a recent and increasing (though still small-scale) use to incentivize commercial developers in urban redevelopment projects⁶⁷.

Learning from each other

The diversity of regulatory takings law around the globe is great: no two countries have the same law on regulatory takings – not even countries with ostensibly similar legal and administrative traditions. The

⁶⁷ The limited and relatively new use of this tool – mostly vis a vis commercial developers in major urban redevelopment projects - reflects the character of the development process in Sweden, where commercial developers are not yet as important a sector as in many other countries. Imposition of a time limit on private, non-commercial developers is not customary (based on a conversation with Thomas Kalbro, the author of the Swedish chapter, December 2008).

purpose of this comparative research was to enable the readers to learn from other countries' experiences and thus to gain a new perspective on their own country's laws and policies. Not only American lawyers, legal scholars and planners should be able to learn from other countries – the same holds for each and every country.

This paper was written especially for American readers because in the USA the debate over property rights is more intensive than in other countries. Both the proponents of more protected property rights and the supporters of enhanced social obligations by property owners may gain by looking at US takings law from the outside. Both sides can also look to other countries for alternative models to support their own position (with appropriate adjustments). And perhaps both sides could look for middle-of-the road approaches that may contribute to a rapprochement in this long-raging contest.

THIS PAPER SHOULD BE CITED AS BASED ON SELECTED PARTS FROM CHAPTERS 1-3 (PP. 3-89) OF THE AUTHOR'S BOOK;

RACHELLE ALTERMAN et al (2010). TAKINGS INTERNATIONAL: A COMPARATIVE PERSPECTIVE ON LAND USE REGULATIONS AND COMPENSATION RIGHTS. Chicago: American Bar Association Publications.

References -

- Abramson, Daniel (2011) Property, Participation, and the Public Interest in the Planning of China's Urbanization. Urban Studies February: 48: 553-568
- Alexander, GREGORY s. (2009). The social-obligation norm in American property law. [vol. 94:745 – 820.]
- Alexander, GREGORY s. (2006). [The global debate over constitutional property: lessons for American takings jurisprudence.](#)
- Alexander, Gregory s., Eduardo M. Peñalver, Joseph William Singer, Laura s. Underkuffler (2009). Cornell law review [vol. 94:743-4].
- Alterman, Rachelle (1979), "land betterment taxation policy and planning implementation: evaluation of the Israel experience", urban law and policy, 2: 201-240.
- 1982. Land value recapture: design and evaluation of alternative Policies. Occasional paper no. 26, center for human settlements, university of British Columbia (1982).
- 1988a. Exactions American style: the context for evaluation. In private supply of public services: evaluation of real-estate exactions, linkage, and alternative land policies. Edited by rachel alterman: 3-21. New York: new York university press.
- 1988b. "evaluating linkage and beyond: letting the windfall-recapture genie out of the exactions bottle," Washington university journal of urban and contemporary problems, vol. 32, 1988.
- 1990. "from expropriations to agreements: developer obligations for public services in Israel," Israel law review, vol. 24 (1) autumn 1990: 28-81.
- 2003. "The land of leaseholds: Israel's extensive public land-ownership in an era of privatization". Chapter 6 in : steven c. Bourassa and Yu Hung Hong (eds.) , Leasing Public Land: Policy Debates and International Experiences. Cambridge, Mass: The Lincoln Institute of Land Policy.
- Alterman, Rachelle. 2005. "a view from the outside: the role of cross-national learning in land-use law reform in the united states". Chapter 19 (pp. 309-320) in planning reform in the new century, edited by Daniel r. Mandelker. Chicago: planners press.
- 2007. "much more than land assembly: land readjustment for the supply of public services". Chapter 3, pp. 57-86 in: Barrie Needham and Yu Hung Hong (eds.) International experiences in land readjustment. Lincoln institute for land policy, Cambridge, mass.
- 2010. Takings international: a comparative perspective on land use regulations and compensation rights. Chicago: American bar association publications.
- Alterman, rachel and Jerold Kayden, 1988. "toward a consensus vocabulary," pp. 22-32 in Rachelle Alterman (ed.), private supply of public services: evaluation of real-estate exactions, linkage, and
-

alternative land policies. New York: new York university press.

Andelson, Robert v. (ed. 2000). Taxation of land around the world. Malden, USA: Blackwell publishers.

Altshuler, Alan A. and Jose A. Gomez-Ibanez, (1993) Regulation for Revenue The Political Economy of Land Use Exactions. Washington DC: Brookings Institution Press

Andelson, Robert v. 2004. Critics of Henry George: an appraisal of their strictures on progress and poverty. Blackwell.

Atmer, Thomas. 1987. Land banking in Stockholm. Habitant international. 11 (1): 47-55.

Barrett, Susan, Martin Boddy and Murray Stewart (1979). Implementation of the community land scheme, school of advanced studies, occasional paper no. 3, university of Bristol.

Baumann, Arthur a. (1894). Betterment, worsenment and recoupmnt. London: Edward Stanford.

Booth Philip (2007) the control of discretion: planning and the common-law tradition. Planning theory 6 (2): 128-147

Booth Philip, 2003, Planning By Consent- The origins and nature of British development control, Routledge, NY

Bourassa, Steven C. and Yu Hung Hong (eds.; 2003), Leasing Public Land: Policy Debates and International Experiences. Cambridge, Mass: The Lincoln Institute of Land Policy.

Bourassa, Steven C. (2007). Community land trusts and housing affordability. Pp. 333-366 in: Ingram, Gregory K. and Yu-Hung Hong (2007). Land Policies and Their Outcomes. Cambridge, Mass.: Lincoln Institute of Land Policy.

British Expert Committee on Compensation and Betterment, Cmd 6386, 1942

Bromley, Daniel W. (1991) Environment and Economy: Property Rights and Public Policy Blackwell , Oxford, U.K.

Bromley, Daniel w. (1999), Rousseau's revenge: the demise of the freehold estate. In: who owns America? Edited by Harvey h. Jacobs. Madison, WI: university of Wisconsin press 1999, pp. 3-28.

Bromley, Daniel w. 2008. "land and economic development", in g. Cornia and j. Riddell (Eds), toward a vision of land in 2015; international perspectives. Cambridge ma: Lincoln institute for land policy: 217-236.

Calavita, Nico and Alan Mallach (2009). Inclusionary housing, incentive and land value recapture. Land lines: Lincoln institute of land policy, January: 15-21.

Calavita, nico, joaquim clusa, sara mur & robert weiner (2010). "Inclusionary housing in Spain". Chapter in Nico Calavita and Alan Mallach, eds. (2010). Inclusionary Housing in International Perspective: Affordable Housing, Social Inclusion and Land Value Recapture. Cambridge, MA: Lincoln Institute of Land Policy

Cox, Andrew 2002 . Adversary Politics and Land: The Conflict over Land and Property Policy in Post-war Britain. Cambridge University Press.

Callies, David L., Daniel J. Cutin Jr., Julie A. Teppendorf (2003). Bargaining for Development: A Handbook on Development Agreements, Annexation Agreements, Land Development Conditions, Vested Rights and the Provision of Public Facilities. Washington, DC: Environmental Law Institute.

Callies David, 1985, Developers' Agreements and Planning Gain, *The Urban Lawyer*, Vol.17 No. 3

Callies David L. and Suarez Adrienne 2005 I. DEMOCRACY IN ACTION: THE LAW & POLITICS OF LOCAL GOVERNANCE: Privatization and the Providing of Public Facilities through Private Means The Journal of Law & Politics The University of Hawaii at Manoa. Fall, 2005 21 J. L. &

Campbell, Heather; Ellis, Hugh; Henneberry, John; Gladwell, Caroline (2000), "Planning obligations, planning practice, and land-use outcomes", in *Environmental and Planning B: Planning and Design*, volume 27, p.p. 759-775.

Clawson, Marion and Benjamin C. Dysart III (1989), "Public Interest in the Use of Private Lands: An Overview" pp. 1-9 in Public Interest in the Use of Private Lands, ed. by Benjamin C. Dysart III and Marion Clawson, New York: Praeger.

Cornfield, Sir Frederick and Robert Carnwath (1975). "The Community Land Bill: an assessment". Journal of Planning and Environment Law (July): 385-389.

Cox, Andrew W. (1981), "adversary politics and land policy: explaining and analyzing British land values policy making since 1947", *political studies*, vol. Xxix, no. 1 (march): 16-34.

Crook, Tony, Currie, Jennie, Jackson, Alastair, Monk, Sarah, Rowley, Steven, Smith, Kerry and Whitehead, Christine. 2002. Planning Gain and Affordable Housing: Making It Count York: Joseph Rowntree Foundation.

Dagan, Hanoch (2007). The social responsibility of ownership, 92 Cornell L. Rev. 1255-1272.

Daniels, Thomas L., Robert H. Daniels and Mark B. Lapping (1986). The Vermont Land Gains Tax: Experience with It Provides a Useful Lesson in the Design of Modern Land Policy. American Journal of Economics and Sociology, Vol. 45, No. 4 (Oct.): pp. 441-455

Davy, Benjamin (2007). "Mandatory Happiness? Land readjustment and property in Germany". pp. 37-56 in: Barrie Needham and Yu Hung Hong (Eds.) International Experiences in Land Readjustment. Lincoln Institute for Land Policy, Cambridge, Mass.

Denyer-Green, B. (1998) Compulsory Purchase and Compensation. Fifth Edition. Estates Gazette. London.

De Soto, Hernando (2000), The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else.

Doebele, William A., ed. 1982. Land readjustment: A different approach to financing urbanization.
Lexington, MA: Lexington Books.

Echeverria, John D. and Raymond B. Eby (1995), *Let the People Judge : Wise Use and the Private Property Rights Movement*.

Ellickson Robert C. 2000. "Taming leviathan: Will the centralizing tide of the twentieth century continue into the twenty-first?" Southern California Law Review. 74 (1): 101-118 NOV.

Evans-Cowley JS and Lawhon LL (2003), The effects of impact fees on the price of housing and land: A literature review . JOURNAL OF PLANNING LITERATURE 17 (3): 351-359 FEB 2003

England, Richard W. (2007). "Land value taxation as a method of financing municipal expenditures in US cities". Pp. 185-200 in: Land Policies and Their Outcomes. Cambridge, Mass.: Lincoln Institute of Land Policy.

Fischel, William (1995). *Regulatory Takings : Law economics and Politics*. Harvard University Press.

----- (2002). *Takings and Public Choice: The Persuasion of Price*. The Encyclopedia of Public Choice. (Charles Rowley, editor).

Furtado, Fernanda (2000). Columbia - Economic aspects of the country's land use. The American Journal of Economics and Sociology. December.

Gdesz, Miroslaw (2005). *Adjacency Levies in Poland: Main Problems*. Paper delivered by the FIG Working Week 2005, Cairo, Egypt April 16-21, 2005.

http://www.fig.net/pub/cairo/papers/ts_29/ts29_08_gdesz.pdf

George, Henry (original edition 1879; 1962) Progress and Poverty. New York, Robert Shalkenbach Foundation.

Gielen, Demetrio Muñoz, 2008. "Public Value Capturing and the financing of public infrastructure in England, Valencia and The Netherlands." Paper delivered at a conference of the International Academic Group on Planning, Law and Property Rights, Warsaw, February 2008.

Gihring, Thomas A. (1999). *Incentive Property Taxation: A Potential Tool for Urban Growth Management*. Journal of the American Planning Association, Volume 65, Issue 1 March: pages 62 - 79

Glaeser, Edward L.(2007). "Restricting residential construction". Pp. 21-45 in: Gregory K. Ingram and Yu-Hung Hong. Land policies and their outcomes. Cambridge, Mass.: Lincoln Institute of Land Policy.

Glickfeld, Madelyn and Donald G. Hagman (1978), "Special Capital and Real Estate Windfall Taxes (SCREWTS)", in Hagman D.G. and Mischynski D.J. Eds. Windfalls for Wipeouts: Land Value Recapture and Compensation. Chicago: American Society of Planning Officials. Chapter 70:437-488.

Grant, Malcolm, *Compensation and Betterment*, in British Planning 62-76 (Barry Cullingworth ed., 1999).

Hall, Peter (1976), "A review of policy alternatives". in Kehoe, Dalton et al. (eds.) Public landownership: framework for evaluation. Toronto: Lexington Books. pp. 46-57.

Hagman, Donald G. 1978a. "Windfalls and Their Recapture", chapter 1: 15-19 in Hagman D.G. and Misczynski D.J. Eds. Windfalls for Wipeouts: Land Value Recapture and Compensation. Chicago: American Society of Planning Officials.

----- (1978b), "Betterment for Worsenment: the British 1909 Act and Its Progeny", in Hagman D.G. and Misczynski D.J. Eds. Windfalls for Wipeouts: Land Value Recapture and Compensation. Chicago: American Society of Planning Officials. Chapter 21:491-516.

Hagman D.G. and Misczynski D.J. Eds. (1978), Windfalls for Wipeouts: Land Value Recapture and Compensation. Chicago: American Society of Planning Officials.

Hansard, April, 29, 1909, Vol. IV Col. 532. The Right Honourable David Lloyd George.

Harvey, M. Jacobs (1999). "Fighting Over Land: America's Legacy.... America's Future". Journal of the American Planning Association Spring: 141-147.

Healey, Patsy, Michael Purdue and Frank Ennis. 1993. Gains from Planning? Dealing with the impacts of development. Research report published by the Joseph Rowntree Foundation, York.

Hirt, Sonia and Kiril Stanilov (2007), "The Perils of Post-Socialist Transformation: Residential Development in Sofia", pp. 215-244 in Kiril Stanilov (Ed.), The Post-Socialist City: Urban Form and Space Transformations in Central and Easter Europe After Socialism. Dordrecht, Netherlands: Springer

Home, Robert (1997). Of Planting and Planning: The making of British colonial cities. London: E & FN Spon

Healy, Robert G. and John S. Rosenberg. 1979. Land Use and the State. Second edition., Resources for the Future Inc. Baltimore: Johns Hopkins Press.

Ho, peter and max spoor (2006). [Whose land? The political economy of land titling in transitional economies](#), land use policy, volume 23, issue 4, October 2006, pages 580-587

Hui, Eddie Chi-Man, Vivian Sze-Mun Ho and David Kim-Hin Ho (2004). Land Value Capture Mechanisms in Hong Kong and Singapore. Journal of Property Investment and Finance. Vol 22: 1 (pp 76-100).

Ihlanfeldt, Keith R. and Timothy M. Shaughnessy (2004). An empirical investigation of the effects of impact fees on housing and land markets. Regional Science and Urban Economics 34: 639– 661

Ivanier, Ariel (2010). UNECE Working Party on Land Administration, pp. 25-6 in Financing affordable housing and infrastructure in cities: towards innovative land and property taxation Conference Report. UN Habitat, April 2010.

www.unhabitat.org/pl/.../Report%20with%20the%20covers_final%20version.pdf

Kim, Annette (2006). The Role of Property Rights Reforms in Warsaw's Housing Market. Pp. 213-230 in *The urban mosaic of post-socialist Europe: space, institutions and policy* edited by Sacha Tsenkova and Zorica Nedovic-Budic. Heidelberg: Physica Verlag, Springer.

Kim, Annette M. (2008). *Learning to be Capitalists: Entrepreneurs in Vietnam's Transition Economy*. Oxford, UK: Oxford University Press.

Kim, Annette M. (2011). Talking Back: The role of Decentralization and Discourse in land compensation changes in transitional Vietnam. *Urban Studies*, February 48: 553-568

Laanly, Claire and Vincent Renard. 1990. Public Land Banking. in *Land Policy in France*, edited by Vincent Renard and Joseph Comby: 47-56. Paris, ADEF.

Lam, Alven H.S. and Steve Wei-cho Tsui (1998). *Policies and Mechanisms on Land Value Capture: Taiwan Case Study*. Cambridge, Mass.: Lincoln Institute for Land Policy.

Lefcoe 1981. A case for local governance and private property. Pp. 233-238 in: Judith deNeufville, Ed. *The Land use policy debate in the United States*. Plenum Press.

Lichfield, Nathaniel and Haim Darin-Drabkin (1980), *Land Policy in Planning*, London: George Allen & Unwin.

Liu, Xuan (2009). Evolution of Transitional Institutions for Urban Land Redevelopment in China: Case in Guangzhou. *Chinese Geographic Science*, 19 (1): 1-7.

Locke, John (reprinted in 2007). *Second treatise on government*. Pp. 87-126 in Michael J. Sandel (Ed., 2007) *Justice: A reader*. Oxford University Press.

McAuslan, Patrick (1980), *The Ideologies of Planning Law*, Oxford, U.K. Pergamon Press.

----- (2003), *Bringing the Law Back In: Essays in land, law and development: Essays in land, law and development*, Aldershot, UK: Ashgate.

McCluskey, William J. and Riel C.D. Franzsen (2005). *Land Value Taxation: An Applied Analysis*. Aldershot, England, Ashgate.

Medda, Francesca (2010). Land Value Tax as an Investment Mechanism for Public Transport Assets. pp. 21-2 in *Financing affordable housing and infrastructure in cities: towards innovative land and property taxation Conference Report*. UN Habitat, April 2010.

Misczynski, Dean J. (1978), "Special Assessments", in Hagman D.G. and Misczynski D.J. Eds. *Windfalls for Wipeouts: Land Value Recapture and Compensation*. Chicago: American Society of Planning Officials. Chapter 12: 311-335.

Moore, Victor. *A practical approach to Planning Law*, 3 (2005)

Needham, Barrie (2007) *Dutch Land Use Planning: Planning and Managing Land Use in the Netherlands, the Principles and the Practice*. Den Haag: Sdu Uitgevers.

Needham, Barrie and Yu Hung Hong (Eds. 2007) *International Experiences in Land Readjustment*.

TS03G - Compulsory Purchase and Compensation, 6071

27/30

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Lincoln Institute for Land Policy, Cambridge, Mass.

Needham, Barrie and Roelof Verhage, 1998. Housing and land in Israel and the Netherlands. Town Planning Review, 69 (1): 397-423.

Nelson, Arthur, Liza Bowles, Julian Juergensmeyer, James Nicholas (2008) A Guide to Impact Fees and Housing Affordability. Island Press.

Neute, Max (1975). Urban Land Policy in Five Western Countries. Journal of Social Policy, Vol. 4 Part 3, July: 225-242.

Netzer, Dick, 1998. Land Value Taxation: Could It Work Today? Land Lines Vol. 10 (2), Cambridge, Mass: Lincoln Institute on Land Policy.

Ostrom, Elinor (2009), Design Principles of Robust Property Rights Institutions: What Have We Learned? Gregory K. Ingram and Yu-Hung Hong. Property Rights and Land Policies. Cambridge, Mass.: Lincoln Institute of Land Policy.

Peterson, George E (2009). Unlocking Land values to finance Urban Infrastructure World Bank, Trends and Policy Options series no 7

Purdue (2010). "The UK" in Rachele Alterman et al: Takings International. Chicago: ABA Press.

QIN, Xiaojing. 2009. Political forces and urban land ownership reform in transitional China. RICS COBRA Research Conference, University of Cape Town, 10-11th September 2009.

Quigley, John M. (2007). "Regulation and property values in the United States: The high cost of monopoly." Pp. 46-65 in: Land Policies and Their Outcomes. Cambridge, Mass.: Lincoln Institute of Land Policy.

Ratcliffe, John (1976), Land Policy: an Exploration of the Nature of Land in Society. London: Hutchinson Press.

Reiner Tom A. and Ann Louse Strong A.L. 1995: Formation of land and housing markets in the Czech Republic. Journal of the American Planning Association 61 (2): 200–209.

Renard, Vincent (1988). Financing Public Facilities in France. In: Rachele Alterman (Ed). Private Supply of Public Services, pp. 163-172.

Reynolds Laurie and Ball Carlos A. DEMOCRACY IN ACTION: THE LAW & POLITICS OF LOCAL GOVERNANCE: Exactions and the Privatization of the Public Sphere The Journal of Law & Politics Fall, 2005 (21 J. L. & Politics 451)

Rosenberg Ronald H. 2006, The Changing Culture Of American Land Use Regulation: Paying For Growth With Impact Fees Southern Methodist University Law Review Winter, 2006.

Replogle, David (1978), "The Uthwatt Proposal", in Hagman and Misczynski (eds.), Windfalls for Wipeouts: Land Value Recapture and Compensation. Chicago: American Society of Planning Officials, Chapter 18:422-425.

Rodriguez-Bachiller Augustin, Michael Thomas, and Stephen Walker (1992). The English Planning Lottery: Some Insights from a More Regulated System; Town Planning Review. Oct. 63 (4) 387-402.

Rousseau, Jena Jacques (1994 [1755]), Discourse on the Origin of Inequality, translated by Franklin Phillip, Oxford: Oxford University Press.

Sandel, Michael J. (Ed., 2007) Justice: A reader. Oxford University Press.

Scottish Executive (2004). DEVELOPING A METHODOLOGY

TO CAPTURE LAND VALUE UPLIFT AROUND TRANSPORT FACILITIES. October 2004 GVA Grimley. www.scotland.gov.uk/planning

Skaburskis, A. & M. Qadeer, (1992), "An Empirical Estimation of the Price Effects of Development Impact Fees", Urban Studies, vol. 29 No. 5, p. 653-667.

Slack, Enid (2004). Property Taxation in Canada. Chapter 4 pp. 69-80 in Bird, Richard M. and Enid Slack (eds.). International handbook on land and property taxation. Cheltenham, UK: Edward Edgar publishing.

Smolka, Martim O. and David Amborski (2007). Value Capture for Urban Development: An Inter-American Comparison. Working Paper, Lincoln Institute for Land Policy. https://www.lincolnst.edu/pubs/download.asp?doc_id=576&pub_id=1279

Smolka, Martim O. and Furtado, Fernanda (2001). Lessons from the Latin American Experience with Value Capture. Land Lines: July 2001, Volume 13, Number 4 . Lincoln Institute for Land Policy. -----
--- (2003). The Value Capture Debate in Latin America. Land Lines Article. Lincoln Institute for Land Policy.

Spaans,, Marjolein, Menno van der Veen and Leonie Janssen-Jansen (2008). "The concept of non-financial compensation in spatial planning", Chapter 2 in: Janssen-Jansen, Leonie, Marjolein Spaans and Menno van der Veen (Eds), New Instruments in Spatial Planning: An International Perspective on non-financial compensation. Delft, Netherlands: Delft University Press

Stanilov, Kiril (Ed., 2007), The Post-Socialist City: Urban Form and Space Transformations in Central and Easter Europe After Socialism. Dordrecht, Netherlands: Springer

Stark, David and Laszlo Bruszt, 1998. Postsocialist Pathways: Transforming Politics and Property in East-Central Europe. Cambridge, England: Cambridge University Press.

Strong, Ann Louise. 1979. Land Banking. Baltimore: Johns Hopkins University Press. [9-42]

Tichelar, Michael (2003). The Conflict over Property Rights during the Second World War, Twentieth Century British History Vol. 14: 165.

UK Government (2005). Circular 05/2005 Office of the Deputy Prime Minister.

UK Department for Communities and Local Government (2008). The community Infrastructure Levy. Available at:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/communityinfrastructurelevy.pdf>;

UK Department for Communities and Local Government, Explanatory Memorandum to the Community Infrastructure Levy Regulations 2010.

http://www.opsi.gov.uk/si/si2010/draft/em/ukdsiem_9780111492390_en.pdf

UN-FAO. 2002. Land Tenure and Rural Development, FAO Land Tenure Series. FAO: Rome.

http://pdf.wri.org/ref/fao_02_land_tenure.pdf

Vickars, tony, 2003. Prospects for Land Value Taxation in Britain. Land Lines: January 2003, Volume 15, Number 1 (Lincoln Institute of Land Policy, Cambridge Mass.)

Williams, Richard and Graham Hallett. 1988. Great Britain. pp. 114-152 in Graham Hallett (Ed.), Land and Housing Policies in Europe and the USA. London: Routledge.

Yandle, Bruce ed. (1995). Land and Rights: The 1990s' Property Rights Rebellion., Rowman & Littlefield.