
Book Review

Land Use and the Constitution: Principles for Planning Practice

Edited by Brian W. Blaesser and
Alan C. Weinstein

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Ever since Associate Justice Brennan of the U.S. Supreme Court asked the rhetorical question, "After all, if a policeman must know the Constitution, then why not a planner?,"² planners and lawyers struggled to explain the constitutional aspects of planning law to planners and other nonlawyers. In *Land Use and the Constitution*, the six authors³ manage to do just that by cutting the complex material of constitutional cases into a rich variety of formats from principles to charts and matrices, and from case summaries to examples and illustrations. The result is a readable and very useful text which should do much to explain the constitutional principles of land use to both the student and the practicing planner—at least from the public policymaker's viewpoint.

Land Use and the Constitution is imaginatively and helpfully structured to explain its often difficult concepts. Commencing first with a series of definitions, the book proceeds to a principle-by-principle discussion of the major constitutional themes pertaining to land-use planning law. There follows a matrix and analysis of planner problem areas which cuts the same material in a different and equally useful fashion. After a whimsical but useful Constitutional Analysis Tree and yet another matrix (this time relating cases to constitutional principles and planner problem-solving areas) the book finishes with a synopsis of fifty-three U. S. Supreme Court cases on land-use planning law.

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2. *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. 621, 661 n.26 (1981) (Brennan, J., dissenting).

3. Brian W. Blaesser, Clyde W. Forrest, Douglas W. Kmiec, Daniel R. Mandelker, Alan C. Weinstein, and Norman Williams, Jr.

The guts of the volume, however, is Part II, Constitutional Principles. Here, nearly half the book's 270 pages is devoted to discussion of such topics as due process, equal protection, takings, freedom of speech and religion, and delegation of power. For the most part, the analysis in this section works very well indeed. The statements of principle are simple and comprehensible. The commentary which follows is helpful and informed, if occasionally a trifle biased toward public sector interpretations (see below). Pertinent case citations immediately follow. And there, with all due respect to the authors and their hard-working commentators, it should have ended. What then follows, however, is an edited but apparently verbatim roundtable discussion of the principle and the major cases from which it derives by a symposium of planners and lawyers convened for the purpose in St. Louis. While it may very well be that the authors benefited from such a symposium for purposes of reviewing the authors' statements of principle and analyses, it is not at all clear how the practicing or student planner will equally benefit from the pages and pages of commentary from that symposium. Surely much of this is incorporated in the comments on the principles which, as before said, are by and large excellent. A potential advantage would be to solicit clearly divergent points of view. As appears below, that is sadly lacking since nearly all of the nineteen commentators⁴ represent or hold largely public-sector views on land-use regulation and policy.

Substantively, it might have been useful to spend a bit more time on the taking/compensation issues, doing a principle analysis of both taking and compensation rather than combining them, so as to adequately discuss their ramifications for land planning practice. That aside, the analysis of the taking issue is perceptive and helpful. For example, the authors note accurately that ripeness of a dispute has to do with finality, and not the exhaustion of administrative relief. The authors further observe that the U.S. Supreme Court did once say that landowners were entitled to their reasonable, investment-backed expectations, a standard which planners and attorneys representing the landowning development community might be inclined to give more prominence.

Another strength of Part II is the range of well-conceived, relevant hypothetical cases which the authors pose as illustrations of the various principles, and to which they suggest very good, if again somewhat

4. Richard F. Babcock, Gus Bauman, Estelle B. Berman, H. Bissel (Ted) Carey III, Orlando E. Delogu, Jules B. Gerard, Gary Hack, William Lamont, Jr., Larry Livingston, Jr., Stuart Meck, Joy A. Mee, Sy J. Schulman, Charles L. Siemon, Israel Stollman, Ann L. Strong, Edward J. Sullivan, A. Dan Tarlock, Richard E. Tustian, George A. Williams, Jr.

biased, answers. These help enormously in driving home the practical implications of the constitutional principles.

Truly inspired is the copious use of charts and matrices which are very helpful—and dear to the hearts of most planners. Yes, as the authors caution, it will be a great temptation to go to the constitutional analysis tree or the chart correlating the relationship among cases, planner problems, and constitutional principles, and avoid all the rest, but that would be a mistake and hopefully few users of this handbook will fall prey to the temptation.

Finally, of all the sections, it is the first that could use a bit of further editing, as exemplified by the way definitions are presented. While the concept is excellent, some of the definitions defy, well, definition! It is the only place in the book where the language often lapses into turgid legalese. For example, “A vested right to a property interest is a right which the law recognizes as having accrued to an individual by virtue of certain circumstances and that as a matter of constitutional law cannot be arbitrarily taken away from that individual.” (At 8-9). Property rights and easements are close behind.

A note, however, on perspective and balance: the voice of the private sector, the defender of property rights, the development community, is not merely muted; it is nearly silent. Of the six authors and nineteen commentators listed in the introductory portion of the book, the overwhelming majority represent public policy clients and perspectives. Even the handful that work both vineyards are not up to the private sector advocacy of, say, a Gideon Kanner or a Michael Berger. No doubt such partisans of private interests would have changed the dynamics of the symposium convened by the authors, large excerpts from which are scattered throughout the text. Nevertheless, it is difficult to avoid the conclusion that, despite occasional disagreement over a legal phrase here and there, the authors and commentators were in essence talking pretty much to themselves in discussing the principles which they articulate for practicing planners.

In sum, *Land Use and the Constitution* is a thorough and well-organized handbook for planners (and some lawyers, I daresay . . .) wanting both an overview and an analysis of critical constitutional cases and their principles which affect land-use planning. Its features—particularly the charts and matrices—should make it a classic in the field. Indeed, I cannot think of anything else quite like it. Despite its clearly public sector perspective, the choice of materials and much of the analysis is more or less even-handed. It is a classic which should be on the bookshelf of every planner, lawyer, and public decision maker of whatever stripe that finds land-use planning a part of professional life.