Methodology and framework of comparative urban planning law

Jinwon Jeon
Real Estate and Construction Practice Division, Yulchon LLC, Seoul, Republic of Korea

Received 31 December 2022
Revised 7 March 2023
Accepted 16 March 2023

Abstract

Purpose – This study aims to systematise the methodology used in comparative urban planning law and propose primary contexts for comparison in planning law.

Design/methodology/approach – This study undertook a review of comparative law methodology discourse and sought to establish connections between the discourse and the field of planning law.

Findings – This study argues for establishment of a realistic goal for comparative planning law by focusing on the planning law's modifiability. The goal of comparison in planning law should not be to find universally desirable principles or better solutions. Rather, the goal should be to identify a motive for devising a solution. This is because it is not only difficult to establish legal values that are universally applicable to planning law but also inappropriate to determine superiority of planning laws that have been developed over time by each jurisdiction's sovereignty and policies on land use. When determining comparable systems for analysis among legal systems that are functionally equivalent, it is important to consider the context of land use relations alongside the comparative analysis to be done. To set realistic goals, the context should not be extended indefinitely but be systematised. Based on the foundational relationship underlying planning law, including the tension between planning authorities and property owners, this study presents five specific contexts for comparative analysis: "Strength of Property Rights," "Level of Judicial Intervention," "Plan- or Development-led System," "Allocation of Planning Power" and "Level of Participation." Examination of these contexts will allow better understanding of the similarities and differences among different systems and practical application of the results of comparative studies.

Originality/value – This study presents a novel approach to systematising the methodology and framework of comparative planning law.

Keywords Planning law, Comparative planning law, Comparative methodology, Urban planning, Property rights, Functionalism

Paper type Conceptual paper

1. Introduction

A city is a breathing place where people gather, work and live. Although its physical space may be likely fixed, it is constantly evolving with the ongoing changes brought in people's

Sincere thanks to Prof Dr Jongbo Kim (Dean of the School of Law, Seoul National University) for his teachings in planning law, Yulchon LLC and Mr. Ju-Bong Park, Esq. (Yulchon LLC) for their strong support of the author's comparative law research and Mr. Yongjoo Kwon, Esq. (Yulchon LLC) for meticulous proofreading of this paper. The author would also like to express my sincere thanks to three anonymous reviewers and Prof Dr Luke Bennett. If there are any errors in this paper, they are solely the responsibility of the author. This paper is supported by APC from Yulchon LLC.

Journal of Property, Planning and Environmental Law
Vol. 15 No. 2, 2023
pp. 45-62
Emerald Publishing Limited
2514-9407
DOI 10.1108/JPPEL-12-2022-0037

lives. This dynamism creates various planning issues that have perplexed policymakers. In addressing these issues, it is natural to be curious about how other cities or countries cope with comparable challenges. As such, comparative approaches to urban planning have been attempted at various levels for a considerable time, from individual planning adjustments to complete system overhauls. Furthermore, efforts to adopt comparative approach have also been matched by legal researchers and practitioners in the field of planning law, who have engaged in an "energetic knowledge trade," as described by Alterman (2011, p. 101).

However, this does not mean that comparative planning law has been methodologically systematised. Rather, this implies that there remains an undeniable gap between the comparative law methodologies and studies in comparative urban planning law.

The complex nature of planning law is partially responsible for this gap. In planning law, the legal and political components are intricately intertwined. For instance, considerable discretion is afforded to local governments exercising a development control in the United Kingdom ("UK") (Booth, 2003, p. 5). German authorities have discretion to establish and interpret plans (Schmidt-Eichstaedt, 2018, p. 14; Künnecke, 2007, p. 80). Because of the discretion, many judicial and policy decisions cannot be fully explained by statutory laws alone (Arnold, 2007, p. 447). While the judiciary traditionally plays a crucial role in urban planning, the administrative officials' perception often has a significant impact. Additionally, legislative changes remain frequent in this the field. In sum, the multidimensional nature of planning law presents extraordinary challenges for planning law's direct integration into comparative law, requiring in-depth examination of the rationale behind laws, policies and the underlying background.

This multidimensional nature of planning law may potentially cause it to be overlooked in comparative planning law studies by making legal analysis a mere ancillary element within planning studies. Moreover, literature that elaborates on what it means to study planning from a legal perspective is scarce. The unpleasant cliché that it is uncommon for solicitors to be well-versed in planning concerns (Gaine, 2021, p. 66) clearly stems from the common belief that planning is the exclusive domain of planners, not lawyers. Of course, it is difficult to answer the questions of what and how to compare planning law unless the meaning and status of planning law are clearly established.

Legal theorists have been developing comparative law methodologies for almost a century. The traditional approach has focused on functionalism and its criticism. The recent approach now follows the postmodern trends that accept more profound topics, such as legal mentality, context and legal culture (Siems, 2022, p. 171), as well as numerical or empirical approaches based on social scientific methods (Siems, 2022, pp. 254-255). As such, the methodologies for comparative law have become increasingly diverse. Although we will not address all these topics, through methodological discussion of comparative planning law, it should be possible to find the nexus for basic issues, which would serve as a foundation for developing systematic methodologies for comparative planning law.

For methodological systemisation, it is important to first comprehend what it means to perform a legal analysis of planning before proceeding with comparing the planning laws across various jurisdictions (Section 2). This is followed by the key fundamental discussion concerning comparative law methodology as well as its relevance to the comparative planning law (Section 3). Then, based on the discussion of planning law and comparative methodology, this article will provide practical guidance on "how far to explain" and "what should be analysed" in the comparison by suggesting and analysing five embodied contexts (Section 4).

This article is based on a review of existing literature on comparative and domestic planning law and comparative law methodologies. This article aims not to draw definitive conclusions about individual comparative themes, but to present research structures and

hypotheses. Examples from existing comparative or regional studies that are referring to secondary sources that capture the distinctive characteristics of planning laws in various jurisdictions are provided mainly for consideration for these hypotheses, rather than for conclusive statements.

2. What "legal approach" means for urban planning

2.1 What is urban planning; legal approach

Before discussing the methodology of comparative planning law, we should first examine the substance of planning law, which is the object of comparison. To illustrate this point, let us assume that there is no planning. If there is no external intervention in land use, particularly regarding the type and scale of buildings that can be constructed, then right holders will use the land as they please, resulting in inevitable conflicts over land use. The one-dimensional approach to resolving such problems without involvement of a planning authority is to align the parties' interests individually, such as by reaching an agreement on compromises regarding each party's rights or adjusting infringement by private legal principles.

This pre-planning situation resembles that of Houston, which is considered an exceptional case in the United States ("US"). Although Houston is not entirely without planning tools (Shibata, 2002; Qian, 2010), the city lacks zoning ordinances, which are the core planning tools governing the use, size and density of buildings in the USA. Instead, private developers create private land-use documents, that is, deeds, that are not integrated into the urban planning framework. For this reason, Houston is referred to as the "city synonymous with the lack of urban planning" (Gray, 2022, p. 152) or the "laissez-faire city" (Qian, 2010, p. 31).

However, deeds between private parties differ significantly from planning. Firstly, deeds concern the private legal relationship between the developer and property owner. It has binding force between those private parties and do not have immediate force on third parties. Secondly, deeds are not required to concern the public interest. Developers, therefore, can create deeds without considering the public interest. Thirdly, deeds are too individualistic. Planning is not simply aggregating discrete individual actions in a specific geographical area.

The following features of planning need to be taken into account when examined via comparison above. Firstly, planning is not a private action; it is a public action that is executed through an exercise of sovereign power and administrative operations. Planning is not accomplished in equal relationship but by public authorities with a mandate. In other words, planning decisions must eventually be "decided" by the relevant administrative agency, regardless of how many public engagements are involved. In contrast, if a plan's effect rests solely on agreement, then a question will arise as to the basis for its binding effect and/or succession of such effect to a non-participant third party.

Secondly, the public interest is the rationale necessary to justify public intervention in planning (Leffers, 2017, p. 172; Needham, 2007, p. 188). Without a public interest justification, there is little rationale for the administrative agency to intervene in the land use relationship and restrict the owner's rights. The nature and extent of the public interest may vary by jurisdiction and by time.

Finally, planning occurs at a level that transcends individual development activities. Planning must encompass a broader geographic area than a mere parcel of land to achieve its objectives. Depending on the type and goal of the plan, the geographic scope may be confined to a particular area or encompass the entire nation.

2.2 Scope of research on urban planning law

Planning establishes a hierarchical relationship of rights and duties on land use between administrative bodies and private individuals. In the absence of a plan, only ownership rights would remain, making it difficult to regulate private land use unless there is nuisance

or tort. Nuisance law indeed governs Houston's land use relationships (Gray, 2022, p. 155). However, planning refuses such indifference, intervenes in land use and imposes limitations on ownership, raising questions about its justifiability.

Legal analysis of planning, therefore, focuses primarily on legal legitimacy. The case of *Euclid* v *Ambler*, which confirmed the legitimacy of zoning by police power under the US Constitution (Burke, 2013, p. 87), has been an indispensable part of the American urban planning history. The issue of legitimacy continues to arise in other parts of the world, whenever new planning tools are introduced. For instance, in 1971, South Korea implemented the Greenbelt, which radically prohibited all development activities within a designated zone to prevent the expansion of the metropolitan area. The Korean Government faced a constitutional challenge on the issue of whether the Greenbelt was an excessive property right infringement (Bae, 1998, p. 498).

The issue of legitimacy generates numerous research topics within the planning law area. The first question is "who" limits it. Stated differently, which administrative agency, for example, the state or federal government, has the planning authority? This question depends on the jurisdiction's allocation of powers and other variables, such how decentralised the system is.

The next question is "how much" it can be limited? If planning entirely restricts land use, then this undermines the fundamental nature of property ownership. If it is not a complete restriction on ownership, then we must choose where to draw the "line." Considering Delgado Chávez (2020), there are two ways to approach this issue: one approach is to address it outside of property rights by limiting regulation, and the other approach is to address from the inside of property rights by limiting property rights themselves. The legal analysis and discussion concerning the validity of planning can vary depending on which approach is chosen. The former pertains to the extent at which planning starts constituting taking and whether new planning tools constitute taking, which is frequently discussed. The latter pertains to the relationship between ownership and development rights, specifically the issue of whether the nature of ownership should include the right to develop one's own land.

Additionally, there is a question of "how" to limit it. It pertains to planning tools and procedures. For instance, administrative authorities may engage in planning either passively by establishing standards for land use or actively by owning and using land by themselves or through a third party (Meshkini *et al.*, 2019, p. 696).

In planning law, the binding force, which makes planning transforms a mere collection of meaningless documents into a substantive administrative operation, is critical. However, we should be cautious that the degree of binding force can vary because of factors such as the planning tools, the development scale and the geographical location, even within the same jurisdiction. It is worth noting that not all plans that are referred to as "plans" are legally binding (Norton, 2019). In contrast to zoning, the binding power of comprehensive "plans" has been mostly rejected in the USA (Arnold, 2007, p. 466), although recent literature indicates that such power is becoming binding in many states (Juergensmeyer *et al.*, 2018, p. 27).

How the party whose ownership right is restricted can challenge the restriction is another crucial issue. There are various dispute resolution models, such as a planning inspector in the UK or an ordinary administrative lawsuit. It is necessary to determine what types of planning or decision can be legally contested and who has the standing to do so. The most crucial factor in such contest is the court's review standard, such as a deferential review. This issue concerns the court's ability to assess and intervene in the "contents" of the plan.

2.3 Summary and implications

Legal analysis of planning entails examination of the tension and balance between administrative agencies and private parties regarding their respective rights and duties. This involves investigating on what basis, by what means and to what extent an administrative agency can intervene in private property ownership and, conversely, how private individuals can resist such intervention and protect their land use rights. Planning law research is responsible for analysing numerous planning-related challenges and establishing a legal framework for comparative approaches.

A legal analysis would generally require consideration of the subject, object, legal foundation, requirements and effects of rights and duties. Merely explaining facts concerning an institution is insufficient as a legal analysis, which should be premised on legal sources underlying or influencing factual events. It applies equally to comparative planning law. Thus, distinction should be drawn between a comparative approach to planning and that to planning law at this point.

3. Theoretical ground for comparative urban planning law

Siems (2022) outlines the "typical structure" of comparative law analysis as follows: selecting a research question and systems, explaining the laws of each country, identifying similarities and differences, conducting an outcome analysis and proposing policy recommendations (p. 15). Each stage is closely linked to the fundamental questions of methodology, such as the comparison's purpose, object and perspective. For example, the purpose is connected to the research question, as well as the scope, depth and evaluation of the comparison. The purpose may also be associated with the emphasis on similarities or differences (Dannemann, 2019). The question of which country to analyse, as well as its scope and depth, is a matter of the object of comparison. Perspective affects multiple stages of the analysis, ranging from formulation of the research question to the application of the analysis.

Given the increasing use of postmodern and interdisciplinary methods in comparative law, methodological questions can expand in numerous ways. However, among them, this article will focus on establishing the theoretical foundation of comparative planning law by discussing the most rudimentary issues: the purpose, object and perspective.

3.1 Justification of comparative approach

3.1.1 Purpose of comparison. If the comparative planning law research is limited to listing the information about each country, then it is hardly called "comparative analysis," although it can be a useful source for other comparative research. Shapiro (1981) criticised comparative law as a matter "no one knows what to do next" with (p. vii). Although he focused on the political dynamics and operation of the judicial system, which is methodologically distant from comparisons of the laws themselves, his criticism about merely showing similarities or differences is worth considering. To overcome this, we must determine what to do next: the purpose of comparative analysis.

3.1.1.1 Finding a causal relationship? One might say that the purpose of comparation of planning laws is to identify a clear causal relationship that explains the differences between jurisdictions. However, it is difficult to clarify variables that will show the causal relationship and explain the differences in planning law between jurisdictions using a comparative approach. As in the study by Alterman (2011), it is difficult to confirm the explanatory power of variables, such as the difference between common law and civil law systems, geographical proximity and compensation rights against restriction.

Because of sampling issues, it is also challenging to discover common principles encompassing all jurisdictions. Unlike the quantitative scientific methods that can use random sampling, comparative analysis has faced criticism for arbitrarily setting comparison targets without an objective standard (Valcke, 2004, p. 714). Specifically, the problem becomes worse when the comparison of subjective sampling attempts to derive a general principle that is universally applicable beyond the compared jurisdictions.

Even if the comparison target is chosen by using specific criteria, such as legal families, it is difficult to conclude that the planning law has evolved in response solely to that particular criterion, that is, legal family's tradition in the country. For example, even when comparing jurisdictions that originated from the common law system, such as the UK, the USA and Canada, their planning laws reveal apparent differences (Alterman, 2011, p. 109). Planning laws in each jurisdiction have evolved in response to their unique political, legal system and historical and cultural context in whole (Light, 1999, p. 577).

3.1.1.2 Finding general principles? One might think the comparative approach is associated with determining the criteria for desirable outcomes. Plato sought an "ideal constitution" that transcended city-states (Zweigert and Kötz, 1998, p. 49), whereas current Neo-Aristotelians seek "universal legal principles" (Michaels, 2006, p. 347). In the EU, recent approaches to comparative law are also understood to be an effort to establish "general principles" (Örücü, 2012, p. 566).

However, in the planning law, it is difficult to determine the "general and desirable outcome." For example, when comparing the UK, which primarily regulates development through planning permission (Booth, 2002, p. 129; Grant, 1992, p. 3), with the USA, which is dependent on zoning (Light, 1999, p. 584), it is impossible to determine which approach – individual permission or zoning – is more general or desirable than the other.

Comparison with the aim of discovering universal human knowledge may be linked to reductionism, but it has been criticised as a nostalgic return to the natural law (Samuel, 2014, p. 42). Moreover, while reductionism in civil law countries is sharing certain legal traits with the Roman law (Samuel, 2014, p. 42), there is no concrete proof for a universal foundation for planning law.

Therefore, to justify the legitimacy of the comparative planning law, the focus should be not on general principles but on "practical concerns" to which comparative approaches can help find the pragmatic answer. Generally, a comparative approach is used to offer alternative solutions for policy concerns (Eberle, 2009, p. 485), and comparative law data have been used particularly in legislation (Zweigert and Kötz, 1998, p. 17). Further, the comparative approach has long been linked to finding solutions or reforms (Glenn, 2014; Hallström, 2015; Hill, 1989).

There is a link between the comparative approach and dissatisfaction with the country's legal system (Alterman, 2011 p. 100). Thus, when discussing comparative law, it is easy to make conclusions that are critical of one's country and favouring others. This may result in a biased view that wildly assumes a foreign system is a "better solution" to justify modification of one's own system based on the foreign system. Particularly, if the comparison is made with a developed nation, then it is more likely to be viewed more positively in the legislative or policymaking process. In the end, the desire for a better solution may lead to the risk of uncritical acceptance (Hill, 1989, p. 107).

3.1.2 Motive for solution, not "better" solution. While one of the most important objectives of comparative law is to find solutions, the answer so obtained in one jurisdiction is not always superior in other jurisdictions. Thus, it may not be as essential to establish a particular direction and determine the best solution; instead, the important objective should be to provide comparisons with among different legal systems as a foundation for

resolving the existing issues. In short, the outcome of the comparison is not a matter of "what ought to be."

Theorists are still divided about whether comparison approaches may be used to evaluate solutions (Örücü, 2012, p. 571). For instance, Hallström (2015, p. 54) discussed evaluating comparative constitutions based on fundamental rights. However, it is certainly more challenging to establish evaluation standards comparable to fundamental rights within the planning law area. It goes without saying that, without an adequate evaluation standard, it is improper to conclude that one planning regime is superior to another. When it comes to political law influenced by the political choice of each jurisdiction, it is better to withhold judgement on better solutions (Zweigert and Kötz, 1998, p. 40).

Planning is linked to property (Krueckeberg, 1995, p. 301), and property rights cannot be understood outside the context of other social institutions (Trebilcock and Veel, 2008, p. 456). Therefore, it is implausible to develop a theory or concept of property rights that transcend jurisdictions (Trebilcock and Veel, 2008, p. 479). Even the defensive reference concerning property rights in Article 17 of the Universal Declaration of Human Rights is limited to protection against "arbitrary deprivation" of property and Article 17 does not specify how much or how freely property ownership should be exercised. Some even contend that Article 17 lacks clarity on the nature of the ownership and the degree of its limitation (Jacobs, 2013, p. S91). Consequently, the definition of land ownership at the international level, which is the evaluation basis for the most fundamental problems in planning law, remains ambiguous (Wickeri and Kalhan, 2010, p. 18). Unless planning goes to the extent of depriving property without compensation (Renard, 2007, p. 43), in which case the property right is universally protected, there is rarely any agreed-upon justice between the administration and the property owner regarding which party should take the lead in land use.

Comparatists contend that comparative law can help address cross-border concerns like antitrust law, privacy and accounting standards (Eberle, 2009, p. 476). For those concerns, legal relationships may have relevance in multiple jurisdictions simultaneously. For example, if multinational firms' accounting rules vary from country to country, then it would have increased unnecessary societal costs. Also, when patent applications are filed simultaneously in multiple jurisdictions, existence of similar rules can be beneficial for them. However, unlike those legal issues that have a common governing rule applicable across multiple jurisdictions, the land use relationship is subject to the territorial sovereignty, substantially depending on the physical context and the location of a parcel of land, which are distinct among various jurisdictions. As a way of example of the difference, the Free Trade Agreement contains a deferential clause regarding the land policy because a proper regulatory power of each country should acknowledged (Kim and Kim, 2012, p. 1).

3.1.3 Comparative planning laws and realistic goals; system's modifiability. We must establish realistic goals for comparative planning law. Siems cites the US Supreme Court's former Justice Scalia's statement that "practices of the world community, whose notions of justice are (thankfully) not always those of our people" (Siems, 2007, p. 133). The most suitable place for adoption of comparative law is legislation, which may convert "notions of justice" from other jurisdictions into "those of our people." Zweigert and Kötz (1998, p. 51) also noted that the legislative adoption is methodologically less problematic. Comparative planning law is meaningful when the system is susceptible to change: the more modifiable planning law is, the more justifiable the comparative approach is.

Firstly, planning law is not a purely legal matter. To borrow the phrase "legally enforceable policy" from Norton (2019, p. 56), planning law relates to policymaking that requires continuous policy adjustments in repose to changing social phenomena.

Secondly, although the degree of discretion afforded with legislative and administrative branches may vary by jurisdiction, some degree of discretion is generally acknowledged. Even with taking, which is a major limitation on this discretion, there are few constitutional restrictions, apart from the requirement for just compensation.

Thirdly, planning law has a relatively short history. In 1924, the USA introduced the Standard State Zoning Enabling Act to guide state legislations to create its own zoning laws (Juergensmeyer *et al.*, 2018, p. 47), although a few states already had enacted the legislation enabling zoning regulations at the local level before it (Knack *et al.*, 1996, p. 4), and in 1947, the UK enacted the Town and Country Planning Act, which is the foundation of the current planning permission system (Booth, 2002, p. 137). In Japan, the first modern planning law appeared in 1919 (Yorifusa, 2006, p. 29) – and in Korea in 1934 (Gallent and Kim, 2001, p. 234). These laws were detached from an obsessive adherence to their own legal traditions and, therefore, could reserve future modifications. Regardless of which country one lives in, the search for solutions to planning challenges remains ongoing. This is also why dramatic changes have been made, such as the implementation of Korea's Greenbelt that prohibited development within designated zones in the 1970s and the UK's nationalisation of development rights from the 1940s (Booth, 2002).

3.2 Object of comparison

3.2.1 Which jurisdictions will be chosen. For selection of countries for comparative planning law analysis, there are two crucial issues to consider. The first issue is sampling. In the comparative planning law analysis, random sampling is uncommon, and comparatists tend to avoid reckless selection of comparison targets without considering "basic information." Only after at least an abstract level of information about each system is provided, potential comparison targets may be contemplated. By the time comparatists are selecting countries, they might be required to have a understanding of the intended comparison (Siems, 2022, p. 18). Thus, the selection process cannot be separated from the comparatists' intentions, such as the type or purpose of the research (Brand, 2006, p. 458).

The legal family, a representative criterion in comparative private law, is however not suitable for planning law. As discussed above, the planning laws of the USA and the UK, which are common law countries, are significantly different. Even in empirical research, the explanatory power of the legal family could not be confirmed in planning law (Alterman, 2011).

In sum, it is hard to overcome subjectivity and arbitrariness of sampling in comparative law research, including comparative planning law. Thus, instead of solely focusing on the sampling, caution should be exercised in interpretation and generalisation of the findings coming from the research. Over-generalisations of subjective sampling should be criticised and overcome.

The second issue is unit of analysis. Researchers should be wary of whether countries constitute appropriate units of analysis: whether a country is sufficiently homogeneous to serve as a unit of comparison must be resolved before selection of countries for comparative planning law analysis, particularly when the country adopts a federal system.

The issue is not simple. In Germany, for instance, Oxley *et al.* (2009) explain that Lander-level planning legislations exist "under central government guidance" (p.16). In the USA, the police power, which is the foundation of planning authority, is the "inherent power of a state legislature" (Burke, 2013, p. 3), where the Standard State Zoning Enabling Act's influence remains simultaneously real (Juergensmeyer *et al.*, 2018, p. 49). Thus, the degree to which these federal influences or guidance contribute to homogeneity must be evaluated by considering specific research questions. Besides the federal system, we must also consider the existence of potential variations by local legislations.

3.2.2 Which elements to be compared: functionalism and contextualism. The difficulty in comparative law analysis lies in identifying elements for comparison within each

jurisdiction. It would be too superficial to choose comparison targets by simply relying on the similarity of terms. Indeed, there is no internationally standardised term for planning law (Dobry, 1976, p. 507). It would result in term-based biases and deficiencies that have been consistently raised by comparative theorists (Örücü, 2012, p. 568).

To address this concern, Zweigert and Kötz (1998, p. 34) proposed functionalism as a method for selecting comparison targets, which has led discussion on comparative law methodology for the past few decades. Functionalism assumes that each country has functionally equivalent solutions for similar social problems (functional equivalence) and compares these solutions (Samuel, 2014, p. 53).

Despite the influence of the functionalism, theorists criticised fundamental assumptions of functionalism – that is, the assumption of similarity of problems and solutions (Samuel, 2014, p. 30). For example, Zweigert and Kötz's (1998, p. 44) argument that solutions should be detached from their context during comparison was the most controversial. Theorists like Legrand argued that the "social context" surrounding the law, that is, the legal culture, should be thoroughly taken into account in comparative analysis (Brand, 2006, p. 428). Consistently, numerous discussions have recognised the importance of context in comparative law, although the meaning of context and the level of context analysis would vary among theorists (Frankenberg, 2017). Now, contemporary functionalism recognises the significance of context and tries to incorporate it into its methodology (Brand, 2006, p. 432), whereas Legrand is criticised for his approach's lack of practical applicability (Brand, 2006, p. 432).

If the selection of comparison targets cannot rely on formal aspects such as terminologies, then comparison based on substantive aspects becomes necessary. Then, it becomes difficult to deny the utility of functionalism. Certainly, functional equivalence alone cannot provide a perfect methodological answer, and Legrand's opinion on "context" should not be overlooked. However, it is undeniable that functional equivalence is a useful starting point for finding comparison targets at the abstract level. In conjunction with the analysis in Section 2, functional equivalence can be outlined as the public legal relationships in land use between administrative bodies and private individuals at a macro level and as the rights and duties of planners and property owners in relation to particular planning issues or tools at a micro level.

Also, as solutions with equivalent functions do not always correspond to one another on the same level and context can directly affect the corresponding level of solutions, the boundary of comparison targets should be flexible in terms of context. Institutions with comparable functions may not be subject to the same scrutiny or have the same work scope. For instance, planning permission in the UK is often compared with Korea's development activity permission (Yoo and Cheong, 2001), but there are differences in the context and function of the two permissions, the standard of review and the agency's authority. Specifically, Korea has binding city plans that control over the permission (Jeon, 2019, p. 98), whereas the UK does not (Buitelaar *et al.*, 2011, p. 935). As such, while comparable functions may exist in different institutions, like those in the development permission and plan, the comparison targets may not always be uniform in scope or nature.

Therefore, it is reasonable to take a critical viewpoint on use of functionalism. This implies that comparison targets should be investigated by both functional equivalence and context. The comparison target should not just be limited to a specific solution related to a particular problem but broadened or reduced depending on the context.

3.3 Perspective of comparison

There are two approaches of comparison: objective and subjective. An objective approach places objects on the same level and compares them from a neutral standpoint. On the other hand, a subjective approach analyses multiple objects from the perspective of each one of

them. Absolute objectivity is of course not feasible. While Zweigert and Kötz (1998, p. 35) argued that the perspective of the indigenous legal system should be eliminated, comparatists cannot simply disregard their jurisdictional knowledge and experience and pretend they are not influenced by them (Brand, 2006, p. 414; Siems, 2022, p. 13). Lawyers come before comparatists; they become comparatists based on legal education in their own country, which interferes with researchers having objective views independent from their own jurisdiction. Surely, it is worthwhile to strike for objectivity, but the notion that we can be completely objective is a misconception that must be discarded.

Similar distinctions exist between the internal and external viewpoints (Samuel, 2014, p. 60). H.L.A. Hart insisted that the normative character of law could only be comprehended from the internal viewpoint (Husa, 2015, p. 31) from the legal system's participants. The external viewpoint can aid in the understanding of the law, but it alone is insufficient for complete understanding of the law. As such, in legal studies, surely including planning law, the internal viewpoint can function without the external view, but not vice versa.

4. Framework of comparative planning law

4.1 Introduction; contexts of planning law

In comparative approaches, differences in context contribute to differences in outcome (Husa, 2015, p. 5). Beyond merely uncovering the law and its implementation, we must consider its deeper backgrounds.

For a comprehensive comparison, Frankenberg (2017) emphasised the importance of examining "everything," and Siems (2007, p. 140) noted the importance of understanding "epistemological foundations of the cognitive structure." Comparative law can explore political, economic, social and historical factors (Reitz, 1998, p. 627). Therefore, contexts of planning law (Figure 1) can be expanded to concern property law, the Constitution and even philosophical thoughts (Norton and Bieri, 2014). However, as discussed above, it is important to set realistic goals for comparative planning law, as it is not easy to recognise the practical benefit of analysing all these backgrounds and contexts within each jurisdiction.

The question is where to draw the line. It is a methodologically significant to choose and arrange primary meaningful contexts and to systematise how comparatists in planning law would use Ockham's Razor. Contexts such as politics, culture, history and mentality are so

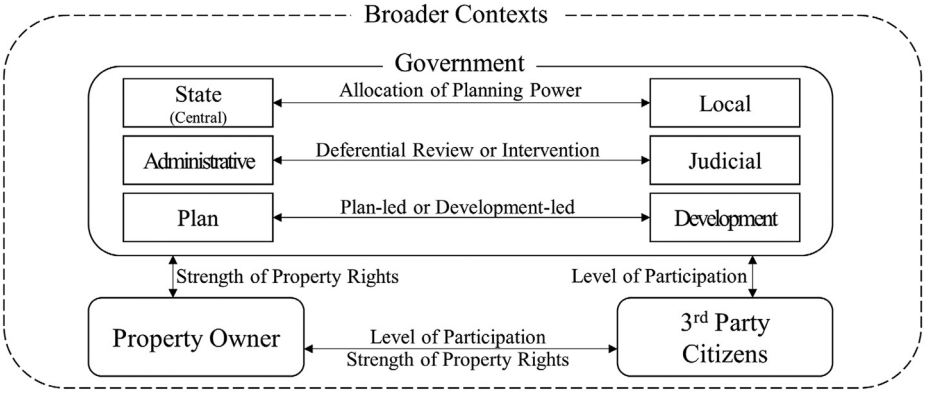

Figure 1.
Contexts of planning law

Source: Contexts of Planning Law © 2023 Jinwon Jeon. Reproduced with permission

vague, when considered alone that considerable effort is needed to explain how they relate to the compared law. It can advantageously reconstruct and refine such contexts to enhance their explanatory power, as opposed to leaving them as general and abstract terms. For example, comparing how the mentality of each country affects the strength and protection of ownership is more concrete and clearer than comparing the mentality and relating it to each country's planning law. This type of "intergrade" can bolster the plausibility of a comparison.

The question then becomes how to identify this intergrade. This article proposes focusing on the "interaction" or "tension" between planning law players, as context comes to the fore with those players. If the basis of the planning law is the conflict between the planning authority and the property rights, then there will be two players involved: property owners and the government. Moreover, third-party citizens who are impacted by the plan or influence the planning decision cannot be overlooked. Then, how planning law functions is largely determined by the influence of each player. The strength of ownership determines the influence of the owners, the intensity of public power determines the influence of the government and the weight on participation determines the influence of third-party citizens. There will be internal tensions regarding the exercise of power, such as the allocation of power between branches or central-local governments. Additionally, tensions between planning tools can be notable.

This article will examine these five embodied contexts by way of examples of the laws of selected countries. We should analyse whether these contexts can explain similarities or differences in each jurisdiction and whether these similarities or differences will persist or disappear when they in the context disappear.

4.2 Strength of property rights

The basis of planning law is the interaction of rights and duties between the planning authority and the property owner, which may be present in the government's restrictions on ownership. Depending on how this relationship is formed in each country, the substance and execution of the planning law will vary considerably. Positive planning laws may not explicitly mention every issue or scenario that may arise because they allow for discretion, which enables flexibility and interpretation of the relevant authority. To fill in these blanks, we must analyse how discretion is exercised against the strength of ownership.

The primary question is whether private ownership can encompass development rights and, if so, then to what extent. The more development rights are recognised, the broader their reach and the less discretionary power the planning authority can exercise. Differences in the recognised development rights among different jurisdictions may be attributable to the substance and extent of ownership, although not readily evident.

For instance, Sweden was discussed as having abolished development rights for owners (Kushner, 2003, p. 32). In the UK, all development rights were nationalised by the Town and Country Planning Act of 1947 (Booth, 2002). If review and analysis of relevant statutes, case law and their context reveal a lack of recognition of such development rights, then it becomes necessary and important to examine how such deficiency may impact the practice of the government's discretionary power over planning.

Imagine there is a country with a discretionary permission system that is similar to the UK's planning permission system. Even if both administrative agencies have similar discretionary initiatives, the function and degree of such planning permissions would be different. The heightened level of property protection in some countries is attributable to other factors, such as administrative agencies refraining from exercising discretion or courts establishing detailed standard of review for such discretion.

Perception towards property rights can operate in numerous ways within the legislative and judicial spheres. The difference in property protection may relate to differences in constitutional principles (Delgado Chávez, 2020, p. 28). Like Japan's Basic Act for Land, positive laws may stipulate that public interest trumps land ownership (Shibata, 2002, p. 173). Moreover, the perception of property rights is not static, even among different branches of the government. For instance, in the USA, state legislatives promptly enacted laws to limit the exercise of eminent domain for private purposes in response to a ruling that recognised the legality of such power (Arnold, 2007, p. 489).

Sometimes, differences in property protection can be traced back to in-depth discussions. For instance, the fundamental difference in the degree of protection of property is attributed to the philosophical basis: Norton and Bieri (2014) contrasted the "individualistic notions of property ownership" (p. 10) in the USA explicable by J. S. Mill's liberalism with "social obligations of ownership" (p. 10) in Germany consistent with Hegelian liberalism. For the social and historical contexts, the question of whether certain classes or groups enjoy relatively greater protection of their property interests against planning must not be overlooked (Jacobs and Paulsen, 2009, p. 135).

4.3 Level of judicial intervention

Courts significantly impact the planning system's operation. The less judicial intervention there is, the greater planning agency initiative will be. Deferring to the discretionary power of the planning agency, courts of each nation have developed legal framework and/or doctrines governing judicial review of plans or planning decisions. In the USA, for instance, one can find descriptions such as "highly deferential rational basis or rational relationship review" (Norton, 2010, p. 1099) as well as the "doctrine to the expertise of administrative agencies" regarding zoning decisions (Burke, 2013, p. 227).

From a legal standpoint, this can be a matter of allocating the burden of proof and the scrutiny standard. Traditionally in the USA, land use decisions, which is regarded as a legislative act, have been presumed valid; consequently, those who challenge its validity bear the burden of proof (Peckinpaugh, 1980, p. 499; Juergensmeyer *et al.*, 2018, p. 143). However, some state supreme courts have lessened the burden of proof by recognising it as quasi-judicial (Peckinpaugh, 1980, p. 501; Juergensmeyer *et al.*, 2018, p. 144). Moreover, existence of guidelines for discretionary decision-making can also impact the scrutiny standard of the judicial review (Peckinpaugh, 1980, p. 506).

To determine how the judicial branch affects the planning authorities in each country, it is necessary to comprehend both legal principles and practical tendencies. For example, in South Korea, even though the Supreme Court has adopted a judicial doctrine for review of the balance of interests in planning, there is criticism that courts tend to omit detailed analysis of interests and thereby refuse to exercise judicial control over planning (Kim, 2020, p. 93).

The level of judicial intervention cannot be determined solely by evaluating all decisions in existing case law relating to planning law and calculating the success rates. From the practitioner's standpoint, the difficulty or quality of each case is different: each case has its own factual and legal disputes. Moreover, not all planning disputes end up being litigated before court. There are various factors, such as the future relationship with the administrative agency, that can affect the decision of whether to file a lawsuit. In some jurisdictions, there are alternative methods to challenge planning decisions, which should be considered, including administrative appeals, Ombudsman-like system and alternative dispute resolution procedures.

4.4 Plan-led or development-led

A plan's importance and status can vary by the system. The problem of implementation exists everywhere in planning, and it is closely tied to the status of the plan. If the plan's contents are not only explicit but also strongly binding, then it will be difficult to amend it during implementation; hence, the establishment of the plan will be central to land use regulation. Alternatively, if the plan's contents are unclear or weak, then there will be room for clarification and modification during the implementation process. In this case, the implementation process for individual development will be at the core of land use regulation. Because these distinctions are not statutorily apparent, contexts must be explored.

These distinctions are referred to as plan-led and development-led. Although the definitions of these terms are not precise, these terms have been used in studies analysing the systems of European countries, including studies conducted by Buitelaar *et al.* (2011) and Oxley *et al.* (2009). In general, the scholars use the term "plan-led" to describe a system that differs from the British system of less binding plan and planning permission (Buitelaar *et al.*, 2011, p. 935).

Even in systems with positive laws intended to be plan-led, like former Netherlands system, its practice may be far from plan-led (Buitelaar *et al.*, 2011, p. 935). Thus, unless the ability to modify the plan is completely restricted or limited, a development-led approach may become an option in practice, as it may be challenging to find a pure plan-led system.

Inattention to these matters may result in erroneous evaluations of the role of positive laws or institutions. If an evaluation of a system is made based solely on the language of the positive law, then there is risk that the importance of the plan in a certain system will be overestimated.

4.5 Allocation of planning power

Who can control land use and to what extent relate to the allocation of planning authority between the central and local governments, the possibility of central intervention and the effectiveness and legitimacy of planning. If multiple layers of planning authority are granted to central and local governments, then the relationship between the effectiveness of each plan can become a practical issue (Jeon, 2019).

The issue of who controls land use may also be linked to the plan's type and binding force. If a national plan with a solid binding force is established at the national level, then the lower-level plans will operate within the larger framework set by the national plan, placing more emphasis on efficient goal-setting and implementation under central leadership.

State-led initiatives can have various degrees of significance and binding force depending on the subject of the plan. For instance, Article 24 of Japan's City Planning Act grants the Minister authority to guide or intervene directly in city planning for matters of "national interest." This is regarded as an example of top-down characteristics that persist despite the recent considerable decentralisation (Yorifusa, 2006, p. 44).

In areas where policy needs are evident, the state can act as a planner or provide compelling recommendations to local governments. This is commonly seen in growth management. In Korea, for example, the Greenbelt was designated by the central government (Bae, 1998, pp. 479-502). Although local authorities are responsible for designation and cancellation of such Greenbelt in the UK, the National Planning Policy Framework established by the central government exerts significant control over it (Rankl and Barton, 2022, pp. 9-10). In light of these examples, it is necessary to determine whether the central government intervenes through policy instruments regardless of black-letter laws and identify the rules and exceptions to power allocation outlined in each country's law's legislation to comprehend the actual allocation of planning power.

In addition, the incentives for local governments must be examined to comprehend the actual use of allocated power. Local governments may adopt development-friendly policies to increase tax revenue and attract more investments (Zhang, 2002, p. 479). If a considerable amount of authority is delegated to the local governments, then the local governments incentives can significantly affect the interpretation and application of the planning law.

This allocation is by no means fixed. Even in the USA, where local governments are primarily responsible for land use regulations, federal and state government intervention is increasing (Arnold, 2007, p. 486). In the past, the legislation in South Korea stipulated that the central government had planning authority nationwide, with local governments serving as delegated agencies. Now planning authorities in South Korea are allocated to local governments with certain exceptions (Kim *et al.*, 2012, pp. 90-91). Although there may be differences in degree and progress, the decentralisation of planning authority similarly has been progressing in Japan (Yorifusa, 2006, pp. 25-45).

4.6 Level of participation

Because of the emphasis on public engagement, the legal framework surrounding planning has evolved from a two-dimensional relationship between administrative agencies and property owners to a three-dimensional relationship additionally involving ordinary citizens. For the land to be used as the property owner desires, the plan must not only undergo administrative review but also take into account the participation of third parties, including ordinary citizens, before and after the review process. It is noteworthy that there have been numerous instances in which residents' opposition prevented or delayed changes in planning, preventing property owners from achieving their goals.

Participation in planning is characterised by intervention in the use of "other" people's land. For instance, in the USA, police power which is intended to promote "public health, safety, morals, and the general welfare" is the legal basis for zoning (Burke, 2013, p. 3). However, beyond the police power, it is important to consider whether land use can be justifiably restricted based on personal preferences, such as citizens' preferences.

Public engagement in the planning process is increasing in many countries, (Nolon, 2005, p. 810) and is being part of the legal system (Hartmann *et al.*, 2018, p. 136). If participation procedures are mandatory, then the omission of the participation procedures such as a public hearing would render the plan unlawful by breaching the positive law (Kim, 2018, p. 275). However, the most challenging aspect of participation is the substantive participation element. If the system focuses solely on the formal aspect of participation, then it may simply be about convening a meeting before planning. However, if substantive participation is required, then the plan's effectiveness will be called into doubt for not incorporating opinions from the participation process, especially when there is no justification for failing to do so.

Taking a step further from participation, there are instances in the USA, where plans were examined by referendum, although the legitimacy of such electoral zoning in other countries remain controversial. The US Supreme Court ruled it does not violate due process (Juergensmeyer *et al.*, 2018, p. 138), but the extent and nature of such engagement vary by jurisdiction; this needs to be examined in comparative analysis on planning law.

5. Conclusion

The aim of this article was to establish a connection between planning law and comparative law and to create a methodological framework for comparative planning law. To develop methodologies for comparative planning law, it is necessary to determine what it means to study planning from a legal perspective, which will be the subject of comparative planning

law analysis. In Section 2 of this article, it was argued that the legal essence of planning involves a hierarchical relationship between administrative bodies and property owners regarding land use, and various legal issues stemming from this legal essence were explored.

In Section 3, the theoretical foundation of comparative planning law, including the purpose, object and perspective, was discussed in connection with several rudimentary discussions on comparative law methodologies. Because of the lack of common evaluation standards, this article suggests that we should be cautious about evaluating which solution is better and, instead, proposes using comparative planning law to find motives for answers to ongoing planning issues. Moreover, this article recommends using functionalism from a critical perspective by adopting a flexible approach in identifying comparison targets while not ignoring contextual aspects of each legal system.

Building onto the discussions in Sections 2 and 3, Section 4 devised comparative planning law frameworks. Among the various discussions on comparative law such as functionalism and sampling, the most ambiguous aspect of comparative planning law is how to understand "context." Given that players within the legal relationship bring contexts, such as politics, culture and mentality to the surface, Section 4 attempted to identify five intergrades between the abstract level of contexts and planning law by analysing the tensions and influences among the three key players: the property owner, the government and third-party citizens. These five embodied contexts ("Strength of Property Rights," "Level of Judicial Intervention," "Plan- or Development-led System," "Allocation of Planning Power" and "Level of Participation") must be analysed together when individual comparative research analyses its objects, and they must be examined when constructing and interpreting comparative findings. Practical frameworks offered by this article can help comparative planning law researchers with designing research questions and analysis structure.

Nevertheless, several shortcomings still exist in this article, and it is not immune to the implications of traditional comparative law approaches. To broaden the horizon of comparative planning law, it is necessary to explore extending trends in comparative law, including postmodern, socio-legal, numerical and empirical trends (Siems, 2022), which could not have been fully covered in this article. Furthermore, it would be valuable to establish a connection with recent trends in interdisciplinary studies, such as legal geography, because both legal geography and comparative planning law share a common interest in clarifying the legal implications of spatial order and could agree that legal scholars or other experts cannot monopolise the study of space (cf. Nicolini, 2022, pp. 14-33).

References

Alterman, R. (2011), "Guest editorial: comparative research at the frontier of planning law: the case of compensation rights for land use regulations", *International Journal of Law in the Built Environment*, Vol. 3 No. 2, pp. 100-112, doi: 10.1108/17561451111148220.

Arnold, C.A. (2007), "The structure of the land use regulatory system in the United States", *Journal of Land Use and Environmental Law*, Vol. 22 No. 2, pp. 441-523.

Bae, C.-H.C. (1998), "Korea's greenbelts: impacts and options for change symposium: emerging land use law in the pacific rim", *Pacific rim law and Policy Journal*, Vol. 7 No. 3, pp. 479-502.

Booth, P. (2002), "Nationalising development rights: the feudal origins of the British planning system", *Environment and Planning B: Planning and Design*, Vol. 29 No. 1, pp. 129-139, doi: 10.1068/b2769.

Booth, P. (2003), *Controlling Development*, Routledge, London.

Brand, O. (2006), "Conceptual comparisons: towards a coherent methodology of comparative legal studies", *Brooklyn Journal of International Law*, Vol. 32 No. 2, pp. 405-466.

Buitelaar, E., Galle, M. and Sorel, N. (2011), "Plan-led planning systems in development-led practices: an empirical analysis into the (lack of) institutionalisation of planning law", *Environment and Planning A: Economy and Space*, Vol. 43 No. 4, pp. 928-941, doi: 10.1068/a43400.

Burke, B. (2013), *Understanding the Law of Zoning and Land Use Controls*, LexisNexis, New York, NY.

Dannemann, G. (2019), "Comparative law: study of similarities or differences?", in Reimann, M. and Zimmermann, R. (Eds), *The Oxford Handbook of Comparative Law*, Oxford University Press, pp. 390-422, doi: 10.1093/oxfordhb/9780198810230.013.12.

Delgado Chávez, R. (2020), "Comparative analysis on land use law perspectives in the United States and the European union, as offered by john R. Nolon and Lora-Tamayo vallvé", available at: https://ddd.uab.cat/record/235422

Dobry, G. (1976), "Planning law in England", *Real Property, Probate and Trust Journal*, Vol. 11 No. 3, pp. 507-513.

Eberle, E.J. (2009), "The method and role of comparative law", *Washington University Global Studies Law Review*, Vol. 8 No. 3, pp. 451-486, doi: 10.2139/ssrn.1265659.

Frankenberg, G. (2017), "Critical comparisons: re-thinking comparative law", in Mar, M. (Eds), *Legal Theory and the Legal Academy*, Routledge, London, Vol. 3.

Gaine, M. (2021), *How to Get Planning Permission: An Insider's Secrets*, Spinlove Books, London.

Gallent, N. and Kim, K.S. (2001), "Land zoning and local discretion in the Korean planning system", *Land Use Policy*, Vol. 18 No. 3, pp. 233-243, doi: 10.1016/s0264-8377(01)00017-5.

Glenn, H.P. (2014), "The aims of comparative law", *Elgar Encyclopedia of Comparative Law*, Second ed., Edward Elgar Publishing, Cheltenham, pp. 65-74, doi: 10.4337/9781781006108.00009.

Grant, M. (1992), "Planning law and the British land use planning system: an overview", *Town Planning Review*, Vol. 63 No. 1, pp. 3-11, doi: 10.3828/tpr.63.1.gr415506k73285m0.

Gray, M.N. (2022), *Arbitrary Lines: How Zoning Broke the American City and How to Fix It*, Island Press, Washington, DC.

Hallström, P. (2015), "Theory and method of comparative constitutional law", *Scandinavian Studies in Law*, Vol. 61, pp. 49-53.

Hartmann, T., Van Straalen, F. and Spit, T. (2018), "Expectation management at the local scale: Legal failure of public participation for large urban planning projects", *TeMA-Journal of Land Use, Mobility and Environment*, Vol. 11 No. 1, pp. 133-145, doi: 10.6092/1970-9870/5369.

Hill, J. (1989), "Comparative law, law reform and legal theory", *Oxford Journal of Legal Studies*, Vol. 9 No. 1, pp. 101-115, doi: 10.1093/ojls/9.1.101.

Husa, J. (2015), *A New Introduction to Comparative Law*, Hart Publishing, Oxford.

Jacobs, H.M. and Paulsen, K. (2009), "Property rights: the neglected theme of 20th-century American planning", *Journal of the American Planning Association*, Vol. 75 No. 2, pp. 134-143.

Jacobs, H.M. (2013), "Private property and human rights: a mismatch in the 21st century?", *International Journal of Social Welfare*, Vol. 22 No. S1, pp. S85-S101, doi: 10.1111/ijsw.12044.

Jeon, J. (2019), "Legal influence and relations between city plans and development plans, and merger of plans", *Construction and Urban Development Law Journal*, Vol. 2, pp. 90-112, (In Korean).

Juergensmeyer, J.C., Roberts, T.E., Salkin, P.E. and Roweberry, R.M. (2018), *Land Use Planning and Development Regulation Law*, 4th ed., West Academic Publishing, Saint Paul.

Kim, H., Kim, H.S., Kweon, I., Moon, C. and Han, S.H. (2012), "The actual status and the critical assessment on transfer of urban planning empowerment to local government", *Journal of Korea Planning Association*, Vol. 47 No. 4, pp. 85-104, (In Korean).

Kim, J. (2018), *Understanding of Construction Law*, 6th ed., Fides, Seoul. (In Korean).

Kim, M.H. and Kim, J. (2012), "The Korea-U.S. FTA and the real estate policy in Korea", *Public Land Law Review*, Vol. 58, pp. 1-20, (In Korean).

Kim, Y.S. (2020), "Legal nature of implementation plan authorized under the national land planning and utilization act and its judicial control methods and limitations", *Studies on Public Administration Cases*, Vol. 25 No. 1, pp. 41-106, (In Korean).

Knack, R., Meck, S. and Stollman, I. (1996), "The real story behind the standard planning and zoning acts of the 1920s", *Land Use Law and Zoning Digest*, Vol. 48 No. 2, pp. 3-9, doi: 10.1080/00947598.1996.10395877.

Krueckeberg, D.A. (1995), "The difficult character of property: to whom do things belong?", *Journal of the American Planning Association*, Vol. 61 No. 3, pp. 301-309, doi: 10.1080/01944369508975644.

Künnecke, M. (2007), *Tradition and Change in Administrative Law: An Anglo-German Comparison*, Springer Science and Business Media.

Kushner, J.A. (2003), *Comparative Urban Planning Law*, Carolina Academic Press, Durham.

Leffers, D. (2017), "Developers, the state, and the politics of private property rights", *Journal of Law and Social Policy*, Vol. 27, pp. 165-194.

Light, M.A. (1999), "Different ideas of the city: origins of metropolitan Land-Use regimes in the United States, Germany, and Switzerland note", *Yale Journal of International Law*, Vol. 24 No. 2, pp. 577-612.

Meshkini, A., Normohamadi, M. and Zarghamfard, M. (2019), "Developing an optimal pattern for state intervention in urban land management: case of Iran, Tehran city", *Spatial Information Research*, Vol. 27 No. 6, pp. 695-708, doi: 10.1007/s41324-019-00272-2.

Michaels, R. (2006), "The functional method of comparative law", in Mathias, R. and Zimmermann, R. (Eds), *The Oxford Handbook of Comparative Law*, Oxford University Press, Oxford, pp. 339-382.

Needham, B. (2007), "Final comment: land-use planning and the law", *Planning Theory*, Vol. 6 No. 2, pp. 183-189, doi: 10.1177/1473095207077588.

Nicolini, M. (2022), "*From Law and Geography to Legal Geography", Legal Geography: Comparative Law and the Production of Space*, Springer, Cham, pp. 13-44, doi: 10.1007/978-3-031-19410-8_2.

Nolon, J.R. (2005), "Comparative land use law: patterns of sustainability", *Pace Environmental Law Review*, Vol. 23 No. 3, pp. 855-904.

Norton, R.K. (2010), "Who decides, how, and why – planning for the judicial review of local legislative zoning decisions", *Urban Lawyer*, Vol. 43 No. 4, pp. 1085-1106.

Norton, R.K. (2019), "Planning law", in Leigh, N.G., French, S.P., Guhathakurta, S., and Stiftel, B. (Eds), *The Routledge Handbook of International Planning Education*, Routledge, London, pp. 55-65.

Norton, R.K. and Bieri, D.S. (2014), "Planning, law, and property rights: a US–European cross-national contemplation", *International Planning Studies*, Vol. 19 Nos 3/4, pp. 379-397, doi: 10.1080/13563475.2014.965249.

Örücü, A.E. (2012), "Methodology of comparative law", in Smits, J.M (Ed.), *Elgar Encyclopedia of Comparative Law*, 2nd ed., Edward Elgar Publishing, Cheltenham, pp. 560-576.

Oxley, M., Brown, T., Nadin, V., Qu, L. and Tummers, L. (2009), *Review of European Planning Systems*, Centre for Comparative Housing Research, Leicester Business School, De Montfort University.

Peckinpaugh, C.J. Jr. (1980), "Burden of proof in land use regulation: a unified approach and application to Florida comment", *Florida State University Law Review*, Vol. 8 No. 3, pp. 499-522.,

Qian, Z. (2010), "Without zoning: urban development and land use controls in Houston", *Cities*, Vol. 27 No. 1, pp. 31-41.

Rankl, F. and Barton, C. (2022), *Green Belt*, No00934, House of Commons Library.

Reitz, J.C. (1998), "How to do comparative law", *The American Journal of Comparative Law*, Vol. 46 No. 4, pp. 617-636, doi: 10.2307/840981.

Renard, V. (2007), "Property rights and the 'transfer of development rights': questions of efficiency and equity", *Town Planning Review*, Vol. 78 No. 1, pp. 41-60, doi: 10.3828/tpr.78.1.4.

Samuel, G. (2014), *An Introduction to Comparative Law Theory and Method*, Hart Publishing, Oxford.

Schmidt-Eichstaedt, G. (2018), "Urban land-use planning", *Academy for Territorial Development in the Leibniz Association*.

Shapiro, M. (1981), *Courts: A Comparative and Political Analysis*, University of Chicago Press, Chicago.

Shibata, B. (2002), "Land-use law in the United States and Japan: Fundamental overview and comparative analysis", *Washington University Journal of Law and Policy*, Vol. 10, pp. 161-266.

Siems, M. (2007), "The end of comparative law", *Journal of Comparative Law*, Vol. 2 No. 2, pp. 133-150.

Siems, M. (2022), *Comparative Law*, 3rd ed., Cambridge University Press, Cambridge, UK.

Trebilcock, M. and Veel, P.-E. (2008), "Property rights and development: the contingent case for formalization", *SSRN Electronic Journal*, Vol. 30, pp. 397-482, doi: 10.2139/ssrn.1084571.

Valcke, C. (2004), "Comparative law as comparative jurisprudence - the comparability of legal systems", *The American Journal of Comparative Law*, Vol. 52 No. 3, pp. 713-740, doi: 10.2307/4144481.

Wickeri, E. and Kalhan, A. (2010), "Land rights issues in international human rights law", *Malaysian Journal on Human Rights*, Vol. 4 No. 10, pp. 16-25.

Yoo, H.-W. and Cheong, W.-H. (2001), "Conceptual analysis and practical implementation of development permission system", No. 2001–28, Korea Research Institute for Human Settlements, (In Korean).

Yorifusa, I. (2006), "Local initiatives and the decentralization of planning power in Japan", in Hein, C., and Pelletier, P. (Eds), *Cities, Autonomy, and Decentralization in Japan*, Routledge, London, pp. 25-54.

Zhang, T. (2002), "Urban development and a socialist pro-growth coalition in shanghai", *Urban Affairs Review*, Vol. 37 No. 4, pp. 475-499, doi: 10.1177/10780870222185432.

Zweigert, K. and Kötz, H. (1998), *An Introduction to Comparative Law*, 3rd ed. Oxford University Press, Oxford.

About the author

Jinwon Jeon is Associate Lawyer at Yulchon LLC; B.A. in Political Science, J.D., PhD candidate in law (Seoul National University), M.A. in Legal Studies candidate (University of Illinois, Springfield; Distance Learning), Master of Urban Affairs candidate (Boston University). Jinwon Jeon can be contacted at: jinwonjeon@yulchon.com