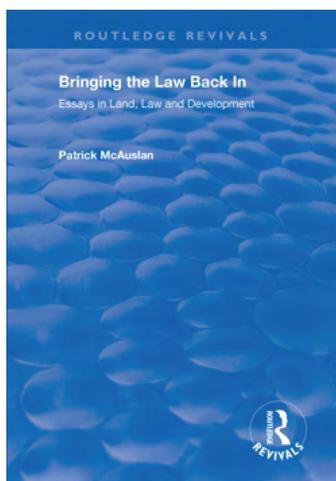

Book Reviews

Patrick McAuslan 2021: Bringing the Law Back In: Essays in Land, Law and Development. London: Routledge Revivals



Although Urban Studies has a long tradition of embracing a multidisciplinary approach, there is still a lack of critical understanding about the many ways the prevailing legal order determines the pattern of urban development internationally, as well as shaping the underlying conditions for urban planning and management. In particular, there has been too little emphasis on the intrinsic and inescapable links between law, land, planning and housing. For this reason, the posthumous re-publication of Patrick McAuslan's collected essays in land, law and development deserves special attention.

Originally published in 2003, McAuslan's final book consolidated a long, distinguished and influential career as both a legal scholar and a legal practitioner. For many decades he was deeply involved with various processes of land law reform in several countries, especially in Africa, Asia and Eastern Europe, producing an impressive body of work that led to the award of an MBE by the UK government in 2001. This revival of *Bringing the Law Back In* is most welcome, as it is in this volume that McAuslan organized—and delved deep into—a series of topics and arguments from his previous books, proposing the terms for an articulated conceptual framework that allows for a better and more critical understanding of the intricate links between law, land and development, especially in urban areas.

Incorporating a wealth of unrivalled professional experience, McAuslan's ground-breaking academic work on Urban Law, planning and policy has long inspired academics and policymakers internationally and deserves renewed recognition through the re-publication of this seminal work. Thought-provoking and timely, the book provides guidance to jurists and urban planners alike who have been challenged by the increasingly difficult task of improving living conditions in cities. In 14 chapters it covers a wide range of national and local case studies. It includes some conceptual essays on the complex but symbiotic relation between the legal order and land, in which McAuslan places a critical emphasis on the different roles played by the law and lawyers in formulating land use and development policies, creating new urban planning systems, and promoting land reform.

Above all, the book presents a consistent legal framework that allows for a proper understanding of the notion of the 'law in context'; that is, a broad understanding of the social, political, economic and cultural forces that have historically determined (and been determined by) the legal system—as opposed to the traditional view of law as an objective and closed system. Adopting an interdisciplinary approach, McAuslan does not take the law for granted. On the contrary, he sees it as a problem of academic knowledge to be discussed and criticized—not only from the outside, but also from within the legal order itself. He discusses the nature and role of law *in* development, as opposed to the hegemonic tradition of law *and* development studies, always stressing the importance of comparative studies and analysis. More importantly, he adopts an understanding that law is at once an instrument and a process; that is, a sociopolitical arena where conflicts are expressed, take place, and can sometimes be resolved. This means accepting the possibilities for and constraints on promoting social reform through the law, albeit within a redefined legal system.

More specifically, this broad framework means promoting the notion of Urban Law as a legal discipline with its own content, principles, institutions, rules and instruments: an academic discipline far broader than Administrative Law and more firmly separated from the private law tradition, and which needs to be interpreted according to its own principles. This entails proposing an inseparable relation between land, urban and housing law, policy, and planning, which in turn requires an understanding of how urban land markets operate. Embracing a pro-poor perspective, McAuslan stresses the inestimable importance of urban management as an intrinsic facet of the urban legal order. It is regrettable that to date very few Law Schools internationally (including in the UK) have offered courses in Urban Law.

Central to McAuslan's argument is an understanding of the importance of property rights and the need to re-qualify this notion in a critical manner in the light of notions such as public interest and public participation. There needs to be more exploration of the role law plays in the production of urban space, where planning is understood as a sociopolitical battleground rather than a mere technical exercise. The ideological uses to which the law and the planning system are put also need to be unmasked. Crucially, there is a need to advocate for legal reform in support of urban reform: every effort must be made to bring law back into the policy- and law-making agenda in relation to urban development and democratization.

McAuslan's framework also paves the way for a critical discussion about the political quality of the law- and decision-making process within the legal urban order. In particular, participatory mechanisms and procedures for direct democracy need to be introduced at all levels of government, especially at the local level. There needs to be a full and open discussion about how urban development is financed so as to have a fairer distribution of the costs and benefits of urbanization and recapture some of the surplus value. We need to understand how the law has begotten illegality and think about ways to integrate informal settlements into the urban fabric, paying particular attention to the socioenvironmental dimension. Last but not least, we need to focus on the growing discussion about the Right to the City and its possible legal interpretation.

These final lessons of Professor McAuslan should not be forgotten or ignored. It is difficult to approve a new legal urban order, and the challenge to its implementation and enforcement is even greater. To do so requires the promotion of legal education and capacity building, recognizing a new generation of collective and social rights, democratizing access to the judicial system, and finding that elusive balance between legal reform, institutional change and sociopolitical mobilization.

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