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# A Tribute to Bernard H. Siegan

LARRY ALEXANDER\*

The publication of two of Bernie Siegan's articles in this issue of the *San Diego Law Review* provides an opportune time for the University of San Diego School of Law to pay tribute to him for his many accomplishments. Bernie is such a friendly, gentle, soft-spoken man, that we, his colleagues, are probably among those least aware of the magnitude of his accomplishments and stature in the world beyond our walls.

Perhaps the best known aspect of Bernie's professional life is his extensive list of publications, especially his books. Bernie has written four books on the subject of economic liberties, beginning with *Land Use Without Zoning* in 1972, an empirical case study of the operation of the free market. *Land Use Without Zoning*, like all of Bernie's work, was controversial. But its being controversial reflected the fact that it fulfilled the highest aspiration of scholarship: it was widely read, and it spurred critical thought and dialogue about a major issue of public policy. Bernie's continuing interest in land use and antipathy to governmental controls thereof are reflected in one of his two contributions to this issue.

Bernie's other books on economic liberties have had similar effects. His most recent book, *The Supreme Court's Constitution: an Inquiry Into Judicial Review and Its Impact on Society*, displays Bernie's skills as a legal historian in establishing the historical pedigree for constitutionalizing economic liberties. And perhaps his most important and influential work, *Economic Liberties and the Constitution*, is, alongside Richard Epstein's book on takings of property, the major authority for those who hold the position that economic liberties are the foundation for all constitutional rights.

In addition to his four books, Bernie has edited four books on law

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and economics. He has also published numerous monographs, anthology chapters, and articles on the subject of economic liberties. He is constantly in demand as a speaker on that subject, not just in the United States, but abroad as well. Indeed, as the less-developed world and the newly emancipated nations of Eastern Europe seek alternatives to centralized command economies, one should expect to see increased demand for Bernie's ideas.<sup>1</sup>

Lest one think that Bernie is only an academic, it should be noted that he has had a distinguished career as a public servant as well. He was a member of the Commission on the Bicentennial of the United States Constitution, the President's Commission on Housing, then President Elect Reagan's Task Force on Housing, and a consultant to the Justice Department, the FTC, and HUD. He organized and moderated the highly regarded 1976-79 law school lecture and debate series. He has arranged conferences, and he has endowed a distinguished lecturer series in the name of his late wife, Sharon.

Perhaps the greatest setback in Bernie's professional career came when the Senate refused to confirm his nomination by President Reagan to the United States Court of Appeals. However, the Senate's rejection of his appointment,<sup>2</sup> perhaps more strongly than anything else, indicates that Bernie Siegan has become synonymous with the idea of constitutionalized economic liberties. The Senate knew what he stood for and rejected his appointment for that reason. Likewise, those of us who disagree with him on much of what he professes know where he stands. This observation is not to imply that Bernie is close-minded or dogmatic, for he is neither. It is only to say of him what can be said of so few: Here is a man who stands for something.

Indeed, another rejected Reagan nominee, Robert Bork, in his recent book on the Supreme Court, devotes a section to attacking the views of the two persons who in his estimation are the most prominent proponents of judicially enforceable economic liberties. One of Bork's targets is Bernie. (The other is Richard Epstein.) Bork's views of good public policy are close to Bernie's, except that with respect to noneconomic issues, Bork has a genuine conservative streak that Bernie lacks. But Bork finds no support for constitutionalizing his generally libertarian views in the constitutional framers' original intentions, while Bernie finds considerable support there for such views. Bernie's reply to Bork's criticisms is his other contribution to this issue of the *San Diego Law Review*.

On a more personal note, Bernie, your colleagues and your stu-

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1. In June 1990, Professor Siegan accepted an invitation to participate in advising the government of Bulgaria.

2. The judiciary committee voted on party lines 8 to 6.

dents treasure your presence among us. We admire your energy and dedication, and we respect your intellect and ideas whether or not we agree with them. I, personally, have enjoyed greatly our many conversations, but more than that, our friendship. On top of all your other virtues, you are a real mensch.

