



# International comparison of the changing dynamics of governance approaches to land development and their results for public value capture



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## ABSTRACT

A difference exists between public and private governance approaches to land development, also called ‘active’ and ‘passive’ approaches. These approaches change over time and interact with institutional, financial and environmental factors. This article evaluates how these factors influence governance approaches and compares the results of different approaches by analysing how they capture the economic value increase that accrues from urban development and how this affects the governances’ intrinsic rationales. After categorising value capture tools, this article investigates the embedment and functioning of these tools into three different governance approaches in three different countries (England, Spain, and the Netherlands), ordered from more passive to more active approach: developer obligations in private land development and in land readjustment, and public land acquisition and development in public governance approaches. The studied cases suggest a general trend towards passive approaches and a sharpening and regularisation of the public value capture instruments embedded in them.

## 1. Introduction and theoretical framework

This article addresses the dynamics between institutional, financial and environmental factors on the one side and the governance approaches to land development on the other side. It does so by focussing on how public value capture affects the democratic legitimacy, effectiveness, efficiency and fairness of these approaches.

### 1.1. The debate on governance approaches to land development

Public and private bodies can play different roles in land development processes, leading to different forms of governance of land development. A form of governance consists basically of public (administrative) and private (civil) law regulations that regulate the actions of public bodies in land development with respect to the use of property rights in land and buildings. One possible categorisation distinguishes between ‘active’ (public bodies make plans, regulate the use of land, purchase and assemble the land, provide the infrastructure, and finally dispose the land to real estate developers who construct on the land and

dispose the built property) and ‘passive’ approaches (public bodies make plans and regulate the use of land and allow private bodies perform the remaining actions). Because of the prominence of public and private bodies, ‘active’ and ‘passive’ approaches are often referred to as ‘public’ and ‘private’ approaches, respectively (Van Der Krabben & Jacobs, 2013: 775–776; Hartmann & Spit, 2015). These are extreme models, and practice shows a wide variety of mixed formulas of ‘public’ and ‘private’ approaches that this paper categorises as follows (ordered from more passive to more active): a) private land development, b) land readjustment, c) public–private land development, d) public land banking and development, and e) nationalisation of all land and public land development.

Many countries have debated about the advantages and disadvantages of each approach, for example, the financial risks that public bodies must bear in active approaches, and the difficulties in implementing public land-use goals in passive approaches. One example is the debate in the Netherlands since the 1990s about the consequences of the transition since that time from active to passive approaches (e.g., Priemus & Louw, 2003; Van Der Krabben & Jacobs,

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2013). Other examples are the discussion in Spain since the 1970s (Muñoz Gielen, 2010: 30–34) and in the USA in the 1960s and 1970s (Van Der Krabben & Jacobs, 2013: 775) about the poor functioning of passive approaches. Recently, there has been a revival of a debate in many countries and international about the possibilities of land readjustment (LR) to cope with the problem of scattered property ownership and land speculation. LR regulations prescribe how landowners can jointly develop their land, thus sharing costs and profits. In this debate, LR is presented as a third approach, between the active and passive approaches, because it gives landowners the possibility of joining the development and does not imply a third party (private or public) acquiring all the land (e.g. Home, 2007; Hong & Needham, 2007; UN-HABITAT, 2012; Worldbank, 2014).

Governance approaches to land development, i.e. regulations controlling both public actions in land development and property rights in land and buildings, are social creations. In other words, they reflect ‘the influence and interests of yesterday’ (Bromley, 2000: 28–29, quoted in Hartmann & Needham, 2012: 3), i.e. institutional, financial, and environmental factors influence governance approaches. An important move in recent decades concerns how changes in these factors push public bodies to increasingly pursue the private financing of urban infrastructure. Examples of such changes in factors that influence governance approaches are constraints in public sector expenditure, changes in real estate markets (both financial factors that have directly influenced the feasibility of public actions), the rise of environmentalism (an environmental factor that has renewed basic policy views about the control of land development by concentrating public attention on the impacts of urban development, their limitation and mitigation), fiscal decentralisation towards local public bodies (an institutional and financial factor that has changed the sources of municipal’s finances), and the influence of multilateral agencies promoting public value capture (an institutional factor that has stimulated the use of public value capture instruments) (Loughlin, 1981: 95; Kirwan, 1989; Bailey, 1990: 428, 431; Callies & Grant, 1991; Peddle & Lewis, 1996: 131–132; Healey, Purdue, & Ennis, 1996: 144; O’Neill, 2010: 5–6; Monk & Crook, 2016: 233–234, 237, 252–253, 256; Smolka, 2013: 10–12; Crook, 2016: 73; Muñoz Gielen & Lenferink, 2017).

This paper focusses on how changes in institutional, financial, and environmental factors have influenced governance approaches, and how this influence sometimes, in turn, has affected these factors in a feedback loop that retroacts again on governance approaches. To analyse these interactions, this paper uses Hartmann and Spit’s methodological approach to evaluate the results of governance approaches by evaluating whether their underlying rationales are accomplished in practice (2015: 729–731):

- Their democratic legitimacy, or whether governance approaches serve the public interest, and, if this is not clear, whether the demands of citizens are represented in the institutional system of politics (legitimacy of decision-making) and the results match the collective goals of citizens (output-legitimacy);
- Their effectiveness, or whether governance approaches succeed in achieving the planning objectives within a reasonable period. In modern liberal democracies, this also implies whether governance approaches succeed in doing so without conflicts that delay the implementation;
- Their efficiency, or whether the results of governance approaches are worth the efforts made, i.e., whether planning is a good use of scarce resources. As this is very difficult to assess, this paper compares the financial risks that public bodies must assume in each approach;
- Their fairness, or whether governance approaches fulfil different concepts of justice: libertarian (the market should not be regulated, except by the minimum necessary to reduce market failures); social (the state should promote welfare of the poor); and utilitarian (the state should promote the happiness of the majority).

## 1.2. Embedment of public value capture in governance approaches

This paper also focusses on public value capture tools because they are relevant for the results of governance approaches (i.e. whether and how the above-mentioned four governance approaches’ rationales are accomplished). The results of governance approaches are frequently related to their powers to achieve public land-use goals (often, but not always, public urban infrastructure and facilities). We believe that these powers depend, to a large extent, on whether governance approaches manage to capture value increase to finance public land-use goals. For example, if public bodies capture value and use the captured value to finance the necessary public infrastructure and affordable housing, this can be an important argument (though not the only one) to advocate the public interest of a planning intervention (democratic legitimacy), ease its implementation (effectiveness), diminish the financial risks for public bodies (efficiency), and fulfil social and utilitarian concepts of justice (fairness).

This relationship with public value capture is why discussions about governance approaches often also address the more normative discussion about who is the legitimate owner of the economic value increase that accrues from urban development, for example, in the UK since WWII, in Spain in the 1980s and 1990s, and in the Netherlands in the 1990s (Muñoz Gielen, 2010: 24–34). The discussion of the legitimacy of public value capture has a long history. On the one side, there exists the theory of full or conservative liberal ownership, where any value increase of land, regardless of who or what caused it, belongs to the landowner. An alternative theory, also espoused by liberal thinkers, advocates that the use value can be considered as fundamental to individual and social well-being, whereas the exchange value (should the property be exchanged) cannot. Any value increase resulting from exchange belongs to the community, because the community is responsible for it (MacIntyre, 1984: 251; Christman, 1994; Krueckeberg, 1995). A common topic in the classical and neo-classical theory of economic rent is the idea of taxing the value increase of land. Variants of this argument have been advanced by Adam Smith, David Ricardo, J.S. Mill, Alfred Marshall, A. Pigou and, especially, Henry George (George, 1879: 89–94, 219–241; Prest, 1981: 7–21; Oxley, 2006: 103; Alterman, 2009: 4–5).

## 1.3. Focus of the paper

To summarise, this article considers how changes in the institutional, financial and environmental factors have influenced governance approaches to urban land development, and the results of these approaches, and on how this influence, in turn, has affected these factors in a feedback loop that retroacts again on governance approaches. To analyse the results of governance approaches, this article focuses on how these approaches use public value capture instruments, how they have changed over time, and whether the results have influenced the democratic legitimacy, effectiveness, efficiency, and fairness of governance approaches (see Fig. 1 for an overview of the studied variables and causal relations). In doing so, this paper contributes to the debate in different countries, mentioned in Section 1.1, about the advantages and disadvantages of active and passive approaches and about the influence of the institutional, financial and environmental factors. Additionally, it contributes to literature that categorises and illustrates public value capture instruments from an international comparative perspective (e.g. Hagman & Misczynski, 1978; Healey, Purdue, & Ennis, 1995; Alterman, 2012; Smolka, 2013; Monk & Crook, 2016) by positioning these instruments among different governance approaches.

## 1.4. Methodological approach

To analyse the causal relation among the studied variables (institutional, financial, and environmental factors, governance approaches—including value capture tools—, and results, see Fig. 1), this article

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