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Corruption in land-use issues: a crucial challenge for planning theory and practice

Francesco Chiodelli and Stefano Moroni

This paper deals with the question of corruption in the field of land-use planning. To curb the insidious spread of graft and bribery, anti-corruption measures should be built into any planning system as part of its structure. Corruption in the planning field is largely tied to the opportunities that land-use planning generates by allocating development rights and land uses (following a discretionary and differentiated logic). This paper will explore some of the principles and techniques (transparent negotiation, auction of development rights, recovery of land rent, and formal equality in a radical version) that can be imple-mented to contain or eliminate corruption at the outset.

Keywords: corruption, bribery, planning, land-use regulation, building rights

Introduction: why deal with corruption in planning theory?

Planning theorists have rarely tackled the issue of corruption directly and thoroughly;[1] a fact that might lead one to believe that corruption is not a particularly significant issue in the field of land-use planning; or that, even though the topic is significant *per se*, it only marginally affects planning theory (e.g., because there is no direct correlation between corruption and the specifics of any given system of land management). Upon closer examination, however, the situation proves to be rather different.

Firstly, corruption is unfortunately endemic in the land-use planning field. Findings from Transparency International 2009 suggest that 'the government bodies which oversee the land sector are one of the public entities most plagued by ... bribery' (Transparency International, 2011, 3). The Transparency International 2013 survey notes that 'around the world, one in five people report that they had paid a bribe for land services' (Transparency International, 2013, 11).

1 Among the few significant works that deal explicitly and extensively with the relationship between land-use planning and corruption, see Gardiner and Lyman (1978) and NILECJ (1979a; 1979b). Some interesting works on corruption and planning in specific countries have only recently been published. As regards Italy, see, Cappelletti (2012); as regards Spain, see, Alcaraz Ramos (2007), Iglesias (2007), Jerez Darias et al. (2012), Jiménez (2009), Quesada et al. (2013). As regards Australia, see Dodson et al. (2009).

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Secondly, certain features of a given planning system can be seen to have causal links with corruption, for instance by increasing the margins for illicit exchanges and transactions. And it is this same mechanism that affects many planning systems currently being applied around the globe. As Gardiner (1985, 121) writes:

> A variety of opportunities for corruption are built into land-use and building regulatory systems. Planning and zoning commissioners must decide which of many possible land uses are in the best interest of the community; specific building and site plans must be reviewed; building inspectors must decide whether code violations require redesign or reconstruction, and so forth.

From this perspective, the present paper is divided into four sections. In the first, we provide a framework for analysing corruption as a general phenomenon, considering its forms and magnitude, the factors determining it, and its consequences. In the second section, we address the problem of corruption with specific regard to land-use planning (the focus will be on regulative and bureaucratic corruption). The third section is devoted to the discussion of possible anti-corruption strategies in the area of land-use planning (namely, transparent negotiation, auction, betterment capture, and formal equality in a radical version). The fourth and last section draws attention to the need to keep the issue at the forefront of the debate in planning theory.

A general framework for analysing corruption: forms, magnitude, consequences and determinants

First issue: three main forms of corruption

Corruption is behaviour which deviates from the formal duties of a public role for the purpose of private-regarding pecuniary or status gains (Nye, 1967). In short, it is the abuse of public power and role for private benefit. While corruption comes in a variety of forms, there are three prevalent types.

Heading the list is legislative and regulatory corruption, which refers to the manner and the extent to which legislators can be influenced. Rule makers can be bribed by individuals or interest groups to introduce or revise regulations that can change the economic benefits associated with certain situations.

At a second level we have bureaucratic corruption, which refers to corrupt acts of the appointed bureaucrats in their dealings with the public. Individuals bribe bureaucrats either to speed up bureaucratic procedures or to obtain a service that is not supposed to be available.

Last but not least is public works corruption; that is, the systemic graft involved in building public infrastructures and services.

Second issue: magnitude

It is not easy to assess the full extent to which corruption affects our social structure and systems. There are various reasons for this; but the main one is that by its nature corruption covers its tracks: it is based on the voluntary collusion of people who are consequently loath to discuss or reveal the facts.

The data that emerge from official reports on inquiries and the charges brought is inaccurate as to the extent of the phenomenon. Take the situation in Italy: corruption in this country is a pervasive and systemic phenomenon which affects society as a whole (GRECO, 2009); nevertheless, only 1,200 indictments were reported in 2010. In Italy, the instances reported reached a peak of 2,000 crimes in 1995 – involving 3,000 persons – during the years of the famous 'Clean Hands' (*Mani pulite*) judicial inquiry (Koff and Koff, 2000, 2). In the ensuing years the number of instances dropped by around one third (Davigo and Mannozzi, 2007; Vannucci, 2009).

The same happens in Spain, where, for instance in 2009, only 750 cases of political corruption, involving 800 individuals investigated for crimes such as nepotism, bribery and fraud, were officially reported; that is, only the tip of the iceberg (Quesada et al., 2013). Note that in almost 40 per cent of Spain's most important municipalities – with more than 90 per cent of the population – there have been recent cases of corruption (Villoria et al., 2012).

A general idea of the actual extent of corruption can instead be gleaned from the estimates issued by Transparency International (2013). The 2013 report states that 27 per cent of the global population interviewed admitted to having paid some form of graft in the preceding twelve months, with a rise on the previous year in most places around the world.

Other data come from the KPMG (2011) survey of 214 executives in the UK and in the USA: 73 per cent of the respondents in the UK and 70 per cent in the USA stated that there are places in the world where business cannot be done without engaging in corruption and bribery. About 3 in 10 of the executives had decided not to do business in a certain country due to corruption and bribery issues. Along similar lines, Dow Jones (2013) conducted a *State of Anti-Corruption Compliance Survey* of executives from more than 350 companies worldwide: 45 per cent of the companies claimed that they had lost business to unethical competitors.

Third issue: direct and indirect negative consequences

According to International Chamber of Commerce et al. (2008, 2), 'the cost of corruption equals more than 5% of global GDP (US $2.6 trillion), with over US $1 trillion paid in bribes each year; corruption adds up to 10% to the total cost of doing business globally'. This concerns both the developed and developing countries. Corruption

costs African economies, for instance, 'more than US $148 billion dollars each year. This leads to a loss of 50% in tax revenue, increases the cost of African goods by as much as 20% and eats away 25% of Africa's GDP' (De Maria, 2008, 317).

Corruption is therefore not only negative *per se* – because it clashes with the fundamental principles of fairness and respect for the rules of the game – but it is also negative because it generates unwanted fallout. We shall now examine this matter in detail.

A prime example is the huge burden on the public purse. Although precise estimates of the direct costs of corruption to the public budget are hard to make, individual cases offer a useful guide to the extent of the phenomenon. Let us take Italy once more as an example. Immediately after the 'Clean Hands' judicial inquiry, the costs of public works plummeted by nearly one half: for example, the cost per kilometre of the Milan subway and the cost of Malpensa Airport (Davigo, 2005). This gives an idea of the amount of money previously taken from the public coffers to the advantage of corruptors and the corrupted (Della Porta and Vannucci, 1997, 524). This observation is confirmed by estimates by the *Corte dei Conti* (the Italian Court of Auditors), according to which in Italy corruption can increase the costs of public works by up to 40 per cent (Corte dei Conti, 2012a; 2012b).[2]

It is nevertheless important to note that corruption's negative side-effects do not involve monetary costs alone – for example, the budget for public works. It generates various other undesirable consequences.

First, corruption seriously damages the legitimacy and credibility of the political and institutional system, and undermines generalised trust.

Second, it diminishes the efficiency of the bureaucracy, for example, because the contracts are not awarded to the most efficient bidders, or because corrupt council officials may create hurdles so as to increase their chances of receiving kickbacks.

Third, corruption alters the allocation of public funding. The chances of siphoning off funds determine how the authorities decide to allocate resources, for instance, by favouring large-scale projects and appropriating capital assigned for the maintenance of existing facilities. A 2004 World Bank study on the effect of corruption on service delivery concluded that 'an improvement of one standard deviation in the International Country Risk Guide corruption index leads to a 29% decrease in infant mortality rates, a 52% increase in satisfaction among recipients of public healthcare, and a 30–60% increase in public satisfaction stemming from improved road conditions' (Oberoi, 2014, 193).

2 To be cited in this regard are the recent judicial investigations (for corruption and other offences) brought against 51 people involved in the construction of the Mosé flood barrier to protect Venice. The Mosé Project should have cost (expressing the 1988 expenditure forecast in 2014 euros) less than 2 billion euros (the amount had already risen to 2.7 billion in the 1997 forecast), but the real expenditure on the construction work has now reached 6.2 billion euros (Barbieri and Giavazzi, 2014).

Fourth, it distorts the market and inhibits economic growth: in particular, corruption affects economic growth by distorting the prices, incentives and opportunities that entrepreneurs face. Data and figures in the World Bank's report *Doing Business 2014* show a positive association between the countries where it is easy to do business and corruption is under greater control (World Bank, 2013a, 18). See also data provided in the World Economic Forum's *Global Competitiveness Report 2013-2014* (2014) and in the Heritage Foundation's *Index of Economic Freedom* (2014). Mauro's (1997, 91) analysis of 94 countries found that 'a one-standard deviation (2.38-point [on his 10-point scale]) improvement in the corruption index is associated with over a 4-percentage-point increase in a country's investment rate and over a 1/2-percentage-point increase in the per capita growth rate'.

In certain extreme cases, moreover, one might even say that corruption actually 'kills': for instance, there is statistical evidence for a correlation between corruption and loss o lie in the event o earthquakes (Ambraseys and Bilham, 2011; Black, 2007) and other cases of disaster and accident.

To conclude, to be noted is that some studies claim that corruption may have beneficial effects, as in the case of over-restrictive and complex public regulations in which bribery can boost efficiency and promote growth (see Leff, 1964). Most of the literature on corruption nevertheless concurs that, in most cases, the advantages cited are non-existent. More than being *oil which greases the wheels*, corruption should be interpreted as *sand in the machine* (Ades and Di Tella, 1997; Kaufmann, 1997). Findings from the World Bank's report *Doing Business 2015* suggest that 'firms confronted with demands for bribes wait about 1.5 times as long to get a construction permit, operating license or electricity connection as firms that did not have to pay bribes' (World Bank, 2014, 105–6).

Fourth issue: the three main determinants (discretionality and differentiation, economic rents and cost-benefit ratio)

Generally speaking, the greater the government's power of intervention, the more likely corruption becomes (Heritage Foundation, 2014). Clearly, government size is not *per se* synonymous with corruption. Nevertheless, 'as the amount of regulation increases, the opportunity to extract bribes also rises. … The benefits from corrupt practices for bribe-taking politicians or bribe-giving businessmen will rise with the size ... of the government and the amount of social and economic regulation' (Glaeser and Goldin, 2006, 10).

More specifically, corruption in the public sphere requires the co-presence othree 'structural' fundamental elements (besides, obviously, the 'psychological' predisposition of those implicated).

The first ingredient is any form of discretionary power in the (differentiated) assignment of advantages and disadvantages. This discretionary power may lie with the political elite, the administrators, or the legislators.

The second element concerns economic rents associated with that power: the larger the gains at stake, the greater the incentives for corruption, and hence the larger the kickbacks that can be obtained from the illicit transactions.

The third element is a net 'gain' resulting from the unlawful deals transacted, which outweigh the penalties that might be incurred. In short, the level of corruption is obviously a function of the integrity and honesty of politicians, public officials, entrepreneurs and private individuals. But, holding such factors constant, bribes are determined by the discretionary power of decision-takers, the benefits available, and the riskiness of corrupt transactions (Rose-Ackerman, 1997, 38).

A specific view on corruption in the land-use planning domain

Clearly, the phenomenon of corruption affects various areas of public activity, and the regulation and planning of land use is no exception: something one can intuit from the many cases reported daily in the media.

As Arial et al. (2011, 2–3) write: 'Corruption in the land sector can be generally characterised as pervasive. … Government bodies which oversee the land sector are one of the public entities most plagued by service-level bribery'. The same point is stressed by Cullingworth (1993, 253): 'The problem [of corruption] is… particularly acute in land use planning where ... the opportunities are far greater than in other areas of public policy'.

According to the Transparency International (2013) inquiry, 21 per cent of respondents who in 2013 admitted to having engaged in corrupt transactions reported that the bribe was linked to 'land services', and 21 per cent to 'registry and permit services' (this category includes, for example, building authorisation). Hence, it appears that a very large proportion of cases of corruption involve aspects of the planning domain.

To be noted is that one of the most important powers of the local authorities concerns precisely urban planning and construction.

Focus: legislative and bureaucratic corruption in the planning field

As we have seen, there are three main types of corruption: legislative, bureaucratic, and public works-related. Although all three types of corruption regularly occur in the field of planning, here we shall deal mainly with the first two (though only for reasons of space, because the third one also warrants more thorough exploration[3]).

These forms of corruption are mainly tied to the stage at which planning regulations

3 A crucial contribution to the discussion on this matter has been made by the Flyvbjerg et al. (2003) celebrated study on the (often unjustified) increase of mega-projects in the infrastructure sector.

are introduced (or revised). For instance, palms may be greased so that a proposed land-use plan or regulatory scheme conforms to the contractor's wishes: for example, to ensure that a certain area is certified as developable, or that an already certified area's quota of developable building volume is increased beyond the initial figures. Depending on the system of planning in force in a given place, this type of corruption can occur in different phases of the planning process (during the drafting phase, or when applications for variants are made), and it can also affect different planning tools (comprehensive plans or implementation plans).

Among the possible forms of corruption that precede the construction of a building, cases of bribery also arise with the issue of building permits. The World Bank (2013a, 47) observes that 'in some economies obtaining a construction permit requires dozens of procedures. It can take more than a year to comply with these ... . Moreover, the process is often little more than a way to extract rents and so is associated with corruption'. *Vice versa*, a smooth process for obtaining building permits is usually associated with a lower level of corruption (World Bank, 2013b). To be noted is that the time required to obtain a building permit may be long, and the procedures complex, not only in developing countries, but also in developed ones. A survey on thirteen Italian provincial capitals conducted by the World Bank in 2013 reported that obtaining the building permits necessary to build a warehouse (in order to start a small or medium-size business) required an average of 13 procedural steps and around 230 days (World Bank, 2013b). The same report observed that there is a negative and significant correlation between complexity and length in obtaining building permits and regional GDP. Moreover: 'Wealthier cities tend to have a more efficient construction permitting process' (World Bank, 2013b, 4).

Determining factors of corruption in cases of land-use choices

Earlier we indicated the three basic factors determining corruption: the existence of a power able to decide discretionally how (markedly) differentiated advantages and disadvantages are allocated; the existence of substantial economic returns associated with that power; and the existence of a net gain from illicit dealings. In most land-use planning systems in force in the Western world (systems prevalently of the *teleocratic* kind),[4] these three determining factors are invariably present.

Firstly, orthodox planning systems generate markedly differentiated treatment among the various types of land and owners. This invariably channels advantages towards certain people (such as the owners of the areas that are granted building

4 'For the teleocratic approach, planning is the fundamental, unavoidable central means of (public) land-use regulation: in this case planning is more precisely intended as a mode of rational, deliberate intervention necessarily via a *plan*, itself in turn a directional set of authoritative rules established with the end of achieving a desired overall state of affairs through deliberate coordination of the contents of the (private) independent urban activities' (Moroni, 2010, 138).

rights) and away from others (such as the owners of land that are denied building rights). This is a very particular case not only of 'takings', but also of 'givings' (Bell and Parchomovsky, 2001). The crucial point is that this type of differentiated treatment is present to such a marked extent (in the democratic Western countries) *almost solely in land-use decisions*. As Sorensen and Auser (1989, 36) write, 'planning, or rather zoning…, deliberately sets out to be discriminatory'. Moreover, such allocative decisions often have a discretional nature in many planning systems. On the one hand, the technical rationality of planning is of the 'weak' variety (Chiodelli, 2012). On the other hand, the choices of the public actor are usually bound by very bland restrictions; in particular, the ideal of the rule of law in its strong version has been largely abandoned in the land-use field (Moroni, 2007). As Epstein (2005, 11–2) observes:

> The modern administrative state has enormously expanded the scope of government activity … Imagine someone with a plot of land in a prime neighbourhood … An administrative committee has the power to alter the wealth of the property owner substantially by its decision, up or down. That committee does not ask whether the owner has committed some wrongful act … What it is doing is making a judgment about the contribution, loosely defined, that this development will make toward the well-being of the community at large. The background standards – shared benefit, public interest, convenience, necessity and so on – are so nebulous that even where there is a system of judicial review it is difficult to work out the grounds on which decisions have been made. ... The amount of discretion built into the system is simply inconsistent with the rule of law.

Secondly, a line on a land-use plan can be worth millions of euros simply because differentiated categories of land parcels generate huge financial yields. As Ellickson (1973, 711) writes, 'the amounts of money at stake in switching parcels of land from one zone to another assure that zoning will continue to be an arbitrary and largely corrupt system'. Furthermore, significant advantages in terms of reducing overall building costs can be obtained by using bribes to obtain the go-ahead for development (e.g., to get building permits issued rapidly).

Thirdly, the benefits from giving bribes in planning are huge compared with the slim chances of actually being caught. Moreover, because discretion in town planning decision is high and based on somewhat weak technical arguments, it is even harder in this area to identify (and punish) cases of corruption.

To conclude: the crucial point is that corruption can only occur when a politician or a public official has the opportunity to use his/her authority and power selectively in a way that induces landowners or developers to want to pay for favourable treatment (Gardiner, 1985, 122). In short, landowners and developers are not in themselves more prone to corrupt (that is, less virtuous than other kinds of owners or entrepreneurs); it is a certain planning system in itself that incentivises certain behaviour.

Coping with corruption in land-use planning: four approaches

Generally speaking, certain basic principles must be brought to bear in any possible anti-corruption campaign. Apart from seriously increasing the risks of, and penalties for, corrupt practice, it is advisable to minimise the perks and advantages that the public regulators and functionaries can produce, and to limit the degree of discretion allowed in public choices, and the capacity to differentiate among individual positions.

All the above measures, of course, apply to corruption in general, in whatever field it arises. For the purpose of the present paper, however, it should be asked whether there are any specific anti-corruption strategies that might be applied to the planning domain in particular.

As noted above, what makes the planning systems currently in force particularly vulnerable to corruption is the fact that the traditional forms of land-use planning allow for the discretional and differentiated allocation of considerable economic resources. At least four approaches have been recommended to tackle these problems (in this section, our discussion will focus prevalently on developed countries and Western urban realities, even if part of our argument could be applied to other countries as well). All the approaches continue to assume that a state exists and that it should have an important role also at a local level (of course, one could also argue that the best way to eliminate corruption in this sector would be to eliminate the role of the state in the land-use field, but, in this case, the cure would be worse than the disease). To be stressed is that the four alternatives that we consider are not mere technical solutions, but reflect more general points of view.

These approaches share several assumptions. First, a democratic environment (i.e., an institutional arrangement characterised by political competition among parties and the election of decision-takers by vote) is necessary to alleviate corruption problems. Also welcomed is greater participation by citizens in public life and public debates (as recommended by a large part of current planning theory). Second, transparency in general is equally important; 'letting the sun shine on government operations' is obviously a powerful antidote to corruption (Oberoi, 2014). Third, rapid bureaucratic procedures help as well. As regards building permits in particular, all the approaches recognise that a smooth and faster process for their issue (for instance, using a 'single window' to grant permits and introducing appropriate electronic systems[5]) might inhibit certain kinds of corruption.

In what follows, we focus mainly on the differences among the four approaches, with regard to land-use planning regulations in particular. As will be seen, the second and third approaches retain zoning (i.e., differentiated land-use regulations and different building ratios defined *a priori*), but they seek to reduce the risk associated

5 On electronic building permits, see the National Institute of Building Science (2002).

with it. In contrast, the first and the fourth approaches are two (different) attempts to avoid traditional zoning (in the first case, zoning is 'defined *in itinere*', while in the fourth case it does not appear at all). Moreover, the first, second and third approaches are attempts to operate on a case-by-case basis through more tailored procedures, while the fourth rejects the logic of case-by-case decisions. Finally, simplification is not the crucial factor for the first three approaches, while it is the focus of the fourth one.

First approach: transparent negotiation

This first option is not simply in favour of transparency in general (this is something that all the four approaches accept), but in favour of transparency as regards a particular kind of land-use decision procedure. In this case the idea is that it is not discretionary judgements or differentiated allocation *per se* that lead to corruption, but secret (non-transparent) negotiations. The background idea is that bargaining between public and private actors is inevitable in land-use transformations. The only way to fight the corruption that may emerge in these cases is therefore to explicitly recognise these kind of negotiations and define a specific procedural process for them.

A course of action of this kind was proposed, among others, by Luigi Mazza and applied by him in the drafting of Milan's *Framework Document* (*Documento di inquadramento delle politiche urbanistiche milanesi*) approved in Milan in 2001 (Mazza, 1997; 2004).

From this perspective, the best course is to: first, define a strategic plan for the city that introduces general policy principles and specific criteria with which to evaluate case-by-case the changes proposed by private entities (assessment criteria are in this case both yardsticks to evaluate projects and guides for design); second, weigh up the proposals and alternatives (assessing the pros and cons); third, meet the developers in open and public meetings in order to see if the proposed changes can be accepted, rejected or improved, and start explicit and transparent negotiation in this regard (for instance, more development rights can be granted to developer A if he/she agrees to revise certain aspects of his/her project and build X public parking places); fourth, make more explicit and public the final choices underlying certain decisions on land use (hearings must be transcribed, and decisions must be issued with findings of fact and explicit statements of reasons: in brief, processes that are often marked with informality must become strictly formal ones).

This was exactly what was attempted in Milan. In the case of Milan's *Framework Document*, the planning staff were in particular concerned to develop an approach different from the more traditional one: 'Instead of checking projects for conformity with plan zones and norms, they now had to assess them in terms of their performance in relation to evolving urban dynamics and rather general policy principles' (Healey, 2007, 106). 'Planning staff also acted as guardians for both strategic policy and for the negotiation of public-interest benefits' (Healey, 2007, 107).

The main problem with this approach is that it does not seem to act on the determinants of corruption, but only proposes procedures that seek to attenuate its weight during the implementation process. Considering the criticisms made of Milan's *Framework Document*, Healey notes: 'Some wondered if the technical, policy-oriented emphasis would be strong enough to squeeze out the old clientelistic practices' (Healey, 2007, 106).

Second approach: auction

The second option envisages the introduction of a sort of auction of development rights. Traina (2013), for instance, suggests the auctioning of development rights as a crucial means to fight corruption. In this perspective, the administration organises a public auction: this would foster, according to Traina, a healthy and open platform on which landowners and developers can compete or the developable quotas available. The administration then chooses the highest bids, which will bring most advantage to the city as a whole.

As Veljanovski (1998, 9) writes, the idea of auctions 'has several attractions. It would ensure that the development went to those who valued the land the highest, and could ... generate money for the local authorities'.

Note that in this case the landowner does not have any development right until the local government has attributed specific development rights. The development right is therefore a government license, and it is the government's decision that gives the owner the right to develop.

> 'Auctioning off' development rights involves a form of 'privatisation' on a case-by-case basis, but the bulk of development rights would continue to be vested in the state, and as a result it would be planning authorities themselves that decide which sites should be put up for auction and the conditions that are to be attached to the sale. (Pennington, 2002, 83)

Even if the auction of development rights is often considered as a kind of market-based instrument, this is only partially true. Something is not market-based simply because prices and competition of some kind are introduced; to have a really market-based instrument, all the exchangeable items must be in private hands from the outset, and locational choices cannot be severely restricted in a top-down way.

An auction system for development rights has been attempted in Brazil, for instance in São Paulo, through the *Certificados de Potencial Adicional de Construção* (CEPAC) system. CEPACs are additional development rights that are sold in public auctions (Sandroni, 2010).

Partially different versions of auction have been employed in Hong Kong and Singapore, and in many cities in China as well (Ching and Fu, 2003; Gwin et al., 2005; Hong, 1998; Ooi et al., 2006; Tse et al., 2001). In these cases, auctions are held of publicly-owned land through which developers obtain new developable land by

buying it, or leasing it for long periods of time (60–99 years); the winner is the developer that submits the highest bid, usually conditional on it being above the 'reserve' price set by the public administration. In certain cases, auctions of this kind have been explicitly introduced to prevent corruption (Cai et al., 2013).

The main problem with this approach is that the auction mechanism *per se* does not eliminate the problem of corruption in the land-use field at its root, because an auction itself is vulnerable to corruption: corruption may persist through pre-auction deals between public officials and developers and the choice of the auction format and conditions.

Third approach: betterment capture

This third option is based on the retrieval of the *windfalls*, or spikes in price, of particular lots due to land-use choices (and the compensations for the fall in value of others – the *wipe-outs*). In this case, the basic idea is to reduce incentives for corruption by reducing the rents associated with different land-use decisions; that is, by reducing differentiated treatment of landowners inherent in zoning. In short, the idea is that the adoption of mechanisms known as 'value capture' or 'betterment capture' can help minimise the incentives for corruption. This option would diminish the economic benefits arising from the differentiated assignments of land use.

The idea of introducing a betterment levy on land rent as a means also to achieve more correct and transparent decision-making has for instance been advanced by Philip Day (1995). He writes: 'The scope for profiting from land makes it difficult to maintain the integrity of a town plan because of the pressures brought to bear on planning authorities by landowners and developers to have they land 'released'' (Day, 1995, 12). He continues: in this regard 'town planning *theory* is impeccable. It has always maintained that land value increases resulting from public planning decisions should be recouped on behalf of the community' (Day, 1995, 4). From this perspective, 'the integrity of the planning system would be safeguarded and planning decisions could be made on their professional merits' (Day, 1995, 44).

These issues have been widely debated. The first instances of value-capture date from the early 1900s in Great Britain (Hagman, 1978), although the most successful and long-lasting ones are most likely those of Israel, where since 1981 the authorities have applied a levy of 50 per cent on the rise in real land prices following any land-use decision, accordingly assessed parcel by parcel (Alexander et al., 1983; Alterman, 1979).

Apart from Israel's policies, other attempts to deal with windfalls in this area have been sporadic and rather disappointing: there are substantial technical hurdles and also resistance of a both political and social nature (Alterman, 2012). To date, only a few member countries of the Organisation for Economic Co-operation and Development (OECD) have practised a significant type of direct windfall capture (for

example, Poland and Spain: Alterman, 2010).

This approach has some interesting aspects. The problem with it, however, is this: if the betterment taxation is partial (i.e., is levied on only a part of the increase), it may not suffice as a remedy or corruption; i it is total or quasi-total, it may create more problems than it solves because it annuls the meaning and importance of owning land (Knight, 1953).[6]

Fourth approach: back to a radical ideal of formal equality

The fourth option envisages the application of more abstract and general regulations on land use, thereby completely foregoing orthodox zoning systems. This kind of approach is recommended for instance in Moroni (2010 and 2014) and Holcombe (2013). The underlying hypothesis here is that the illegitimate use of a (central or local) state by private interests is based upon a pre-existing illegitimate power of the (central or local) state to specifically enrich some specific individuals or groups at the expense of others (Nozick, 1974, 272).

The approach posited by Moroni (2010 and 2014) entails the implementation of identical rules for all land enclosed within a given municipal area (thereby doing away with zone and micro-zone differentiation), which means directly eliminating the principal mechanism behind bribery. Rules of this kind must be rigorously abstract and general (the issue is not differentiated *types* of use, but negative *effects* of use everywhere), end-independent (they merely establish a relational framework, not an end-state), and prevalently negative (they merely prohibit individuals from interfering with the private domain of other individuals – for instance, when they transform lands and buildings – rather than imposing some active duties or actions). They are to be collected in an 'urban code' which is profoundly different from orthodox land-use plans. (Land-use plans should only be used to control circumscribed public sector activities, not the general functioning of the city and the activities of the private urban actors. Land-use plans should be used only to constrain the public parties to creating infrastructure and services on public land with public resources.)

In this case, there is a strong reduction of discretion (both in introducing rules and in applying them), and no differentiation.

A similar logic may be applied to the assignment of development rights: these could be allocated according to an identical building index for all the areas involved, and later freely bought and sold (Moore, 1975; Moroni, 2014). This would basically involve a particular version of the so-called 'transferable development rights', which might more appropriately be termed 'marketable development rights' (Thorsnes and Simons, 1999). In this case, there is no general zoning plan defining the overall

6 We focus here mainly on one side of the coin, namely the 'betterment levy'. For the other side, 'compensation' (as a mechanism against corruption), see Bell and Parchomovsky (2010).

land-use configuration that has to be implemented. This system is clearly similar to the 'cap-and-trade' environmental policy approach to reducing pollution.[7]

As Micelli (2002, 144) observes: 'the equalization principle makes land-ownership less sensitive to planning choices: if all the property-owners obtain the same building index, they are no longer interested in diverting public decisions toward private interests'. See also Moore (1975, 339): 'There are all too many documented examples of corruption and bribery of officials involved in zoning. … [The instrument of transferable development rights] removes the temptation that zoning creates'.

The principal advantage of this solution is that it would eliminate the main cause of corruption in the land-use field. According to critics, it has two problems (see the debate in Alexander et al., 2012). Firstly, it has been pointed out that, because places are intrinsically different, locationally-specific (i.e., map-dependent) rules are required to regulate them. However, it is precisely because places are not intrinsically different, but *become* different in the unpredictable and creative flow of socioeconomic relationships and interactions, that locationally-generic (i.e., non-map dependent) rules are needed to enable this process to come about. If socioeconomic processes do not create differentiated and specialised places, differentiating regulations may on the contrary be useful.

A second criticism stresses that every legal system has some kind of discretion. This is quite true as well, but the term 'discretion' has more than one meaning, and only one is really relevant to the rule-of-law ideal. As Hayek (1960, 213) wrote:

> Under the rule of law the private citizen and his property are not an object of administration by government … . It is only when the administration interferes with the private sphere of the citizen that the problem of discretion becomes relevant … . The principle of the rule of law, in effect, means that the administrative authorities should have no discretionary powers in this respect.

In short, administrative authorities must not have direct 'sovereign' power over persons and their property. Therefore a land-use system based on a radical version of the rule of law can accept some kinds of discretion, but not *any* kind of discretion.

7 A marketable development rights programme might, in certain (specific pre-defined) cases, designate some sending areas to be preserved – without using 'geographical' criteria but instead, for instance, 'categorial' ones – but no specific receiving areas. ('Categorial' criteria introduce distinctions – abstract and general, and non-map dependent –according to substantive features.)

Conclusions: the problem of corruption as a core issue for planning theory

Corruption in land-use planning is found in many countries around the globe, and the damage that it causes is considerable. As explained above, its diffusion is in part due to certain features of the existing planning systems that offer various 'incentives' that encourage corrupt practices.

We can take it for granted that human behaviour itself is sometimes at fault (although such conduct might be curbed by cultural measures, such as behavioural education to high ethical standards): hence in order to combat corruption it is vital to devise reformed institutions that can perform as correctly and fairly as possible notwithstanding the presence of imperfect human beings (Klitgaard, 2011, 34).

There are several possible approaches to achieving this in the land-use field, and here we have considered four of them. Of course, each of the formulas proposed has problems of implementation and may have unwanted effects. Moreover, their effectiveness as anti-corruption measures should be assessed also in relation to contingent factors which profoundly affect the forms taken by corruption (Jiménez, 2009).

Yet, while all four approaches have potential, we find the fourth is the most radical and effective path for dealing head-on with corruption in land-use planning. Furthermore, this path would also lead to a simpler and more direct way of monitoring land-use choices. The central idea in this case is that it is zoning (and a teleocratic idea of planning: Moroni, 2010) that primarily incentivises corruption in the land-use issue. The background assumption is that the problems of negative externalities and o coordination do not necessarily require a zoning solution (Epstein, 1996).

Irrespective of which option is considered most suitable for land-use practices, it is crucial to grasp the importance o making the question o corruption a central element in planning theory. For this reason, when the potential and critical elements o any system o planning are evaluated, it is vital that the question o corruption remains one of the pivotal themes upon which that system of planning is assessed. Moreover, this direction of research and action may suggest new and interesting ways to conjugate procedural issues (on which so many planning theories have often exclusively concentrated) with substantive ones. In particular, it suggests that we cannot avoid certain problems merely by changing the way in which traditional planning instruments are constructed (as often happens in many planning theories merely suggesting more participation, dialogue and so forth); we must on the contrary explore more radical changes as regards the regulatory instruments themselves.

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