



Taking planning seriously: Compulsory purchase for urban planning in the Netherlands



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ABSTRACT

Public policy instruments such as compulsory purchase frame the relationships between authorities and those affected. In Dutch planning local authorities may not issue compulsory purchase orders if landowners are able to realise the plan themselves. This self-realisation principle has been strongly criticised. However, the arguments are not based on a study of compulsory purchase in practice. This paper fills this gap by analysing both the historical path of compulsory purchase and the Royal Decrees on compulsory purchase issued in the Netherlands between 1995 and 2012 in which the parties concerned claimed self-realisation. The analysis revealed that 72% of the self-realisation claims assessed by the Crown were dismissed. Consequently, the impact of this principle does not bear out the expectations of the critics. Indeed, it may strengthen rather than weaken the position of planning in relation to landowners. The paper also shows the merit of an instrumental approach in the context of urban and regional studies.

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Introduction

Dutch urban land policy has traditionally followed a specific model in which local authorities assembled and serviced land for urban development and sold it to housing associations, development companies and end users (Needham, 1992; Needham, 1997). The local authorities are empowered to use compulsory purchase to assemble land. With the restructuring of government along the lines of neoliberal principles, local authorities are finding themselves increasingly confronted with development companies that want to buy land to secure a position in the development process (Groetelaers & Korthals Altes, 2004). The ambition of public land banking has remained 'the dominant model' (Louw, 2008, 78) in this scenario and local authorities have tended to acquire land for private development (Buitelaar, 2010). Critics have suggested that compulsory purchase cannot be used against project developers as the law has a self-realisation principle which would enable them to evade expropriation by claiming that they were able to realise the development themselves (Buitelaar, 2010; Priemus & Louw, 2003; Van der Krabben & Jacobs, 2013). The idea that compulsory purchase cannot be used if parties claim self-realisation is not based on any research on self-realisation claims and the way they are assessed by the Crown. Moreover, earlier literature suggests that the self-realisation principle is 'often wrongly

interpreted' (Dreimüller, 1980, 118). This paper will fill this gap in the knowledge of current Dutch planning by analysing Crown decisions on compulsory purchase in cases where parties claimed self-realisation.

The topic of self-realisation principle in the Netherlands is relevant for the international community of scholars with an interest in Dutch planning (Alexander, 2002; Fainstein, 2008; Healey, 2006; Kauko, 2012; Kinder, 2011). After all, Amsterdam has been analysed as "grounded utopian actual city" (Fainstein, 2005, 127). The analysis of public policy instruments such as compulsory purchase also has a broader relevance as these are not neutral devices, but have their own logic through which they structure public policy. Consequently, an instrumental approach reveals novel aspects of urban policy (Lascoumes & Le Galès, 2007). Assumptions and frames of reference get 'locked into' (Healey, 2012, 192) instruments. In this light, exploring the way in which the interests of Dutch landowners and local authorities are weighed in compulsory-purchase cases in which landowners state their intention to realise the plan themselves will provide insights into the role of government at a time in which services that used to be directly provided by the state are being increasingly outsourced to the market (Peters, 2011; Savini, 2013). Political debate often centres more on the choice of instruments than on the goals of government, as it is the choice of instruments that, in effect, structures the policies (Hood, 2007; Lascoumes & Le Galès, 2007). A close examination of the way in which interests are actually weighed in the application of an instrument such as compulsory purchase

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will provide insight into urban and regional planning that cannot be acquired by studying planning documents and practices alone. This paper investigates the way in which the instrument of compulsory purchase helps to shape Dutch planning as an institution and defines the relationships between local authorities and private players in a planning context. In relation to planning and property rights two narratives compete. Firstly, it is the analysis of 'ownership constraints' (Adams, Disberry, Hutchison, & Munjoma, 2001) that may disrupt development planning and impact the attractiveness of cities negatively. Secondly, it is the presentation of planning as harmful to property development, for example by reducing housing supply (Gurran & Phibbs, 2013). The present paper relates to the first line of analysis, by investigating if compulsory purchase potentially can address these ownership constraints in cases in which owners indicate that they are willing to implement the plan.

The second section of this paper introduces the instrumental approach and the argument against self-realisation. The third discusses the research methodology. The fourth analyses the development of the instrument of compulsory purchase for planning purposes and the fifth presents the results of the analysis of Crown decisions related to self-realisation claims. The results of the analysis are discussed in the sixth section. The last section draws conclusions of wider relevance.

An instrumental approach to investigate the self-realisation principle

Public policy instruments 'produce specific effects, independently of the objective pursued (the aims ascribed to them)' (Lascoumes & Le Galès, 2007, 3) Policy instruments address policy issues in particular ways (Clift & Tomlinson, 2011) and 'generate their own effects' (Newman, 2009, 3).

A consideration of Dutch planning through the instrument of compulsory purchase could potentially provide insights into new dimensions of the policy. Instruments are institutions that structure the behaviour of actors and affect the balance of power. An actor's capacity for action is affected by the instruments chosen. Hence, the selection of an instrument connects policy with politics (Lascoumes & Le Galès, 2007).

Direct and indirect government

This paper investigates the self-realisation principle in Dutch compulsory purchase law, which may conceivably be regarded as a classic illustration of the notion that instruments are 'bearers of values' (Lascoumes & Le Galès, 2007, 4). More precisely, this principle dictates the boundary between direct and indirect government. "Direct government is the delivery or withholding of a good or service by government employees." (Leman, 2002, 49) 'Direct development' (Adair, Berry, & McGreal, 2003, 1075), the provision of serviced plots by the authorities, is a form of direct government as the authority itself provides the land. On the other hand, indirect government involves the production of goods and services by others. The wave of new public management, fuelled by neoliberal ideas on the proliferation of 'state-mediated market rule' (Theodore & Peck, 2012, 20), has resulted in a growing preference for indirect government over direct government, not least because instruments of indirect government, like taxation, can be used to 'disguise government involvement' (Peters, 2002, 560). Kettl comments that policymakers tend to underestimate the complexities of indirect government.

"They frequently begin with a reverential view of market competition and an assumption that such competition is superior to government monopoly. They assume that leaving things to the market will produce superior services. And they assume that

the management of government services through indirect mechanisms will happen spontaneously and with little need for government oversight." (Kettl, 2002, 491)

In short, the use of instruments of indirect government has expanded faster than our thinking about how to manage them (Kettl, 2002) and "... pessimistic lessons drawn from the indirect government experience miss the point that many direct government activities have been and continue to be more successful than those carried out indirectly." (Leman, 2002, 49) The debate on indirect government has also cropped up in Dutch planning (Savini, 2013), where the direct development practice of Dutch local authorities is being increasingly questioned (Buitelaar, 2010; Van der Krabben & Jacobs, 2013). The arguments relate to the financial risks, particularly with regard to the changing, more market-oriented programme to be developed and to the idea that planning should be an instrument of indirect government, geared to the regulation of private land use, and that, consequently, direct development creates a government interest around the disposal of serviced plots, which interferes with the presumed primary task of indirect government (Needham, 2007).

The critics of the self-realisation principle, however, are still convinced that direct government can potentially provide more than indirect government. According to Leman, this confidence in direct government, i.e., in the use of bureaucracy to execute decisions to provide services, is well-founded.

"While bureaucracy has many drawbacks, it has the distinct advantage of internalizing transactions that must often be handled through complex contractual relationships in indirect government. Direct government thus can paradoxically be more flexible and responsive than indirect government since changes in operations can be handled internally, whereas complex legal relationships between government and third-party partners must be amended in the case of indirect tools." (Leman, 2002, 50)

Navigating contractual relationships in urban development projects is indeed a complex business (Van der Veen & Korthals Altes, 2011), and it is no less complex in cases where market players take on obligations to contribute to the delivery of public services in a public-private mix of direct and indirect government.

The arguments against the self-realisation principle

The arguments against the self-realisation principle are possibly most fiercely debated by Priemus and Louw (2003), who point out that if developers willing to undertake a development declare that they are 'able and willing to implement the land-use plan as laid down by the local authority', this will make 'it legally impossible for a local authority to acquire the land by the ultimate instrument of expropriation' (Priemus & Louw, 2003, 373). This, according to Priemus and Louw, is bound to have a negative impact on integrated development.

"Municipalities perceive the problem that the comprehensive or integral development of a site comes under threat, because each building plot is serviced individually. As a result the economies of scale are lost, increasing the complexity of the building logistics and necessitating changes in construction schedules." (Priemus & Louw, 2003, 373)

Furthermore, they indicate that project developers with a competitive position on the land market will then hold a privileged position in the supply of housing for consumers. Priemus and Louw call this a 'monopoly of developers on the building market' (2003, 373), which will affect the consumers' freedom of choice. They propose that amendments be made to the expropriation law to limit

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