



Delineation of property rights as institutional foundations for urban land markets in transition



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ARTICLE INFO

Article history:

Received 10 April 2013

Received in revised form 4 January 2014

Accepted 9 January 2014

Keywords:

Urban land market

Transition

Property rights

Poland

ABSTRACT

This paper aims to critically reflect on establishing the new frameworks for land markets and urban land development processes in countries in transition. Based on the doctrine of the so-called 'property rights' school, land and property ownership has long been identified as a prerequisite for economic development. The common advice to countries in transition creating new frameworks for land markets was to assign and register property rights. The aim of this paper is to discuss the significance of the delineation of property rights, which for urban land development processes and outcomes falls mainly within the remit of land use regulations. In this paper the concept of property rights regime and its characteristics is developed in order to discuss the delineation of property rights and their relationship with urban land development process and its outcome. Process of land development is conceptualized depending on land ownership (private or public), and the role of the owner in the planning process. The outcome is discussed based on the morphological results and the provision of urban infrastructure. On the basis of empirical experience from transition period in Poland it is argued that the emphasis on private property rights in the absence of the institutional foundations of urban land market under capitalism was bound to produce urban problems. First, the new institutional foundation for urban land market was introduced subsequent to dynamic of emerging real estate market, and viable markets existed despite unsolved question of restitution of property rights. Second, the subsequent delineation of property rights is clearly linked to processes of urban land development, which follow the line of development without planning. It can also be related to the morphological results of urban development like the haphazard location of investments and lack of adequate approach to deal with the provision of urban infrastructure.

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Introduction

Based on the doctrine of the so-called 'property rights' school, land and property ownership has long been identified as a prerequisite for economic development. Commonly shared themes among policy advice for the countries in transition was to balance the budgets, cut subsidies, welcome foreign investment, drop tariff barriers, privatize state enterprises and legally secure property rights (the so called Washington consensus) (Lash, 2009). Economic advisors insisted that the existence of private property rights was both necessary and sufficient to induce the rise of a market economy (Bromley, 2000). The common advice to countries in transition creating new frameworks for land markets was to assign and register property rights. EU organizations, the World Bank

and national governments have all given financial and technical support to establish institutional structures and modernizing land administration infrastructure in CECs (Osskó and Hopfer, 1999). The focus was on land registration as a key component of a free market economy and the transfer of land and real estate from the public to private sector, including restitution of the property, compensation, and privatization (Osskó and Hopfer, 1999; Załączna and Havel, 2008).

This paper aims to critically reflect on establishing such new frameworks for land markets and urban land development processes in countries in transition, based on the example of Poland. The aim is to present and discuss the significance of the delineation of property rights, which for urban land development processes and outcomes falls mainly within the remit of land use regulations.

Delineation of property rights refers to the way the boundaries of the bundle of rights over land or an attribute from that bundle have been drawn, that is, the conditions under which the

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right can be exercised (Buitelaar and Segeren, 2011). In many advanced economies, land-use law plays an important role in delineation of property rights. Public law rules (zoning plan and regulations) and private law rules (among others: nuisance law, easement, covenants, co-ownership and legal vehicles) create, enforce and structure rights in land and in that way influences land use and development possibilities. These arrangements define a boundary in the fundamental rights of property. In the literature which apply the property rights approach to urban problems there are studies showing the importance of the initial distribution of property rights for the process of urban redevelopment (see e.g. Eckart, 1985; O'Flaherty, 1994; Adams et al., 2002; Adams and Watkins, 2002; Hong and Needham, 2007; Louw, 2008) or the outcome of urban development (see Fellmann, 1957; Conzen, 1960; Ward, 1962; Mortimore, 1969; Blomley, 2004). These applications concern assignment of property rights, the importance of land ownership for urban development, e.g. the relationship between antecedent ownership patterns and process or outcome of urban development process. There are also growing applications of property rights theory to planning practice (Krabben Van der, 2009; Webster and Lai, 2003). Recently Buitelaar and Segeren (2011) distinguished between assignment and delineation of property rights and analyzed how the assignment and delineation of private property rights, both before and during the development process, affect the morphological result of urban regeneration. This paper will contribute to the existing literature by discussing the way property rights are delineated by land use regulations and create the institutional foundations of urban land market in transition. In the theoretical framework the concept of *property rights regime and its characteristics* will be introduced in order to discuss the delineation of property rights and their relationship to urban land development process and its outcome. Process of land development will be conceptualized depending on land ownership (private or public), and the role of the owner in the planning process. The outcome will be discussed based on the morphological results and the provision of urban infrastructure. This approach focus further upon Poland, a country that experienced the transition to market economy and creating the new framework for land development processes. Discussion emphasizes the need to pay greater attention to the delineation of property rights as the institutional foundations of urban land market in transition.

In the following part of the paper, the background will be set up by presenting the discussion about property rights assignment in 1990s and recent criticism which arise around the focus on property rights. The next part of the paper presents a theoretical framework within which the empirical analysis will be approached. These include presentation of the delineation of property rights, concept of property rights regime and its characteristics, conceptualization of land development process and proposed focus on outcome of the process. In empirical part the paper will present the situation in Poland at the beginning of transition.

The focus on assignment of property rights

An EU funded project examining land markets in Central and Eastern Europe and the progress from command driven to a market based economies, concluded that in order for a land market to function, there must be: (1) a clear definition and sound administration of property rights; (2) a minimum set of restrictions on property usage consistent with the common good; (3) simple and inexpensive transfer of property rights; (4) transparency in all matters; and (5) an availability of capital and credit (Dale and Baldwin, 2000). The three-pillar model of the land market based on three regulated sectors was established together with a set of

indicators for the assessment of land market development.¹ The three regulated sectors were (1) land registration and the cadastre, (2) valuation services, and (3) financial services. It was believed that if government is able to adequately establish and support these pillars then the land market will provide a dynamic environment that includes: the participants (land owners and tenants); the goods and services (the land and its use); and the financial instruments (mortgages, credit, capital financing, etc.). It was also argued that the efficient functioning of these elements is essential if the land market is to operate smoothly and formally (Dale and Baldwin, 2000). The development of the policy and regulatory framework was also used as criteria for evaluation of land markets. However, the focus on consistent land policies that operate within a stable institutional framework was of secondary importance in that discussion. Theoretical foundation for the importance of establishing the formal property system was also further influenced by De Soto (2000). De Soto argued that establishing the formal property system creates the capital, which is the force that raises the productivity of labour and creates the wealth of nations.

This article does not argue that the formal property system is not supporting development of markets but, instead, aims to pay attention to delineation of property rights, reflecting the multidimensional nature of property rights and its complex ramifications. Experience has showed that the assignment and registration of property rights might be necessary but not sufficient to induce the proper functioning of land and property markets, particularly in countries of expanding inequality and polarization (Irazábal, 2009). Recently it has been argued that the attention to property rights as an instrument to further the expansion of capitalist accumulation was too pervasive (Haila, 2007). Can 'imperfections' in urban land markets only be resolved through state sanctioned private property rights? – Haila (2007) discussed the pervasive use (and abuse) of land market and property rights in China. In relation to Pillar 1 of land market model presented above we can see that e.g. residents of favelas in Rio de Janeiro are often opposed to the regularization of land titles (Irazábal, 2009; Perlman, 2005). In relation to Pillar 2 and Pillar 3, the question arise – in the middle of the world financial crisis do we still believe in the inevitable role of banks and financial institutions to make the market work or whether we think that we should try other modes of regulation? The intensification and pervasiveness of urban challenges in many regions of Latin America have raised awareness about the need to question full property rights as an instrument that can secure shelter for the poor (Angotti, 1996; Irazábal, 2009). In urban context unbalanced focus on legal and economic consideration in discussions of markets and property rights to the detriment of social and cultural issues expanded socio-economic and spatial inequalities and polarization (Irazábal, 2009). The trend was labelled by Mitchell (2001) as a '*post-justice city*'. In the '*post-justice city*' citizenship is taken away from those who cannot partake in the neoliberal economy (see also Weber, 2002; Mirafteb and Wills, 2005; Irazábal, 2008). Lefebvre (1996) introduced the notion of '*the right to the city*' where '*urban space should be produced to meet the everyday needs of those who inhabit it*' (Purcell, 2002, 2005, p. 200). In Harvey's (2003, p. 940) words, '*the right to the city*' should not be '*merely a right of access to what the property speculators and state planners define, but*

¹ In general, from the evaluation undertaken in the project it can be seen that the market reforms in CEC countries have progressed fastest in the land registration and cadastral pillar and less quickly in pillars two (valuation) and three (financial services). The reforms in pillar one have received significant support from organizations such as EU PHARE and the World Bank and have enabled the land restitution and compensation programmes to be largely completed. This has been identified as both a political priority and an economic necessity in satisfying the aspirations of the former landowners, and reducing the role of the state as the principal landowner and land manager (Dale and Baldwin, 2000).

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