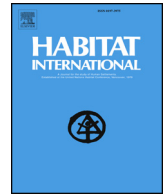




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Editorial

Institutional innovations in land development and planning in the 20th and 21st centuries

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ABSTRACT

This paper attempts to stocktake the major institutional innovations in land development and planning markets in the 20th century, and looks ahead to how these ideas may affect the evolution of institutions in the 21st century. Major ideas discussed include, i) public-private-partnerships; ii) zoning and participatory planning; iii) land readjustment and developers' obligations; iv) transfer of development rights; v) Coasean bargaining; and vi) informal institutions. We suggest that the foci of institutional innovations in the present century will shift from 20th century preoccupations as a result of rapid technological development and increasing environmental concerns. The keys for success in the institutional innovations to emerge will hinge on their abilities to reduce transaction costs for market exchange through new technologies, and align property right structures to achieve common goals of preserving the globe without compromising present economic needs too much.

1. Introduction

Institutions comprise formal and informal rules, and their enforcement mechanisms in societies that in turn shape human interactions (North, 1990). If the cost of institutional change is low, more efficient institutions emerge to supersede less efficient ones, but in reality, institutional changes are often costly and can happen gradually and incrementally only (North, 1993). Hence, institutional innovations have been persistently called for in recorded human history. Land development and planning markets also evolve in this way. For instance, land development legislative frameworks in the developed economies evolved progressively in the 20th century, changing roughly every decade in the UK (Webster, 2005).

Learning from the developed world, governments in developing countries such as those in fast urbanizing Asia, have been experimenting with different institutions to support the conversion of agricultural land and adaptation of redundant urban land into high-density habitats. China's experience, in particular, provides a fascinating laboratory for the comparison of old and new ideas. In this paper, we attempt to take stock of institutional innovations in the land development and planning markets in the 20th century. We also look ahead to how these innovative ideas may affect the development of land and planning institutions in the 21st century.

2. Major threads of institutional innovation in land and planning

The information sources for our analysis here is the findings of over 120 studies presented in the 11th *Planning, Law, and Property Rights Association Annual Meeting* hosted by the HKUrbanLab and the Ronald Coase Centre for Property Rights Research, The University of Hong Kong in February 2017. These ideas are grouped into six categories,

namely: i) public-private-partnership; ii) zoning and participatory planning; iii) land readjustment and developers' obligations; iv) transfer of development rights; v) Coasean bargaining; and vi) informal institutions.

2.1. Public-private-partnerships

One of the most commonly mentioned institutional innovations in land development and planning markets in the 20th century has been public-private-partnership (PPP). The basic notion of PPP is perhaps easier to diagram than to implement; it promulgates the idea that the public and private sectors can join force together to supply infrastructure, urban development and renewal projects (Leo & Fenton, 1990), with each partner contributing in accordance with their competitive edges and contractually held responsible accordingly. Generally, it is believed that the public sector possesses comparative advantages in many land and property rights matters, intra-governmental liaisons and authorization issues, etc. By contrast, the private sector is more resourceful in term of financial and human capital, providing flexibility to work around bureaucratic hurdles, and responsive to the dynamic market demands. Advocating the PPP model, however, has not gone unchallenged. The most severe criticisms are about transfer of interests among the parties and lack of transparency. Others concern the inequality in experience and power, giving private partners an advantage in contract design and contract renewal terms.

Build-operate-transfer (BOT) or build-own-operate-transfer (BOOT) contracts were one of the first PPP models deployed for infrastructure development. Although the use of BOT contracts in modern times dates back to the construction of the Suez Canal in 1834, it became prevalent in the 20th century for a wide array of construction projects such as major highways, tunnels, railways, terminals, water and sanitary

facilities, energy plants and hotels etc. For the massive scale of city development that occurred after the world wars, the setup of New Town Development corporations since the enactment of Lewis Silkin's New Town Act in 1946 in the UK, was also regarded as a successful PPP model. Stevenage, immediately North of the Greater London area, was the first new town developed under this new Development Corporation Model. Development corporations can be broadly construed as quasi-governmental bodies or entities incorporated by law to coordinate city development. The main sources of funding are primarily from the private sector through joint venture or land sales, although limited funding from the public is typically injected at the initial and various key stages of development. After the opening up of the economy in China since 1978, the application of the development corporation model has had profound impacts on the rapid development of the Shenzhen Special Economic Zone (SEZ) and many other fast urbanizing regions. Variants of PPP models have provided a legal, organisational and financial platform for many development corporations tasked with urban renewal in both developed and developing nations/jurisdictions, such as the UK, Canada, India, Singapore, Australia, Hong Kong and China, since the 1970s. The UK was seen as trail-blazer in Europe, with its PFI (Private Financing Initiative) legislation and program. This has been heavily criticised for delivering under-sized and over-priced facilities: a result, in many cases of the knowledge asymmetry around the public-private negotiating table.

Land financing is always a thorny issue for urban development. The 1988 urban land reform in China demonstrates that innovative financing methods similar to share tenancy can be an alternative to outright sales programmes. In this special issue, Huang and Chan argue that land finance (*tudi caizheng*) is a variant of PPP that has driven the mega-scale development in China. Chinese land finance in this sense featured the engagement of strategic partners to form joint ventures, usually in the format of development corporations, to carry out urban development. The ambitious Nansha Free Trade Zone officially established in 2015 is a case in point. Such a PPP model is designed to reduce local debts and enhance market incentives, in a way that could not be achieved via purely private or public initiative.

2.2. Zoning and participatory planning

Modern urban planning has its roots in public health concerns in 19th century Britain, the idea of de-canting population from overcrowded insanitary industrial cities to well-designed satellite communities and in the idea of city-wide urban plans designed to arrange land use and separate living from working and polluting from polluted. The idea of planning whole city development by zoning, soon took hold in the US in a stronger way than in the UK. In response to the environmental impacts to the neighbourhood by the development of Equitable Building, a massive skyscraper in Lower Manhattan, the Zoning Resolution was passed in 1916. The Resolution was translated into The Standard State Zoning Enabling Act in 1924, which was adopted widely in most states in the US. Although the constitutionality of zoning was being challenged, it was upheld by the US Supreme Court in 1926. Subsequently zoning regulations became prevalent throughout the country. Houston is the only large city in the US that does not enact zoning regulations in this way. Land use planning is largely exercised by contracts in that city (Lai, 2016; Siegan, 1970).

Earlier zoning regulations were criticized for infringement of property rights, social and economic segregations, and lack of flexibility. These have been modified gradually with new elements such as a process for applying for change of zoning and public participation in the planning process. In Hong Kong, Lai and Chua in this issue argue that creative zoning through dynamic boundary delineation is an important planning feature in the city's planning system. They refer to the reclamation projects in Hong Kong from 1844 to 2015 for as an example. Compared to static zoning, which has long been accused of attenuating private rights for little measurable social benefit and possible

social disbenefits, creative zoning equips the government with autonomy and flexibility for new urban development initiatives.

After Arnstein (1969)'s idea of a ladder of progressive citizen participation, public engagement has been incorporated into and become an essential element of the planning system in many countries. Although being criticized for lengthening the overall process and costs, depending of the institutional design of the planning system, public participation is widely accepted as enhancing the legitimacy and efficacy of development projects. But its high costs and ability to empower the already powerful and skew public debate, have led governments around the world to constantly experiment in search of more fit-for-purpose institutions. At the heart of the public engagement in planning debate is a conundrum or even a paradox. To be effective in their primary task, which is to coordinate private and public land development, urban plans need to be prepared and enacted rapidly. Timeliness is off the essence. Without it, developments inconsistent with a plan happen and the plan falls into disrepute and often becomes useless or worse. On the other hand, plans also need to be 'owned' by the interests they affect and the greater the consultation and participation, the longer it takes to prepare and agree a plan. Timeliness and legitimacy therefore oppose each other in the production of urban plans. The institutions of planning in all countries with mature planning laws are constantly in flux trying to balance these two concerns.

2.3. Land readjustment and developer obligations

As a city evolves over time, rearrangement of urban space is unavoidable. Government-led solutions such as direct acquisition through compulsory purchase or eminent domain, in support of urban renewal are often politically difficult and inefficient with no guarantee to achieve Pareto gains. The self-financed development corporation model is likely to be a more efficient institutional arrangement for densely built districts with fragmented ownerships. It reduces the tremendous transaction costs in the bargaining processes by consolidating ownership under a single agency tasked with land reorganisation and improvement. Having said that, the operation of a development corporation also incurs significant transaction costs, in land acquisition, political costs and so on. They are not always necessarily the best model for urban renewal projects. Land readjustment (LR) offers another alternative for urban renewal (Hong & Needham, 2007). LR, with its modern origins in 19th century Germany, has been practiced widely in Korea and Japan, and is now becoming more popular in Europe. Typically, a municipal government prepares a land use plan for a LR scheme in which public infrastructure and facilities are provided, and private land parcels are rearranged to attain a higher total value of the project. Participants are returned a smaller but higher value parcel of land after the re-development. A strong legal framework for efficient land exchange and strong leadership in municipalities is essential for successful implementation.

In the Netherlands, Van der Krabben and Lenferink in this special issue argue that, as a result of the 2008 international financial turmoil, active land policy and PPP construction models put many large-scale projects into deadlock. They suggest that LR can better facilitate some kinds of urban redevelopment. In their study, three experimental studies were conducted, asking a series of "what if" questions to major stakeholders in a bid to explore the success factors of introducing LR to the Netherlands. The studies covered residential, commercial and recreational development projects. They found that a top-down Dutch version of LR might develop, especially as local governments were willing to take the lead. Nevertheless, public development agencies were essential to coordinate the schemes. Besides, additional funding would be required to implement LR, a conclusion which is contrary to the findings of other international studies. The pure model of LR works best in areas with high development pressure. The greater the margin, the more possible it is to return land with higher value and the lower the transaction costs of implementation. LR schemes can, in principle,

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