

THE INSTITUTIONAL AND REGULATORY FRAMEWORK FOR PLANNING

The institutional and regulatory frameworks in which planning systems are situated vary enormously, derived as they are from the wider governance context and its particular history. The purposes of planning and how it is undertaken are shaped by the wider context of governance. This wider context reflects the way a society thinks about issues such as: how urban areas should develop; how the benefits of urban development should be distributed; and what the balance between individual rights and collective concerns should be as development proceeds. There are usually substantial tensions and conflicts between different sections of any society about these issues. Urban planning institutions and practices are themselves often active players in such struggles.

This chapter reviews recent trends in the relationship between planning and governance and the role of planning institutions and the institutionalization of planning practices. It also discusses the significance of the legal and the land and property systems which underpin urban planning, the regulatory power of planning and its role in the formal government structures, and the significance of regulatory roles, resources, arenas and stakeholders in the implementation of plans and planning policies.

PLANNING AND GOVERNANCE

Modern urban systems are characterized by complex patterns of interdependencies between actors, institutions, functional activities and spatial organizations. One key trend has been

to re-think the relation between formal government and the wider society. In recent decades, government restructuring has been reflected in a number of ways, such as:

- A relative decline in the role of formal government in the management of social and economic relationships;
- The involvement of non-governmental actors in a range of state functions at a variety of spatial levels;
- A change from hierarchical forms of government structures to more flexible forms of partnership and networking;
- A shift from provision by formal government structures to sharing of responsibilities and service provision between the state and civil society; and
- The devolution and decentralization of formal governmental responsibilities to regional and local governments.

While these trends have led to the involvement of a wide range of stakeholders, it has also led to: institutional fragmentation, multiplication of agencies, complex webs of relationships, reconfiguration of networks, disparity of powers and responsibilities across different tiers and departments of governmental and non-governmental institutions, increasing role of market forces, and confusion over 'who does what'.

Given the diversity of actors and interests involved in managing urban futures, it becomes evident that planning is not just about formulating ideas, policies and programmes, but also about implementing these through collective actions. It is in this context that planning is seen as a form of urban



Urban planning is a major local government responsibility, as in the case of Shanghai's City Planning Office in China

© Mick Ryan / Alamy

(or place) governance; and as a result, planning is embedded in power relations.

The effectiveness of urban planning and governance depends not only on the assumed command and control power of a master plan, but on the persuasive power which can mobilize actions of diverse stakeholders and policy communities to contribute to collective concerns. The likelihood of such enabling power to emerge is higher in the societies where power is more diffused and transparently exercised, so that checks and balances can be put in place. Where local government is either non-existent or lacks accountability and transparency and the civil society is weak, the tensions between 'power to' and 'power over' are often resolved in favour of the latter. In such situations settlement planning becomes an instrument of repression rather than accommodation.

Since the late 1990s, 'good governance' has become the mantra for development in developing countries, with planning being seen as a key promoter of such an ideal. At the same time, it is increasingly being recognized that urban governance processes are not merely managerial processes. They are heavily politicized struggles over distribution of resources and quality of places. It is also important to note that while the development of urban governance capacities helps to promote effective urban planning, efforts to improve planning systems and practices can also help to strengthen governance capacity.

PLANNING INSTITUTIONS AND THE INSTITUTIONALIZATION OF PLANNING PRACTICES

Urban planning, as a field of governance, is performed through, and has effects on, a wide range of institutions in society. A focus on institutions, in a wide sense, as norms and procedures implies that, whenever planning is promoted, attention should be paid to 'competing rationalities' of the various institutions involved. The agencies of planning 'systems' are themselves active agents in these evolutions, promoting some sets of norms and resisting others. It is also important to recognize that these institutions are themselves in continuous evolution as they interact with each other and with the challenges of dealing with a changing world.

A more narrow meaning of institutions refers to specific configurations of agencies and organizations which operate within the parameters of the wider norms and practices. A 'planning system' and its specific agencies and organizations fall within this meaning of institutions. Formal planning systems consist of bundles of public and private rights, agency authority, coordination mechanisms and procedural protocols which are defined by formal political and legal authorities.

Many of today's planning systems in developed countries were designed in the mid-20th century, and were built on the assumption that nation states had a hierarchical arrangement of government responsibilities. The national level provided a framework of laws governing land-use regulation, powers of land assembly and the balance between public and private rights in land and property development activity. The national level also articulated key national policy objectives and provided grants and subsidies to promote particular kinds of development. Municipalities were charged with preparing plans to encapsulate their development policy, in the light of higher tier policies and the local conditions of their areas. They were also expected to carry out development and regulatory activity within the framework set by national and regional levels of the system. It was then assumed that development would occur as defined in formally-agreed plans. In some countries, this arrangement really did work as expected. In many other countries, however, all kinds of disjunctions appeared.

There is no one 'model' of the agency structure of a planning system. What is an appropriate structure needs to be worked out in specific contexts, in relation to the evolving wider governance landscape. However, irrespective of the

diversity, there are a number of critical issues which can make or break an effective planning system. These are discussed in the sections below.

How urban planning is actually practised, however, is the result of the way the formal institutional design of a planning system interacts with other dimensions of governance dynamics, both formal and informal. There is repeated criticism that planning practices fail to achieve what system designers expected. Often, this is because the designers failed to pay attention to the wider institutional context, and the tensions and struggles within it. More recently, following the general trend towards more decentralized governance arrangements, some system designers have sought to give more flexibility for local autonomy. Such an approach has been energetically pursued in Brazil.

LEGAL SYSTEMS AND THE DISTRIBUTION OF RIGHTS AND RESPONSIBILITIES

Formal legal systems are central in defining the extent, nature and location of the regulatory powers of planning systems. They define the system of urban government, establish the system of urban planning and regulation of land development, and delimit the powers of urban planners and managers. In recent years, international covenants on human rights and national human rights law have come to have a significant impact on planning law.

Legal systems are, for example, important to resolve planning-related disputes. In some countries, such as the US, it is often said that the legal system has become the primary arena where urban planning policies are defined. In other countries, the legal system exerts its influence by the judgements made in various courts, and the enforcement practices which these judgements legitimize. Litigation over planning issues seems to be an emerging global trend. This is most clearly the case in developed countries, but the opportunity for legal challenge has also been important in situations where customary law challenges formal law.

For poorer people, formal institutions may fail to make provision for their needs and/or may not be seen as legitimate or effective. For instance, in many African countries, it is increasingly being suggested that the regulatory framework governing the delivery of residential land plots is so encumbered by bureaucratic procedures and regulatory norms and standards that areas allocated in formal plans for housing become unaffordable and unavailable for low-income settlements. If this is the case, informal practices for

accessing needs and opportunities may develop, such as land invasion, property sub-division, and acquisition for private purposes of spaces intended for public uses.

Globally, there are substantial variations in legal systems, as well as in the cultures of respect for legal systems. In the US, for example, citizens see it as an important safeguard of their individual rights. In other places, formal legal systems are often perceived as something 'outside', remote and unable to appreciate the worlds in which low-income people live their lives. In this context, recourse to illegal land subdivision may often be judged more efficient and equitable than the cumbersome processes of an underfunded and sometimes corrupted planning system.

In designing or re-designing planning systems, therefore, it is important to note that the regulatory power of planning is underpinned by legal systems which define a number of key areas including:

- Who holds the right to develop land and the institutional location of this right?
- What provisions are made for the appropriation of land for urban development purposes?
- What provisions are made to enable affected stakeholders to participate in and object to planning decisions?
- How and how far are public realm benefits extracted from private development initiatives?
- How are disputes resolved?

LAND AND PROPERTY OWNERSHIP AND DEVELOPMENT INSTITUTIONS

The regulatory practices associated with planning systems lie at the intersection between public purposes, the institutions of land and property ownership, and property development activity. To understand the practices associated with urban planning in any situation thus requires paying attention to firstly, specific institutional structures of land and property ownership and secondly, the dynamics of property development activities. Both of these vary from place to place, both within countries and between countries. This is particularly important, as it is these structures which are often responsible for major inequalities in a society. For example, in the UK, large landowners played a major role in urbanization in the 19th century. In Sweden and the Netherlands, in contrast, urbanization in the mid-20th



Well-maintained records are essential for effective urban planning institutions

© Wildscape / Alamy

century was a state activity, with all development land held in public ownership. This not only had a major impact on the form of urbanization, but also shaped the building companies which evolved to deliver housing policy.

In urban contexts, property rights may develop into very complex bundles. Most cities and towns contain a range of land tenure and property rights systems. In addition to formal rights, there may also be customary and religious tenure options, and various types of informal tenure. There may also be competition between different ‘institutions’ within a society over which system of defining rights should prevail.

The challenge for planning systems is to extract public realm benefits from the activities of very powerful players, both economically and politically. It has been argued that planning systems should play a role in ‘smoothing’ market cycles, by stabilizing expectations, creating an adequate flow of sites for development, and perhaps even acting ‘counter-cyclically’ to the primary economy.

In areas where upgrading projects are pursued (to improve the living conditions of residents) poorer residents often find it worthwhile to sell their dwelling to realize immediate returns, to pay off debts or just release more fluid capital, and move somewhere less well-located and provided for.

Such experiences raise challenges for urban planning to find ways to ‘manage’ land and property markets and development processes generally; to reduce exploitative effects; to distribute ‘rights to the city’ more equitably; to provide more and better located neighbourhoods; and to negotiate for public realm benefits.

PLANNING SYSTEMS, AGENCIES AND REGULATION

What have become known as ‘planning systems’ refer to a collection of agencies, procedures, instruments and protocols that are often sanctioned by the formal state, backed by formal law, and linked especially to rights to develop and use housing, land and property. Notwithstanding the diversity of planning regulation, a key issue for the design of planning systems centres on where regulatory ‘power’ is situated in a wider governance context and how it is practised. It is often assumed that such power resides in formal government decisions and the legal support of judicial systems. Yet, another source of regulatory power is social acceptance.

Planning systems operate at various spatial levels ranging from national to neighbourhood levels. The ‘agencies’ of planning systems are commonly thought of as located in formal government authorities. There is, however, significant variation in which level of government is given formal responsibility for which activity. There is also variation in the institutional location of the ‘checks and balances’ on planning agencies. For example, in the highly centralized systems of China, Great Britain, Japan and some transitional countries, national government has strong planning powers and can rule over the final approval of local plans.

The distribution of formal responsibilities within planning systems has an important structuring effect on planning practices. For example, formal systems specify in law who has the power to use the different planning tools, to change them and to oversee how they are used by others. While there are significant variations between different countries, the patterns of responsibilities often involve more than one level of government and spread to other public and private agencies. At one end — in countries such as Australia, Canada and the US — the national level merely provides enabling legislation or adjudication, allowing municipal or regional level governments to develop their approaches. At the other end — in countries such as Cambodia, China, Japan and the UK — national governments keep tight control over the planning system and its practices. Similarly, in Anglophone Sub-Saharan countries, the institutional and regulatory framework for urban planning rests in most cases

at the national government level, or in countries with a federal government structure, concurrently at the federal and state government levels. In cases where the local level of government has considerable autonomy, a municipality and its planning office take a leading role. The energetic transformation of Barcelona, Spain, is such a case, as is the well-known case of 'participatory budgeting' in Porto Alegre, Brazil.

Aside from formal, statutory planning agendas, a widespread global trend has been the formation of special 'partnership' agencies focused on particular development tasks. In some cases, informal agencies created through neighbourhood or other civil society initiative may be acknowledged as a *de facto* 'planning agency' (see Box 3).

In many parts of the world, emphasis has been put on decentralization of power and responsibilities to the local level. In Africa, for example, in countries such as Botswana, Ethiopia, Kenya, Nigeria, Tanzania and Uganda legislation in the 1980s and 1990s enacted devolution of functions, power and services. European countries, such as France, Italy, Spain and the UK, also experienced devolution of power to regional governments, albeit with different degrees of autonomy. However, decentralization of authority has often taken place without any accompanying strengthening of the resources available to local governments.

Given the complexity of contemporary urban systems, the capacity for effective urban planning depends on coordination of interdependent actors within and beyond the formal structure of government. Today, formal government

Box 3 Civil society planning initiatives in Kobe, Japan

In Japan, local government and urban planning capacity have been under-developed until very recently. Civil society struggles over Kobe's neglected inner-city neighbourhoods in the 1960s led to innovative practices in local area management in which citizens took the initiative in developing local area guidelines for managing change. Such initiatives have come to be known in Japan as *machizukuri*, or 'community development', activities. In this way, a kind of 'bottom-up' design of planning institutions has emerged. In Kobe, such initiatives produced informal 'master plans', which later became formalized as new national legislation provided the powers to make use of them. These experiences influenced emerging local government practices from the 1980s onwards, both in Kobe itself and in Japan more widely.

Source: Healey, 2008



Public display of planning application notices is common in developed countries

© Peter Titmuss / Alamy

functions relevant to urban development are typically spread across the tiers of government or departments within local government and between local and national governments. They may even involve relations across regional and national borders. Creating horizontal and vertical coordination between various levels of government as well as between governments and NGOs and achieving integration between disparate responsibilities and different policies has become a key challenge for effective governance.

PLAN FORMULATION AND IMPLEMENTATION

Urban planning has been much criticized for failing to adequately consider implementation issues. Implementation has often proven particularly problematic when plans were developed out of obligation, statutory or otherwise, or from an over-ambitious political project. Traditional master-planning tended to see implementation as synonymous with the control of urban systems. A wider view of planning processes considers implementation as a social learning

process for all parties involved. Within this perspective, tools of implementation are not limited to regulatory and fiscal measures, but also include other modes, such as collaborative practices.

To undertake the key tasks of urban planning, planning effort needs to be directed at mobilizing and coordinating a range of tools and resources. Table 5 summarizes the tools and resources needed to pursue each task.

As noted above, the power of a plan has a lot to do with the authority accorded to it in formal law, through national government advice or through customary practices. In planning systems where the right to develop is enshrined in a zoning ordinance (such as parts of the US), the plans which express this carry a lot of weight in deciding what can take place on an individual plot. In more discretionary systems (such as in the UK), a plan is more of an information tool, a statement of what the city government wishes to see happen in a place.

During the last decades, there has been a significant shift from large-scale master planning to more action-oriented participatory planning, often focused on specific urban areas or projects. This has led to a separation of indicative strategies for urban areas from plans which grant specific development rights. Box 4 provides an interesting case from Italy, where such a separation is being attempted in a country with a tradition of general municipal plans where citywide strategies and the allocation of development rights were previously merged.

As noted above, planning regulations are vital tools for planning systems. Development regulations are often combined with building regulations. The latter are



Granting or refusal of planning permission is an important mechanism for development control

© John Keates / Alamy

increasingly important, both in encouraging more sustainable building practices, and in recognizing the role of appropriate building technologies in less developed countries. City governments also typically have other important legal powers. One set of powers relates to the **assembly of land** for major development and re-development projects. Another important mechanism, usually linked to the granting of a development permit, allows the negotiation of **developer contributions** to infrastructure and other community development objectives. The ability to **appeal** against the above regulatory decisions is also an area with considerable global variation.

Task	Tools
Ongoing management of built environment change	Restrictions (i.e. specification of limits, etc.) Requirements (i.e. specification of contributions to the public realm) 'Street-level' management
Development promotion	Direct development by the public sector Acquisition of development land and property by government Encouragement by financial incentives Coordination and mobilization efforts
Strategies, policies and plans	Knowledge and information Specification of key principles and criteria Plans and visions Production of plans with 'statutory' power Coordination activities

Table 5

Planning tasks and tools

Source: derived in part from Lichfield and Darin-Drabkin, 1980

Box 4 Planning system reform in Lombardy, Italy

In the early 1990s, after major corruption scandals involving payments by developers to political parties, efforts were made across Italy to introduce a new, more policy-focused and technically-informed approach to urban planning. Powers to define planning instruments were devolved to regions, and municipalities were strengthened by the introduction of elected mayors. There had been much discussion among the planning community in Italy about how to overcome the rigidity of the main planning tool, the *piano generale regolatore*, which combined both a strategic view of how an area should develop and a specific land use zoning function.

Working in parallel, the Lombardy Region and the Commune of Milan evolved a new suite of planning instruments. These separated the expression of a strategic framework (since 2005 called a *documento di piano*) from the formal specification of development rights and constraints, to be specified in a *piano delle regole* (plan of regulations). These were complemented by a *piano dei servizi*. The purpose of this third plan was to indicate infrastructure requirements, both physical and social. These provided the basis for making transparent demands on developers for service contributions. These three documents provided the basis for a new type of overall plan, the *piano di governo del territorio*, which would finally replace the old *piano generale regolatore*.

Source: Healey, 2007, pp 110–113

A critical issue in effective urban planning is to relate strategies, policies and specific proposals to the resources which could achieve them. The range of fiscal measures deployed in planning systems is constantly evolving. For a considerable time governments have used financial inducements and disincentives to direct development to particular parts of a country, region or city. Such incentives are often used alongside the relaxation of planning restrictions in a particular area, as in the example of Employment Zones in the US, Enterprise Zones in the UK and Special Economic Zones in Southern Asia. However, financial measures can also be deployed to extract community benefits from a development. In situations where development activity is mostly undertaken by private developers, negotiation practices have evolved through which agreements are reached about who should pay for what.

The potential for 'underhand' dealing, and for strong developers to exploit weak municipalities in negotiations over public realm benefits may lead to arguments for the use of an alternative tool, in the form of a standard payment related to the size and scale of a development project in some way. This may be taken as a tax, in which case it is likely to flow into national treasuries or general municipal funds. Or it may be taken as an earmarked charge, allocated for specific public realm assets. Thus, given the right governance context, developer contributions are a useful way to address the externalities that arise from particular developments.

Undertaking the coordinative and integrative work which is at the heart of effective urban planning is a complex task, demanding considerable expertise. Lack of adequately trained personnel with necessary knowledge and expertise is a major constraint for effective urban planning in many parts of the world. An extreme example is Cambodia where the

absence of expert knowledge and personnel has culminated in what is effectively the suspension of urban land-use planning after the cessation of international funding in the late 1990s. In many other developing countries, the shortage of skilled staff at the local level and the brain drain are a major obstacle in effective urban planning.

It is important that planning interventions are related to a good understanding of local conditions. Urban areas, even in one region of one country, vary in their geography and economic possibilities. In designing a planning system and in working in a particular urban context, it is thus important to give attention to:

- The **networks** and **policy communities** which form around particular policy activities, development tasks and implementation activities;
- The **stakeholders** whose actions, interests and values are affected by urban development issues; and
- The **arenas** available for interaction between stakeholders and networks.

CONCLUDING REMARKS

The institutional context for urban planning has a significant effect on its forms and outcomes. Hence, in 'learning from the experience of others', it is important to appreciate local specificities. With this in mind the following **general policy lessons** may be highlighted:

- Initiatives to improve planning systems need to pay careful attention to the specific institutional dynamics of particular nations, regions and cities.

- It is important to consider how planning agencies are related to formal and *de facto* government structures, and in particular the degree of decentralized power and the potential for horizontal and vertical policy coordination.
- Planning systems need to be surrounded by checks and balances on the use of investment and regulatory resources, to limit the arbitrary use of planning measures by powerful groups.
- While planning systems need the support of a legal framework which defines rights and responsibilities, it is helpful to resist over-legalization and the rigidities and time-consuming processes which accompany this.
- Planning measures, where they have material effects, play a significant role in shaping land and property market behaviour.
- Planning systems' regulatory power needs to be combined with investment power, in an integrated and pro-active way, to release the potential of many different kinds of actors to contribute to the urban development process.
- Where planning systems and practices lack strength, respect and trust, it is helpful to focus initially on actions which bring clear benefits to many and build the ground for greater respect in the future.