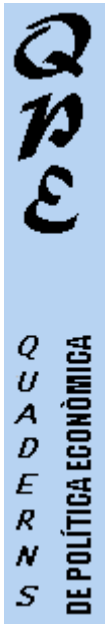

Inés Sanchez de Madariaga

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Special issue: "European Spatial Planning: a View from Spain.

Quaderns de Política Econòmica.
Revista electrònica. 2ª época.
Vol. 6, Enero-Abril 2004

Edita:

Dpto. de Economía Aplicada - Universitat de València
Av. Tarongers *s/n*, 46022 Valencia
FAX: 963828415 - WEB: www.uv.es/poleco
ISSN: 1579 - 8151

SPATIAL PLANNING, IN FACT TOWN PLANNING. FROM REGULATION TO SHARED VISIONS [1]

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Abstract

The Spanish planning system as it evolved during the second half of the XX century has been characterised by a high degree of legal-technical coherence. This character materialised in an elaborate set of regulations hierarchically defined at the national level, which establish not only what can and cannot be done on different types of land, but also obligations to develop on the part of owners of certain types of land and an intricate procedure for land development whose main technique is based on land readjustment.

This system reached its zenith in the late 1980's, but criticism started to develop in the early 1990's. In this context, a number of new laws, both national and regional, have been enacted since the late 1990s. Some of the new laws have a clearly deregulatory intent, other laws try to create totally new approaches to the implementation of plans eliminating the old system of land readjustment, in other cases law is mainly a reproduction of the old national legislation with minor changes. We will refer to these three basic approaches as the "deregulatory model", the "Valencian model" and the "traditional model".

Each of them has different implications with respect to: the quality of planning practice it gives support to; the balance of property rights with public interest; and the promotion of social justice and environmental protection. This paper will give an overview of these emerging approaches to plan making and implementation and describe their main implications with respect to these three main themes.

1. Introduction

The Spanish planning system as it evolved during the second half of the XX century has been characterised by a high degree of legal-technical coherence. This character materialised in an elaborate set of regulations hierarchically defined at the national level (*Ley del Suelo*), which establish not only what can and cannot be done on different types of land, including absolute prohibition to develop, but also obligations to develop

[1] An earlier, shorter version of this article has been published in German: Sánchez de Madariaga, Inés: "Aktuelle Tendenzen in der spanischen Raum-ordnung", *Planungsrundschau. Theorie Forschung Praxis*, 6, 2002-03, pp. 92-105. I thank Efraín Rosado Romero, PhD student, for his contribution to the graphics.

on the part of owners of certain types of land (as defined by Local Plans) and an intricate procedure for land development whose main technique is based on land readjustment (*sistema de compensación*).

This system reached its zenith in the late 1980's: during the years of dictatorship it was only partially applied, as corruption in urban development was widespread; under the first democratically elected local governments, in the 1980's, it was fully applied in many municipal plans accross the country. But criticism started to develop in the early 1990's. The very elaborate character of the system from a technical and legal standpoint, has been, paradoxically or maybe logically, one of the reasons of the difficulties it started to face in that decade. Other main factors which emerged at the time where: the regionalisation of the country following the new Constitution of 1978, which gave the new regions the power to legislate in matters of urban and regional planning, opening the door for a diversity of planning legislations and leaving only a few issues in the hands of the national government; the new patterns of development, as sprawl started to substitute for the traditional, compact forms typical of Spanish cities; the emergent ideology on liberalisation and deregulation, which in Spain was spoused, within the planning field, a decade latter than in other European countries.

In this context, a number of new laws, both national and regional, have been enacted since the late 1990s, as well as a number of decisions on jurisdiction on the part of the Constitutional Courts. These decisions are a consequence of new conflicts which arise between the central state and the regions. Some of the new laws have a clearly deregulatory intent. This is the objective of a new national legislation of 2000, called *De Medidas de Liberalización*, which makes most land potentially available for development. Other laws try to create totally new approaches to the implementation of plans, eliminating the old system of land readjustment, such as the Law of Valencia of 1994, now imitated by a number of other regions. In other regions such as Catalonia, the recently approved law is mainly a reproduction of the old national legislation with minor changes. We will refer to these three basic approaches as the "traditional model", the "deregulatory model", and the "Valencian model". Each of them has different implications with respect to: the quality of planning practice it gives support to; the balance of property rights with public interest; and the promotion of social justice and environmental protection.

This paper will give an overview of these emerging approaches to plan making and implementation and describe their main implications with respect to these three main themes. It will also raise a number of issues derived from the new complexity of planning brought about by the introduction of a regional tier with strong legislative powers in urban and regional planning which are also dealt with in other contributions to this issue (see Romero and Farinós in this volume).

2. The traditional model

The traditional model, defined in the Land Use Law of 1956 and subsequentely reelaborated in 1976, 1990 and 1992, is based on the following main concepts:[2]

1) on the distinction of several types of land with different legal status, *urban*, *developable*, *non-developable*, *general systems;*

2) on the distinction of two basic main levels of planning, one at the municipal level, of a comprehensive nature, called *Plan General*, and another at mid-scale, with the level of detail necessary to carry out development, called *Plan Parcial* (in the case of redevelopment areas, *Plan Especial de Reforma Interior).* A third, intermediate level of planning was introduced in 1976 to give flexibility to the system, the *Programa de Actuación Urbanística*;

3) on the distinction of three types of implementation procedures, one by public entities, through expropriation of land, a second through the collaboration between the public administration and the land owners, *cooperation* , and a third, called *compensation*, by land owners themselves, who become agents of development through a process of land readjustment and is the most frequently used.

Let's see more closely what these distinctions imply. The first distinction refers to four main types of land: *urban land* (the land that already has the urban infrastructure and services needed), *developable land* (the land that is designated as suitable for future development during the period of implementation of the Plan), *non-developable land* (where development is prohibited), and *general systems* (land dedicated to main infrastructure and facilities). This is called *clasificación del suelo* or *land classification*, and it is the responsibility of the cities to assign every piece of land in their territories to one of these categories when they do their comprehensive plans or *General Plans*. The two first categories (*urban* and *developable*) are in addition subdivided by the *General Plan* according to use: residential, industrial, commercial, facilities, open space.

These different types of land relate in different ways to the types of plans. Land within the *urban* category is ready for building and it only requires a building permit which the city gives to architectural projects according to the zoning regulations contained in the *General Plan*. There is one exception to this for sections of urban space needing redevelopment. When this occurs, these areas have to follow a procedure simmilar to that of *developable land:* a detailed plan called *Plan Especial de Reforma Interior*, or *Special Plan for Interior Reform,* has to be designed. This plan contains provisions regarding the new street layout, the regulations governing land subdivision, as well as building regulations of type, form, volume and use of constructions.

[2] This is necessarily a simplified description of the system. A proper description would have the length of a book. See for instance a brief and clear explanation from a legal perspective in Fernández, 1999.

After approval of a *General Plan,* land included as *developable* must follow a further planning process simmilar to that for redevelopment land, which in addition includes a dimension of temporal programming. The *General Plan* establishes which lands are *developable* in accordance with the proposed urban structure, that is, the proposed location of main transportation, water, and other infrastructure, and to the proposed location of main public facilities. The amount of land classified as *developable* is calculated according to projected demands for new space in the mid-long term (15-20 years), its location is fixed in a way as to avoid sprawl and optimise existing and projected infrastructure, and it is itself subdivided in two categories: *programmed* and *non-programmed*. This subdivision indicates when development must take place. It also implies different levels of detail in the provisions of the *General Plan*: more detailed for *programmed land*, and less or no detail for *non-programmed land*. *Programmed land* is in addition subdivided into land having to be developed during the first four years after approval of the *General Plan,* and land that has to be developed during the following four years. Mechanisms of sanction, including expropriation, exist to secure delopment of such land and prevent land warehousing, although they are rarely applied because of economic reasons and often also lack of political will.

For development to occur in the *programmed land*, a *Partial Plan* has to be designed, indicating the layout of streets and regulations on the shape and size of lots and buildings, including amount, form, volume and use. Once this *Partial Plan* is approved, development can take place following one of the three procedures for implementation that will be explained below.

For development to occur in *non-programmed land* a third planning instrument is required, the *Programa de Actuación Urbanística, PAU*. This instrument was inspired by the French *Zones d'Aménagement Concerté,* and was introduced as a means to add flexibility to the two-level system of plans, by allowing a lesser definition of the character of development for these areas in the General Plan, so that the character of development can be decided latter, closer to the moment of development, to better fit market conditions. It also allows for negotiated planning processes of big projects of a specific nature. A PAU establishes a similar level of detail to what the *General Plan* defines for *programmed developable land*. Once a PAU has been approved, this land is technically equivalent to the *programmed land*, and the next step in the process is the design and approval of a *Partial Plan*, to be followed by the implementation procedures.

The land classified as *non-developable* is in addition subdivided in various types which accord increasing levels of protection from development: *common non-developable land*, *protected land* and *especially protected land*. In these two last types of land development is prohibited by reason of the value of their natural, agricultural, ecological or landscape character, and the level of protection is defined according to their relative

value. *Common land* has no specific natural characteristics calling for protection: in this case development is prohibited because projected demand for space is sufficiently covered by land classified as *developable.*

The implementation or development process starts once a *Partial Plan* has been approved. At this point the land-owners have both the right and the obligation to develop. Development can take place according to one of three possible procedures, the most frequent of which is *compensación* or *compensation*. This is a system of land readjustment, or *reparcelación,* where development is carried out by the land-owners themselves.

According to this procedure of *compensation* the various owners whose land lies within the limits of a *Partial Plan* have to create a partnership called *Junta de Compensación* or *Compensation Board* which is given the power to proceed with the public function of development and is legally subject to public law. For a *Compensation Board* to be created, owners representing up to 60% of the value of the land have to agree on it: dissenting owners could be expropriated in favour of the *Board.* This *Board* is charged to do a *Compensation Project* which specifies in what way the owners of original lots will receive new urbanised lots for a value equivalent to the relative value of their original lots with respect to the total value of the whole project. The total value is fixed by the plan and it includes a measure of the amount of floor space corrected by use, to assure equal treatment of all owners.

This mechanism through which the plan attributes value to land is called *aprovechamiento* and is a central piece of the Spanish planning system. The distribution of *aprovechamiento,* or economic value, between owners accounts for differences in the value of lots derived from their use, density and location, as specified in the *Partial Plan*. It is a mechanism designed to assure equal treatment to all affected land-owners, regardless of the intensity or type of use assigned to their original property, while assuring the existence of lots in appropriate locations and sizes for public facilities. Through it, these lots are passed on to the public without economic cost.

The *Board* is also charged to produce an *Urbanisation Project* and to carry out the local infrastructure works. In this process land-owners have the following obligations: to pay for the construction of local infrastructure; to give the municipality the land necessary for local streets and for the local public facilities specified in the *Partial Plan*; to give the municipality land equivalent in value to up to 15% of the total value. This last obligation allows municipalities to recapture a small percentage of the value created in the form of land which is generally used for the development of social housing. Here again legal mechanisms of sanction, including expropriation, exist to assure compliance with these requirements within the stipulated time frame of either four or eight years. In the case of non-compliance, materialized in failure of asking for a building permit within these time frame, owners would automatically have reduced to 50% the

development value of their land. Again, these sactions rarely occur. Once urbanisation has taken place, the owners of the lots have again the right and the obligation to build, by asking for a building permit.

From this brief and somehow simplified description of the traditional system we will move on to explain the main criticisms it has suffered and the alternative paths that have developed since the mid-1990s. Most criticisms are based on the failure of the system to provide housing at affordable prices and on the inefficiencies created by the implementation system of *compensation*. But fundamental differences exist on the diagnosis of the reasons of high housing prices and hence on the proposed alternative solutions. Curiously, criticism of the law and arguments for the new proposals were very narrowly limited to these aspects, without considering the many other implications of a land-use law, and without giving either more complex explanations of housing prices.

This confrontation was made obvious by the antagonistic positions adopted by the members of a *Committee of Experts* created by the Ministry of Public Works in 1994. From the discussions of this Committee came about the two basic positions latter to be materialised in different laws. A first position was defended initially by a number of well renowned economists, many of them high ranking socialist officials. Representatives of this position argued for a deregulation and liberalisation of the model, which was latter to be adopted by the conservative national government in the new national law, and by a number of regions, including Madrid. The second position argued for a professionalisation of the agents of development, substituting for the land-owners, and was adopted first in Valencia in 1994 and then by practically all regions under socialist governments.

3. The deregulatory model

As a result of the new distribution of competences between the national and the regional governments, the power to legislate on planning matters lies at the regional level *(comunidades autónomas)*. In the field of planning the only power that remains at the national level is the power to legislate with respect to property rights and land economic assessment. The two deregulatory pieces of legislation at the national level are the *Law on Land Regime and Assessment* of 1998 *(Ley de Régimen del Suelo y Valoraciones)* and the *Royal Decree on Urgent Measures for Liberalisation* of 2000 *(Real Decreto de Medidas Urgentes de Liberalización)*.

The main implication of these is a reconceptualisation of the categories of *developable* and *non-developable land.* The wording of the law is: "(*non-developable land)* is that land which the general plan considers as worth of protection by virtue of its agricultural, cattle, forest and natural values". In this way *non-developable land* is circumscribed to that land requiring protection by reason of its natural, agricultural or ecological value: in

other words, the idea of *common non-developable land* disappears. This means that all land which does not merit to be protected could be subject to development. A second provision of this legislation is the abolition of the mechanisms for temporal programming. It eliminates the distinction between land to be developed in the first eight years after approval of the plan (by private or public initiative and according to a *partial plan)*, and land to be developed more flexibly according to changing needs and circumstances (according to a PAU). It also allows for land owners to initiate the development process at their convenience.

This dramatic change in orientation is based on the argument, explicitly expressed in the text of the law, that planning constraints on the amount of land classified as *developable* are the main cause of high housing prices: if more land is made available for development, competition among developers will increase and housing prices will decrease. The implications of this notion are wide-ranging, as most of the territory becomes potentially developable, opening the way for the typical patterns of leap-frog development, until now prevented by a very strict legislation which included the possibility of deciding which land could be developed and in what temporal order, as well as the possibility of precluding all development in the rest of the territory.

However, the relative scope of the national legislation leaves room for the regional governments to define their own planning and development models. This is particularly relevant as the national law has been brought to the Constitutional courts on the grounds that it impinges on regional competences. Even the wording of the law with respect to what *non-developable land* is can be interpreted by regional legislators and local governments in a much stricter way of what the national law meant, allowing for considering *non-developable land* all the land not considered necessary for development at the moment of plan making. This is in fact what is happening in a number of regions: in Catalonia, for instance, the new law just approved reproduces with very little change the traditional model. The reduced scope of the national legislation also allows for the development of alternative models, such as the Valencian. In other cases, regional legislation has attempted to follow the deregulatory trends set by the national government.

One such case is the Madrilenean Law of 2001. This law was approved unilaterally by the regional government with opposition from all quarters, including the associations of developers and local administrations also governed by the conservative party, such as the city of Madrid. It is an extremely long and detailed text, which establishes many complex procedures and mechanisms of exception. In many ways, it is a contradictory law, as it incorporates some deregulatory provisions but at the same time readapts, and even makes more elaborate, many of the traits of the old system. It also implies a shift in the balance of planning responsibilities between the local governments and the region to the advantage of the latter.

Let's see now some of the main changes this law introduces with respect to the old system. The first main change is that it adopts the definition of *non-developable* land introduced by the national government in 1998. That is, *non-developable* land can only be that land which deserves being protected by virtue of its exceptional natural, agricultural or forest values. In addition, it is the regional government who decides what lands deserve being protected: it is the Regional Plan who specifies what lands must be considered non-developable. Municipal *General Plans* must incorporate whatever the Regional Plan decides. In fact, this provision imposes harsh limitations on what the municipalities can do when doing their comprehensive planning. A further provision affecting *non-developable* land specifies a whole list of uses which can be permitted into that land, under developers initiative. This provision is one of the many internal contradictions of this law, as it makes in fact this land, which theoretically is to be protected, potentially available for development.

Within the category of *developable* land, the law eliminates the traditional distinction between *programmed* and *non-programmed*. Let's remember that *programmed* land was the land to be developed within the first eight years after approval of the *General Plan*, and non-programmed was the land to be developed on a more flexible schedule through a process of public-private negotiation modelled after the French *Zones d'Aménagement Concertée*. Substituting for such distinction, the law introduces a new one between so called *sectorized* and *non-sectorized* land. In the *sectorized* land municipalities keep their usual planning powers: when drafting the *General Plan*, they establish what will be the location of the main public infrastructure and facilities, as well as the general atribution of uses and densities. Once the *General Plan* is approved, a *Partial Plan* has to be designed before development can proceed.

However there are some modifications as to how both the *General Plan* and the *Partial Plan* have to establish regulations is this *sectorized land*. First, *General Plans* have to be more specific and detailed in their regulation of this type of land than they used to be in the old legislation. The new requirements for the regulations of this type of land that have to be set in *General Plans* make such regulations to be closer to traditional *Partial Plans* than to the less precise regulations such land used to have under the old system. This eliminates some of the advantages and objectives of the two-level planning system and introduces new rigidities into the system. The two-level planning system was thought out to control the overall process of urban growth with a long term planning instrument, while at the same time establishing the means for regulating in the short term the processes of land conversion. This is what makes the *General Plan* a long-range instrument, while a more concrete planning instrument, the *Partial Plan*, to be drafted at a time closer to development, allows for a proper match between market conditions and longer term planning goals. In addition, the law allows for *Partial Plans* to be contradictory with the *General Plan,* a provision which seems to be contradictory,

if largely applied, with the objective of making regulations regarding this type of land in the *General Plan* stricter than they used to be.

The notion of non-sectorized land, on the other hand, introduces what can be possibly considered the most relevant changes in the Madrilenean law. Let's first remember that, as a consequence of the reduction in the amount of land that can be set aside from development, made possible by the equation of non-developable land with protected land, most of the territory is now potentially *developable*. This great amount of land now open for development is going to fall within the category of *non-sectorized* land. In this category of land, municipal *General Plans* are not allowed to define the location of the main public infrastructure or facilities, nor to indicate a general distribution of use and densities. Development occurs by private initiative and it is the regional Ministry of Public Works who has the powers of approval of such proposals.

The process of development by private initiative includes preparation of a *Sectorization Plan* which is a very different instrument from the old *Programas de Actuación Urbanística* or PAUs. For such development projects, the law does not establish any system for public-private negotiation of development to regulate allocation of responsibilities between public and private parties. Because municipalities are not allowed to establish in their *General Plans* the physical location of the main public infrastructure and facilities, or the main distribution of uses and densities, *Sectorization Plans* are not integrated into a wider frame of reference nor subject to any planning framework. Municipalities are *de facto* deprived from all their planning powers in *non-sectorized developable* land because *Sectorisation Plans* are in addition approved by the regional government. The law does not provide any regulation as to how this approval procedure has to take place, paving the way for a totally discretionary process, without guarantees: no technical study is required, or evaluation of impacts, or reference to the conditions of the territory. The process for development in *non-developable* land has simmilar characteristics: private initiative, approval by regional government, no technical or impact requirements.

A number of other provisions of the law raise important issues as to the quality of urban space and the equity implications that may result from application of the law. A first one is a reduction of between 30 and 50% of the existing standards for open space, green areas and public facilities, and the powers it gives the regional minister to further reduce those in favour of road space. Another is how the law establishes for infill and redevelopment sites an intensity of use simmilar to that in the surrounding area, preventing any possibility of using these inner-city sites as opportunities for creating much needed open space and facilities in the already very built-up space characteristic of much urban landscape in Spanish cities, and contributing to the overdensification of central locations. A third one is the primacy it gives to any decision taken by sectoral governmental bodies over the spatial options taken in the plans, whenever the spatial

implications of decisions made by any governmental body conflict with regulations established in planning documents.

4. The Valencian model

Rather than introducing changes in plan making or in the categories of land, the Valencian law is centered in the implementation phase, that is, in the process of development. The implications of such changes, however, are also far-reaching. The main innovation of this model is the introduction of a professional developer called *agente urbanizador,* or *developer*, substituting for the land-owner as main actor of the development process.

The Valencian law's explicit main objective is also to fight high housing prices. It is based in the idea that high housing prices are due to the fact that the supply of developed land is too low: the problem is not that *General Plans* do not classify as *developable* sufficient amounts of land, which they do. Many studies realised since the early 1990s had shown the abundance of land planned for development all over Spain, enough in many places to support a doubling up of the spatial needs of households and enterprises. The problem, it is argued, lies in the fact that this land susceptible of being developed is not being properly developed because there is no real private sector specialised in this type of activity, since the agents in charge of this function (the land-owners) are not professional developers. They are just land-owners who are forced to become developers and to assume a series of tasks not of their expertise or of their means. The complexity and lenghth of the development process through the mechanism of *compensation* is for this law the main cause of housing price inflation.

A brief note first on the role of land-owners in the traditional development process. The process of urbanization, or conversion of raw land into urban land, is legally in Spain a public function and responsibility. However, historical circumstances linked to an endemic lack at the muncipal level of the financial resources necessary to undertake investment in infrastructure, set the context for the development, initiated already in the 19th century, of the system of land readjustment systematized in the Land-use Law of 1956 which persists today. Through this system, land-owners were made responsible of the public function of realising local infrastructure and of replotting. Associated into *Compensation Boards (Juntas de Compensación)*, they became in some way delegated agents of the state, subject to public rather than private law. In exchange, they were given the possibility to keep the substantial economic gains resulting from land conversion. Only a small percent of this unearned value (up to 15% of total value, now reduced to a maximum of 10%) was latter, since 1976, to be recaptured by the municipalities in the form of lots to be used for social housing or other publicly defined goals.

The authors of the Valencian model blamed this system for its inefficiency and innecessary lenghth, considering it a residue of older times and a hindrance in a modern market economy. Arguing that a modern economy required professional agents of the development process, and that there was a lack of a competitive business sector of land developers (as distinct from builders-constructors and developers of buildings), they created the legal conditions for the promotion of land development as a private entrepreneurial endeavour, in which developers engage through delegation from the local authorities. The intent of the law is to promote the emergence of a new breed of private sector land developers, to increase market competitivity, to increase the amount of developed land, and, as a consequence of the former, to reduce housing prices.

According to this law, any developer can take the initiative of making a project proposal. The public administrations can as well initiate this process should they want to become the agents of development. What is most significant here is that developers presenting such proposals do not need to own any land. Any developer can put up a proposal for development without having had to invest any money in land acquisition, and without holding any legal or contractual relationship whatsoever with the actual owners of the land. In this way developers can avoid high up-front expenditures in land acquisition and consequently reduce financial costs. This provision has been subject to debate as to its constitutionality with respect to property rights and has been recently brought up to litigation in the European Courts by a group of foreign (European) land owners in the region.

Once a municipality receives a proposal for development, this proposal is posted during 20 days for public information, to be extended for 20 additional days should other developers express, within the first five days of the posting period, an interest in presenting alternative proposals. The complete set of documents have to be presented in the following five days. Municipalities decide what proposal is to be approved and, in consequence, which developer is going to carry out the development process. Proposals in which land-owners have a participation of over 50% are given certain advantages. The developer selected acquires a compromise of developing the site in less than 5 years, reduced to less than 3 when land-owners are included.

The legal instrument through which this process is accomplished is called *Programa de Actuación Integrada, PAI*. The technical documents supporting a PAI include: a subdivision plan and zoning ordinance, compromises of investment and its timing, economic provisions including the developer's profit and the price to be paid for the land to the original land-owners, and all the technical and engineering specifications necessary to proceed with development. Some studies such as that due to Gaja (2000) show that, because they are the ones who do the financial calculations of costs, land price, and profits, developers are able to manipulate figures to their advantage and to the

detriment of land-owners. An important provision of the law is that PAIs can modify the regulations specified by the general plan for the municipality.

Some studies have shown that dramatic changes have occured in urban development processes in Valencia since inception of the law. All evaluations, including official studies (Fernández, 2001) show great increases in the amount of developed land, confirming a success of the law in attaining its main explicit objective. Some, considering this increase negatively, speak of oversupply. Evaluations however reach different conclusions with respect to its effect on housing prices. All studies show that housing prices have increased in the period 1995-98, albeit at a rate slightly below the national average. While official studies attribute this lesser increase to the effects of the law, other authors (Gaja, 2000) propose alternative explanations to lower prices which seem to respond to historical and contextual circumstances of housing markets in Valencia, where prices have historically been below the national average.

According to the evaluation made by Gaja (2000), some objectives of the law seem to have been better accomplished than others. In around 40% of cases the developer did not previously own any of the land. However, competition seems to exist only in big municipalities and not always (14% of all cases, 63% of cases in big cities). The system seems to be fostering the role played by big companies, promoting a concentration in the market considered by some to be at risk of becoming an oligopoly, particularly in big cities. Gaja points out to other unforeseen consequences. There are signs that productions costs in proposals are being inflated while land costs are being reduced. This would be a consequence of the fact that the developer calculates his own profit dividing unitary development costs (excluding land costs) by the unitary price to be paid to the land owner, in a context of little competition where this type of practice could be counterbalanced by competing developers.

Data in this study show the following results: there has been a real decrease in the average total cost of producing urbanized land; average developer profit is around 50%; prices paid to land-owners for their land have decreased; prices for urbanized land have increased; housing prices however have continued to increase, in parallel to national trends, albeit at a lesser pace. These data suggest that what is actually happening is a transfer of the unearned development value from land-owners to professional developers, rather than a benefit to the consumer in the form of reduced housing prices.

Other unforseen results would be the unintended consequences on the quality of urban space and urban design of the application of economic calculation methods as the main criteria for decision maiking, coupled up with a lack of objectives, requirements or recommendations regarding urban form. Maximisation of profit together with advantages associated to, and requirements of, substantial amounts of open space, are producing an urban landscape of *towers in the park* in the periphery of Valencian cities. The very success of the law in promoting land development has meant that great

sections of open space around the main cities in the region are now urbanised but unbuilt, and it is unclear whether there will be a demand for construction, at least in the short and medium term. Further, should this demand finally materialise, new, broader questions arise. Will these new spaces be occupied at the expense of flight from the city, contributing to the decay of central cities?

5. Some conclusions

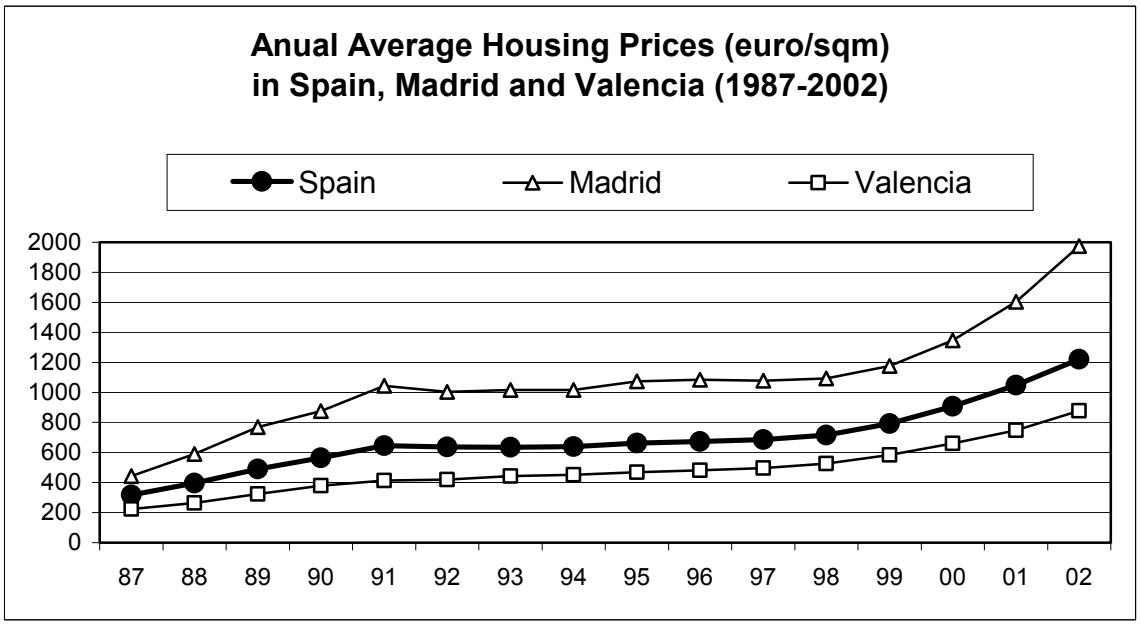
The recent innovations in planning legislation in Spain, and the planning practice they are giving support to, raise, as we have seen, many questions with respect to the quality of such practice, the balance of public and private interests, sustainability and social justice. While the need to reform the old system, introducing higher degrees of flexibility, is clear, the solutions adopted seem to be creating new problems.

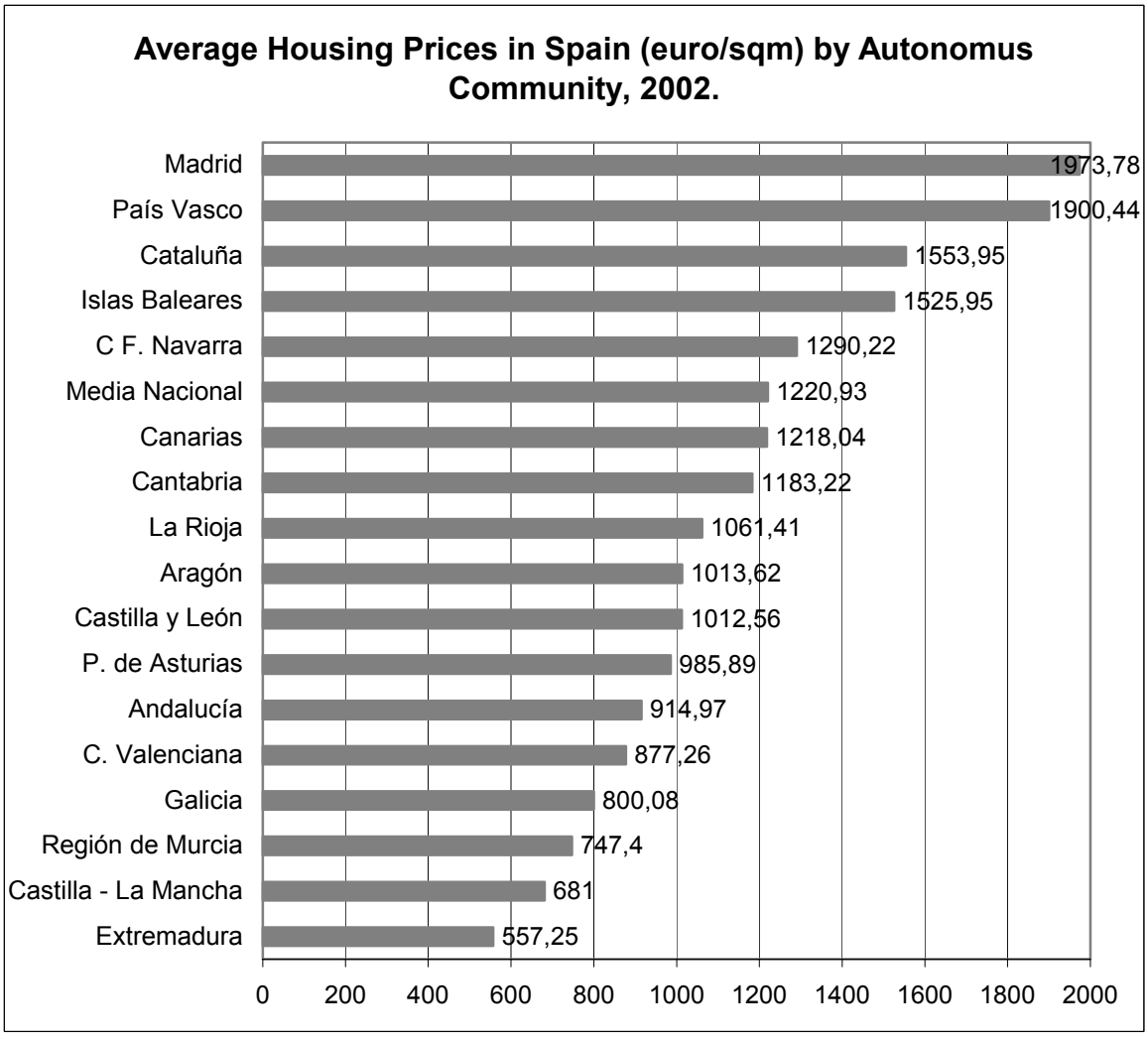
One first problem is the shortsightedness of diagnosis and the lack of recognition of the complexity of urban problems, of their causes, and therefore of solutions. The new pieces of legislation, both those supported by partisans of deregulation and those supported by socialist regional governments, seem to reduce the complexity of cities and of planning to the housing problem, and further reduce the housing problem to simple explanations requiring simple solutions: lack of sufficient supply of developable land in the first case, or lack of sufficient supply of developed land in the latter.

Empirical data have shown however that neither increased supply of land zoned for development, increased supply of developed land, or even increased new housing supply, in absence of a real housing policy, have contributed in these past few years to moderate housing prices. Both the supply of land zoned for development and of new construction have expanded in the last years enormously, while prices do not stop rising, putting housing further and further out of reach of households. Let's have a look at some figures.

As a result of land-use deregulation, the region of Madrid contains land zoned for development of about one million new units, which would mean an increase of close to 50% of the stock of first residence, with an almost stagnant population. According to data published by the Spanish Central Bank *(Banco de España)* and by the Ministry *(Ministerio de Fomento)* available on their web sites, the housing boom initiated in 1998 has meant that an average of over 600.000 units have been built per year in the last years, equivalent to as high as 40% of all housing units built in Europe during 2003, more than those built in France and Germany together. At the same time, prices continue to have yearly increases of over 16%, amounting to an increase of 7'5 times the pre-boom price.

Experts and institutions such as the International Monetary Fund talk of a real estate bubble in Spain and warn against the danger of sudden bust. Most economists today start to acknowledge that the reasons of the continuing housing boom in Spain and its





Source of data: Ministerio de Fomento

subsequent affordability crisis are more a result of macroeconomic factors such as the lack of alternative investment opportunities and low interest rates than of scarcity of supply of land or buildings. Thus, reality contradicts the main arguments that have supported recent innovations in Spanish planning practice.

While the traditional system appears clearly to be overly rigid in today's institutional, technological, social and economic context, the new models do not seem to be tackling the problem of adaptability to changing demands and circumstances while maintaining a solid planning practice, a proper balance between public and private interests or a more sustainable development.

Both the deregulatory and the Valencian model are shifting the weight of decision making from public to private parties; in the first case also between levels of government, from the local to the regional. Both reduce the technical and professional scope for action of planning officials. In the first case, deregulation implies that planning officials are not able to propose and decide on what lands should be developed and how. It is developers who propose and the regional ministry who decides. But the way this decision is made is all but arbitrary: there are no technical requirements or criteria on which to found it, nor is it subject to any kind of environmental, economic or social evaluation of impacts.

While privately initiated development does not necessarily imply bad planning, it will most probably be bad planning when there are no instruments for rational and open decision making. In addition, it could be argued that a system that relies more heavily on a project by project decision, would require a stronger professional and institutional capacity in the public sector than one based on rules defined beforehand. It would also require persons with a different set of knowledge and professional capabilities than those working today for local and regional administrations. Further, these professionals are not being trained by the Spanish higher education system. A serious move to a more flexible and deregulated system would need, not only a different set of regulations in the land use law, but also major changes in the institutional capacities of our planning institutions and a reorientation of planning education.

In the Valencian case, although there have been no major changes as to the contents of the two tier system of plans, the emergence of the professional land developers as central actors, together with the short periods for plan approval, the scarcity of development criteria to be followed by developers, the preeminence of numbers and economic calculations as basis for plan approval, all contribute to a diminishing role of the public bodies as shapers of urban space. The last factor in particular contributes to spatial results of doubtful quality. This system has in addition contributed obviously to a shifting of the appropriation of development unearned value from initial property owners to professional developers.

None of the two new approaches to planning regulation tackles the issue of sustainability in its three dimensional sense: social, environmental, and economic. They are laws thought out with the explicit objective of promoting development, because their single explicit objective was to reduce housing prices through a manipulation of the land market. For them, planning or alternatively development actions in the land market are the single solutions to solving the housing crisis, and the housing crisis is the main problem of planning. Thus, other measures to solve the housing crisis, probably more effective, such as a real policy for housing, are not considered.

Further, in the deregulatory model such measures are explicitly discarded, as housing policy is considered to create more problems than its solves. In this model, again, low priority is given to social objectives, as it reduces guarantees that enough land should be available, both in location and size, for public facilities and open space when faced to the possibility of increased private profitability or of hard infrastructure construction (roads and highways).

Other issues that any planning system needs to address, and for that reason should appear in the text of laws, such as the balance between new development and rehabilitation or redevelopment, global issues regarding the fiscal impacts of leap-frog development, distributional impacts of such development, or the environmental consequences of undiscriminated growth, are not considered seriously.

Here again the results of the new planning approaches are discouraging, particularly of the deregulatory model. Deregulation in Madrid has meant that practically all land is now open for development and that their owners do have vested rights. This is fostering leap-frog development, proliferation of infrastructure, increased demands for facilities, congestion of the transportation corridors, loss of open space, and all the well-known results of sprawl.

The enourmous business that development has become has contributed to a flow of capital to the field, producing an unprecedented concentration in the development industry, both of actors and of land ownership. Most land in Madrid belongs today to a small number of big development companies which are simultaneously construction companies and are owned by a small number of banks. It could be said that we are in fact facing an oligopoly and little competition occurs in the sector. Further out, in small municipalities of a few thousand inhabitants in peripheral locations of the region, a host of small speculators, newcomers to the field, buy and sell land from one day to the next at higher and higher prices, under the complacency if not the corrupt complicity of local officials. Because a lot of money is already invested in all these land holdings, which are legally apt for development, it is clear that sooner or latter most of it will be developed, to high public cost in infrastructure and facilities.

But there could be additional, more troubling consequences that seem to go beyond the field of urban policy to reach the domain of Politics. The scandal of the last regional elections in Madrid seemed to have more than one connection to the real estate world. In June 2003 the new parliament could not be constituted and new elections had to be called upon as two elected members of the regional parliament did not show up on the day of voting, preventing their party from forming a new regional executive. For many, a number of leads suggested at the time that a network of real estate interests could have been behind such facts, although no judiciary investigation could be materialised and nothing was proved.

All of the above leads to wider questions on the nature of planning and of how legislation, as an instrument of planning, should be more responsive to the complexity of cities. It should be obvious that planning is about counterbalancing different demands on the physical environment, often contradictory, which imply making complex decisions, often under the stress of contradictory policy objectives, in complex institutional settings and with limited public resources. That problems never have simple or unique causes, and therefore do not have single simple solutions. And that very often changes in the physical environment of cities find their most relevant explanations in other fields of social life and of thinking.

For sure, simple explanations and simple solutions have a great political appeal: one does not need to understand or to make understable complex issues, nor to introduce a multiple level strategy tackling problems in their complexity. The problem of not recognising the complexity of cities and of planning, and, as a consequence, the fact that existing knowledge of urban processes and of the workings of planning systems is not incorporated into legislation and planning practice, is that simple solutions to complex issues have many unintended consequences, precisely because they were not considered from the start. Or may be some times they were?

In this sense, a greater consideration of the planning principles included in the European Spatial Development Perspective could have positive consequences for planning in Spain, both from a substantive and a process point of view. The emphasis of the ESDP on compact development, control of sprawl, importance of the system of medium size cities, conservation of natural resources, can contribute to a greater inclusion of these topics among the objectives of planning legislation in Spain, and if the link of deregulation with sprawl is clearly understood, to a change in the policy implications and expected results of land-use legislation. From the point of view of methodological outlook, the emphasis of the ESDP on considering problems in their three dimensions, environmental, economic, and social, can contribute to a widening of the objectives and foundations of planning legislation.

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