

Planning Reform and Development Rights in Greece: Institutional Persistence and Elite Rule in the Face of the Crisis

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Abstract

This paper discusses the process of development rights allocation in Greece and the changes to that process which occurred from 2009 onward. It argues that the interaction of institutions which regulate the allocation of development rights, with social practices of formal and informal land development, gives rise to development pathways which demonstrate institutional persistence (North, 1990). In the case of Greece, these pathways range from ‘urban development by state organisations’, to development without planning permission on land that is not owned by the developer.

The crisis was a shock to the Greek governance system, yet the analysis in this paper shows that the reforms of the development rights allocation process followed the pre-existing ‘mentality of rule’ (Foucault, 1991). The paper therefore argues that development pathways reflect a political arrangement between the ruling elites and other social strata (Robinson, 2012). The technologies of governance (Rose & Miller, 1992) and the associated institutions and practices which support elite rule, were sustained, if not reinforced, during the crisis. This analytical approach therefore offers insights of relevance to other countries in Europe and around the world which contemplate reforms to their development rights allocation system.

1. Introduction

The crisis affecting Greece since 2009 has brought to the fore debates about the ability of the country to re-structure its institutional landscape. From autumn 2009 onward, secondary market yields of bonds issued by four high income Eurozone countries (Greece, Portugal,

Ireland and Cyprus) rose to levels which prohibited further borrowing. As a result, the Greek state relied on bail-out funds provided by other EU member states and the IMF, throughout the period 2010-2018. The provision of those funds was linked to the implementation of three Economic Adjustment Programmes, which required an unprecedented macroeconomic adjustment (from a budget deficit of -15.1% of GDP in 2009 to a surplus of +0.8% in 2017, in a context of economic recession) and stipulated comprehensive and extensive sets of structural reforms, including the reform of the planning system to facilitate investment (esp. FDI) and to speed up the planning processes. The results of this adjustment effort have been rather underwhelming in terms of economic development.

The paper will look into the key institutions regulating the allocation of development rights in Greece, the practices underpinning them and their transformation since 2009. It will do so with the use of theories explaining ‘institutional persistence’ (North, 1990), ‘elite rule’ (Robinson, 2012) and ‘dualism’ (Lewis, 1954). The key argument of the paper draws its inspiration from the work of Acemoglou, Johnson & Robinson (2005a, 2005b, 2006, 2008) on the factors affecting the developmental trajectory of a country. According to them, dual regimes are the main factors of long-term economic lag (see also Fergusson, 2013). Such regimes exclude part of the population from economic, political and state institutions and extract resources from the economy in favour of interest groups. According to the same authors, less extractive and more inclusive institutions boost economic development in combination with an efficient and effective state mechanism, which is able to implement policies in its territory.

In Greece, several re-configurations of the institutions influencing the allocation of development rights (the planning system, property taxation etc.) were undertaken within a relatively short period of time after 2009. The Greek planning system, as most countries’ systems, comprises two main operations: policy & plan making and enforcement-licensing.

The pre-2009 planning system was plagued by complicated procedures and a multitude of often conflicting laws. According to Giannakourou (2005, 2001) it was focused on physical planning, was centralised, lacked flexibility, it was slow to update and lacked efficient and effective mechanisms for the transparent negotiation of the interests involved in the production of the built environment. Iordanoglou's argument (2013) that the state apparatus was oriented towards formality and procedure and not towards outputs and outcomes, applies for the planning system too.

The system was geared towards the allocation of development rights via practices which Getimis (1989, 1992) sees as aspects of clientelism and Iordanoglou (2013) and Pelagidis & Mitsopoulos (2010) would define as a take-over of the state by interest groups. In that sense, the way that the allocation of development rights was functioning before 2009 facilitated rent-seeking and benefitted social groups and individuals with access to the political system or the state mechanism. However, the percentage of the population who could eventually develop land and own property was big enough to ensure political stability. To explain this apparent paradox, Iordanoglou (2013) and Pelagidis & Mitsopoulos (2010) have argued that Greek elites were masking their extractive practices by creating exclusionary institutions which they made accessible to a wide range of social groups in order to create alliances and to make such transgressions socially acceptable. The allocation of development rights in Greece demonstrates how that 'technology of governance' (Murdoch, 2004) was applied.

The paper examines the changes in the institutions and practices regulating the allocation of development rights in Greece as a case-study of institutional reform during a crisis period. It seeks to answer the question how the post-2009 reforms have influenced the process of development rights allocation and does so by introducing the concept of the 'development pathway'. The development pathways are the outcomes of the interaction of centuries-old

social practices with older (1923, 1979) and more recent (post-1980) institutions mediating the allocation of development rights (like the planning system). Informal pathways sometimes circumvent formal pathways and sometimes operate in alignment to them. The parallel operation of several formal and informal pathways underpins the dualist character of the regulation of development rights allocation.

Following the introduction, the paper explores the literature on the role of institutions in economic development as well as the literature on institutional persistence. Section 3 discusses the methodology of the paper while section 4 focuses on the analysis of the post-2009 reforms and the impact they had on the structure and the function of the development rights allocation process. The paper concludes that if reforms of the regulatory framework of the allocation of development rights were to create inclusive institutions then they would need to focus on tackling social needs (Fergusson, 2013). However, reform attempts thus far have re-shaped the apparatus of the state in a way that centralises power, increases the discretion of central government, creates parallel systems for the allocation of development rights and shifts the tax burden onto property ownership. The outcome is an institutional landscape which follows the pre-2009 mentality of rule (Foucault, 1991) and potentially enhances the de facto and de jure power of the ruling elites.

2. Institutions and Development

This paper adopts the “the institutional assumption”, as per Acemoglu, Johnson & Robinson (2002). They use the work of North (1973, 1990) and Olson (2000), among others, to explain socio-economic development in the West and to argue that one of the most important factors explaining economic growth and development, is the way society is organised. Acemoglu &

Robinson (2012) classify political and economic institutions in

- extractive institutions, namely institutions which prevent pluralism and the effective operation of the state
- inclusive institutions, namely institutions which promote pluralism and the effective operation of the state.

Extractive political institutions concentrate political power in the hands of small elites which in turn utilise their power in order to enhance extractive economic institutions. This vicious cycle may last for generations, even if the elites that have created it are fully substituted (see Michels, 1962, on the iron law of oligarchy). This vicious cycle allows social conflict to escalate relatively easily and rapidly as it leaves little room for advancement, or even for survival, to those without access to the ruling elites.

According to the 'institutional assumption', long-term economic growth and political stability under a regime of low political exclusion and increased economic exclusion, is very hard to achieve. In fact, based on the 'institutional assumption', such dynamically unstable circumstances are likely either to lead to extractive political institutions, under the pressure of oligarchic economic elites or to the opening of the economy, under the pressure of the groups that are deprived from access to economic activity, but not from political expression.

More specifically, Acemoglu et. al (2002) mention that:

a cluster of institutions ensuring secure property rights for a broad cross section of society... are essential for investment incentives and successful economic performance. In contrast, extractive institutions, which concentrate power in the hands of a small elite and create a high risk of expropriation for the majority of the population, are likely to discourage investment and economic development. Extractive institutions, despite their adverse effects on aggregate

performance, may emerge as equilibrium institutions because they increase the rents captured by the groups that hold political power (ibid., p. 1235)

Acemoglu & Robinson (2006a) further argue that certainty over property rights allows society to take full advantage of the ability of its human capital to transform business opportunities into wealth. In contrast, the concentration of power in the hands of small elites does not promote long-term economic development, but nurtures rent-seeking by these elites at the expense of the rest of society. The two authors conclude that rent-seeking institutions create important incentives for elites to prevent reform towards a less exclusive and extractive regime, in order to avoid political substitution. Their emphasis on property rights resembles De Soto's main tenet that the lack of secure property rights, and legal security in general, for broad population strata is a crucial hindrance to economic development (De Soto, 2000). However, Acemoglu & Robinson emphasise institutional inclusiveness and have argued, in 2012, that a necessary condition for economic development is the existence of a powerful, efficient and effective state that exercises full control over its territory, provides public goods and guarantees property rights, contracts and the rule of law.

The gaps in public goods provision linked the retrenchment of the state since the 1980s as well as the emergence of exclusionary institutions and the proliferation of rent-seeking practices are issues that many advanced capitalist economies in the West are currently also grappling with. As far as Greece in particular is concerned, Pelagidis and Mitsopoulos (2010) focus on the prevalence of rent-seeking, the effect of 'stowing-away', as well as the relatively wide range of social strata that had benefited from extractive economic institutions that constituted and, to some extent, still constitute structural characteristics of the Greek economy. Iordanoglou (2013) emphasises the structural character of lobbying by groups of interests and its impact on

the country's fiscal situation. He describes how, since 1974, and particularly after the mid-'80s, public sector employment has grown but the state apparatus' effectiveness and productivity have dramatically dropped. State mechanisms were hijacked by a range of special interest groups, including civil servants themselves in many cases, engaging in rent-seeking practices that were eventually funded via public borrowing. He also describes the post-1974 transition of Greek society to a regime of relatively low political exclusion but with highly extractive economic institutions.

It is worth wondering, at this point, if the prevalence of rent-seeking and stowing away constituted a conscious strategy of the political and economic elites (McFarlane, 2012), or if the state's weakening and the prevalence of such practices favoured the concentration of economic and political power in certain organised groups and business interests (Iordanoglou, 2013). Sonin (2003) argues that, ultimately, the answer is of little importance. According to him, informality and insecure property rights favour oligarchic elites. Therefore, he continues, in economies under transition, deregulation, macroeconomic stabilisation and de jure privatisation will not necessarily lead to economic growth. Roy (2011) points out that 'subaltern' strategies are readily employed by a wide range of social strata and thus argues that 'Informal urbanization is as much the purview of wealthy urbanites as it is of slum dwellers' (ibid., p. 233).

The last concept which this paper will utilise is that of institutional persistence (North, 1990, Scott, 1991). In their discussion of 'history matters' notions, Vergne and Durand (2010) assign to institutional persistence a strong influence by initial conditions and identify 'stickiness of institutional patterns at a socio-cognitive level' as the mechanism which sustains persisting institutions. In organisational systems where institutional persistence exists, there is

institutional stability and incremental change with largely predictable outcomes in the absence of an external shock. Acemoglou & Robinson (2006b) highlight the links between institutional persistence and the maintenance of de facto and de jure power by the elite. They argue that when the de facto political power of the elites is reduced then these elites may well attempt to offset this shift by increasing their de jure power, and vice versa.

3. Methodology

The methodological approach adopted in this paper considers the process of allocation of development rights to be key in revealing the actual workings of the institutions regulating land development. Therefore, the formal planning framework is not necessarily the structure that explains the allocation of development rights in its entirety. Instead, the paper tries to understand that process by looking into the ways in which development rights are actually allocated through a wide range of institutional arrangements and social practices.

The concept of the Development Pathway is a novel analytical tool which this paper introduces. A Development Pathway comprises institutions and practices which structure development rights allocation during the process of conversion of land from its initial status into (re-) developed land. It covers the changes in the status of land from the initial modification of its (legal and use) status, up to the award of planning permission, the issuance of the building permit and the realization of development itself. Each pathway is unique but typically there are overlaps between formal and informal processes between pathways.

The analysis is divided in two parts, pre- and post-crisis. In the first part the paper analyzes the allocation of development rights prior to 2009. These pathways, 11 in total, are grouped in 3 categories according to their relation to the formal planning system (Figure 1). This macro-scale approach is used in order to map out the extractive character of the Greek system of

development rights allocation. Subsequently the analysis looks into changes that have taken place following the reforms in the period 2009-2017. These mainly refer to changes in the legal framework of planning, the legalization of informal development and property taxation. The paper observes how those reforms have impacted the macro-structure of the development pathways.

The paper utilizes schematic diagrams in order to outline formal and informal processes and their interrelations, across development pathways and to explore social practices further. The bulk of the data about the legal framework came from documentary analysis of the relevant Laws and Presidential Decrees as published in the Government Gazette. Information about the practices and routines underpinning each pathway came from previous work on the analysis of the Greek planning system (see Technical Chamber of Greece, 2016) as well as from other relevant literature and interviews with six (6) highly experienced planning academics, planners and real estate development professionals. These sources were used in order to test the relevance of the documentary analysis and to triangulate the findings.

4. Analysis of the Greek system of regulation of land development

4.1 The particularities of the Greek land and property development model

The socioeconomic importance of land development in Greece and the associated rent seeking and usurpation practices have been widely discussed in the literature on urban development and planning in Greece and are linked to historical processes, initiated hundreds of years ago. Usurpation practices can be traced back to the 1830s when Greece gained its independence from the Ottoman Empire (for example see Hatzimichalis, 2014, on land grabbing). Tounta

(1998) has described the way that many peri-urban forests in Attica, that were public property according to the Greek Constitution, have been converted to developable land through a process of property and development rights transfers and land use transformations that is still ongoing, almost 2 centuries later.

Another critical juncture for the formation of the current land development model can be traced back to the beginning of the 20th century. Yiannakou (1993) has explained how the policy of sub-division of large public estates into small plots and their distribution to destitute farmers in the 19th century or to refugees from Asia Minor following the population exchange of 1922, reinforced small scale ownership in the periphery of Thessaloniki. This, alongside with town planning legislation that was enacted with the Town Planning Decree of 1923, laid the foundations for post-war urbanization which turned agricultural land into urban land and former farmers into urban property owners and sometimes even to developers.

The post WWII era was a period of intense urbanization when these practices were consolidated, systematized and spread. As Vaiou et. al. (1995) point out, urban development policies in post war Greece served various functions. They provided housing and employment and promoted consumption, but also ensured political stability by dampening the appeal of Communism. Leontidou (1990) and Maloutas (2003) have stressed the importance of urban development as a redistributive policy which supported socioeconomic mobility and the integration of internal migrants into Greek cities. Mantouvalou (1995) has described the Greek model of cumulative, piecemeal process of land development that is based on small scale capital and property ownership. She argues that the participation of a wide range of social groups in land development, has contributed to creating social and political consensus around the various informal social practices and institutions constituting that process.

Gradually the notion that ‘construction is good for the economy’ took hold and became a core principle of economic policy. Boosting urban development as an economic policy was characteristically named ‘shadow planning policy’ (*adili poleodomia*). It often affected the land development process decisively and in ways which frequently contradicted declared planning policy goals. The social consensus in favour of this approach has been a key reason why few formal planning mechanisms were introduced in the first post war decades. State intervention in spatial transformation processes focused mainly on providing the regulatory framework and not so much on investing in urban infrastructure and social amenities in expectation of long term social and economic returns, as the case in Western European welfare states was. It is indicative that mechanisms for capturing value in the form of obligatory land and monetary contributions were only introduced in 1979 and eventually came into full effect with the planning reform of 1983 (law 1337/83) which introduced a fully-fledged system for urban expansions (Economou et. al., 2007). Throughout the post-war years, private interests investing in land development were able to extract significant monetary returns which the state only partially managed to capture via general taxation in order to fund urban infrastructure and other social needs. As a result, public goods provision and the infrastructures and amenities in place are not always capable to cope with the needs of the population or with shocks like those occasioned by climate change.

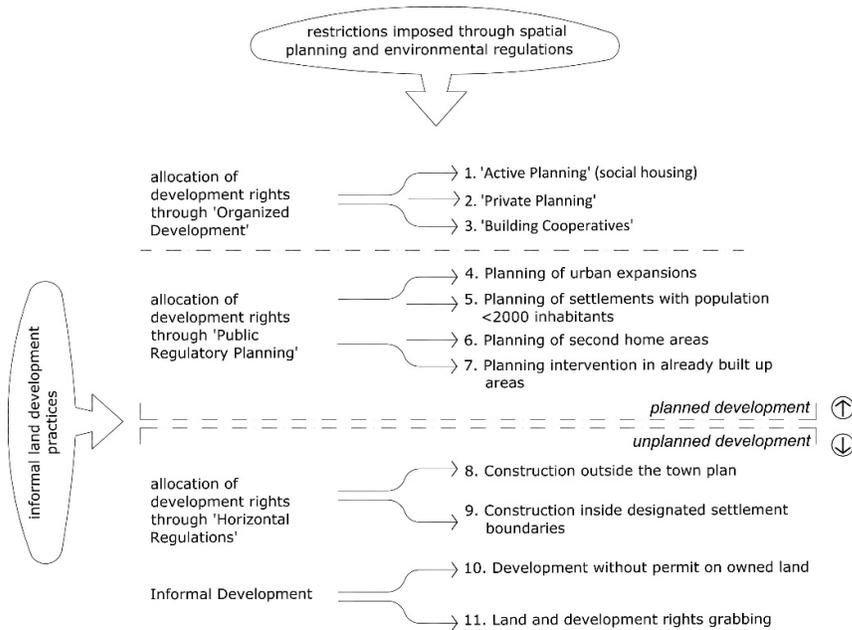
The introduction of spatial planning as a systematic domain of public policy supported by relevant institutions in local, regional and national level did not constitute a break with the practices of the past. The production of spatial plans flourished with support from EU Structural Funds during the 1990s and 2000s while the legal framework also evolved (L. 2508/1997, L.2742/1999) and planning education and research expanded. However, planning remained

weak and was treated as an instrument to valorize land and to offer employment opportunities for various professional groups involved in land development, namely engineers, lawyers, real estate agents etc.

4.2 Regulating the allocation of development rights prior to 2009 – the eleven development pathways

The analysis for the pre-2009 period unveiled 11 development pathways (see Figure 1). The development pathways presented in Figure 1 are split in two groups. Pathways involving the allocation of development rights through planned development were included in Group A (Nrs 1-7) and all other categories of development without plans were included in Group B (Nrs 8-11).

Figure 1: The eleven development pathways at the eve of the crisis



The split in two groups shows how the planning system coexists with other development rights allocation processes. The ‘weak character’ of planning in Greece (Chorianopoulos et. al., 2010) can be attributed to the persistence of the institutions and practices underpinning this dualism.

Group A: Development which follows a spatial plan

This group comprises seven development pathways that are divided in two subgroups: ‘Organized Development’ and ‘Public Regulatory Planning’. ‘Organized Development’ includes all forms of master planned development pursued by a single agent, public or private, that are based on a predefined investment scheme. Organized Development includes three development pathways. The first one (*‘active planning’*) is, in effect, the social housing provision pathway. The pathway was established with Presidential Decree 1003/1971 and Law 947/1979 but has been rarely used, and is practically inactive since the 1990s. The second pathway, *‘private planning’* involves large scale developments initiated by the private sector, mostly resorts and second home developments. The main legal references of this development pathway are Law 1947/1991, Law 2508/1997 but also Law 1650/1986 (art.24), Law 2545/1997 and Law 3982/2011 referring to the organized development of economic activities. This pathway was, in effect, an attempt to create an alternative to the dominant model of land development which is based on small scale capital and diffuse land ownership. The third pathway, the *‘Building Cooperatives’* is based on practices and institutions that go back to the beginning of the 20th century and refers to collective, organized speculative activity. The main specialized legal references for Building Cooperatives include Law 602/1915, Law 201/1967, Decree 886/1971, Decree 17/1984, Law 1667/1986, and Decree 93/1987. This pathway involves the formation of associations (co-operatives) which acquire land, typically without development rights, with the purpose of converting it into a 1st or 2nd home area for the benefit

of the members of the cooperative. In several cases, membership to these associations is contingent on membership to professional groups such as doctors, judges, employees of a specific ministry etc. Building cooperatives have been frequently involved in public land grabbing, especially in forest and coastal areas, i.e. in areas of high environmental amenity which were not marketized in the first instance but where the middle and upper classes aspired to live in (Tounta, 1998). This is a typical manifestation of how special interest groups ensure privileged access to extraordinary benefits either by influencing state actors and institutions or by circumventing them altogether.

The second sub-group of development in accordance to a plan is 'Public Regulatory Planning'. This involves the allocation of development rights via the preparation of spatialized development regulations, a process of detailed plan making for existing urban areas or urban extensions. As part of this pathway, land and property ownership is restructured and detailed regulations are applied onto buildable land plots, usually following the stipulations of higher order spatial plans that are more strategic in nature. Responsibility for this process is entirely assumed by the public sector. The four main development pathways in this subgroup correspond to four types of detailed planning instruments referring to a) planning for urban expansions, b) planning in small settlements up to 2000 inhabitants, c) planning in areas of second homes and d) planning in already built up areas. The main legal references for 'Public Regulatory Planning' are Laws 1337/1983, 2508/1997 and Law 4447/2016, which substituted Law 4269/2014.

Public Regulatory Planning pathways are a key domain where small property owners and investors are active. This type of planning is often non-visionary and mostly focuses on the regularization of existing development, which was actually the core aim of the relevant

legislation, when it was introduced. It serves the interests of small-scale landowners and is mainly concerned with providing public goods. Exceptionalism is a key feature of pathways in this sub-group, for example exceptions are granted from planning rules that constrain development on small size plots. The piecemeal approach, the high level of complexity as well as the high cost of the two-stage plan approval process have rendered Public Regulatory Planning provisions difficult to apply: detailed urban plans often become outdated before they come into effect (ILG, 2006). Land speculation and disputes over property rights further delay the process for several years.

A good illustration of the issues around Public Regulatory Planning are the ‘planning interventions in already built up areas’ which aim at upgrading public infrastructure and at renewing the building stock. This pathway was introduced in the planning system in 1979 and was carried forward during the 1980s and 1990s. The main legal references for this development pathway are Decree 1003/1971, Law 947/1979, Decree 4/19/1978, Law 1337/1983, Law 1577/1985, Law 2508/1997. However, hardly any of those legal provisions was ever implemented, due to the complexity of property interests and multitude of individual owners. This is a strong indication of the weak capacity of planning institutions in Greece to resolve conflicts and to promote collective interests in land development.

Group B: Development without a spatial plan

Development without spatial plans refers to the allocation of development rights through general ‘horizontal’ regulations or via informal practices. Two development pathways belong in this category. The first one, ‘Construction inside designated settlement boundaries’, enables authorities to grant building permits inside settlements with population up to 2000 inhabitants.

This was introduced in order to facilitate reinvestment in remote rural and mountainous areas where local authorities did not have sufficient resources to prepare detailed plans. As a result, a large share of the territory of the country was left outside the scope of plan-making, given that the majority of settlements in Greece are located in remote, rural and mountainous areas. More importantly, that pathway also covers numerous densely built areas of suburbs and second homes which evolved from settlements located in the periphery of metropolitan areas (see Yiannakou, 2015a).

The second such pathway is ‘Construction outside of the town plan’. This is a blanket regulation that allocates development rights to land plots located in areas that are not covered by statutory plans, based on criteria related to the surface of the plot and technical parameters. This regulation, introduced in 1923 (Decree of 17/7/1923), is one of the most persistent institutions in Greece. It has withstood several planning reforms and has dramatically shaped the majority of peri-urban landscapes and tourist areas. It practically means that every plot of land has development rights attached to it and allows for real estate development to take place without much explicit consideration for social and environmental cost or for the provision of public goods. In practice, this pathway has become a precursor of ‘Public Regulatory Planning’ pathways. Areas built ‘Outside of the plan’ are usually included into statutory plans once they have become dense enough, but this process can last quite a long time, more than 15 years, in some cases.

The last two pathways are about what could be called ‘Informal land development’. These pathways cover land development by members of a wide range of social strata, from marginalized groups (like the Roma) to the upper class. Pathway 10 refers to development without planning permission or with disregard for planning regulations, on land owned by the

developer. The promoter-developer is usually a household building a dwelling but even shopping malls and public facilities have been developed like that. Most land in Greece has development rights attached to it. This means that in the case of Pathway 10 the motives of the actors engaging in such practices are usurpation of additional development rights, cost reduction through permit fee, engineer fee and social insurance avoidance. Pathway 11 refers to development of land not owned by the developer. In addition to the motives mentioned under Pathway 10, actors engage in such practices because they cannot access land via the land market due to their marginalization or, more frequently, because they want to marketize land in public ownership or under protection (forests, beachfronts, natural reserves etc.).

Mantouvalou & Mavridou's research in Western Athens' working-class neighborhoods (Mantouvalou & Mavridou, 1993) which urbanized rapidly up to the 1980s, has demonstrated that the variety of informal land development taking place there, obeyed specific social norms. For instance, the surveyors illegally subdividing agricultural land did keep the legally required minimum size of urban plots. In similar fashion, administrators would accept bribes in exchange for tolerance to some practices (like using basements as living spaces) but would not yield when it came to other practices. This was in effect a very pragmatic 'shadow planning' process which made it easier to incorporate such urbanized zones into the formally planned urban fabric later on. From the early 1970s onward, such practices have become widespread in 2nd home areas, many of them built up by middle or upper-class residents, often combining elements from other pathways, like the 'Building Cooperatives' (Pathway 3). The dictatorship's role in mainstreaming this approach to land development was crucial.

The practice of development on land not owned by the developer (Pathway 11) is facilitated by the lack of a comprehensive cadaster system, the creation of which was a reform required

in the recent Economic Adjustment Programmes. Other than some Roma settlements, this pathway currently includes practices like the occupation of public space or public property (squares, pavements, beaches etc.) in order to provide commercial retail or leisure services or the construction of 2nd homes on the coastline or in forest areas. According to Mylonas et al (2014), the amount of land with ownership disputed between the Greek state and private owners (including cooperatives) is around 20% of the total national territory.

Figure 2: Practices of land grabbing and development rights grabbing

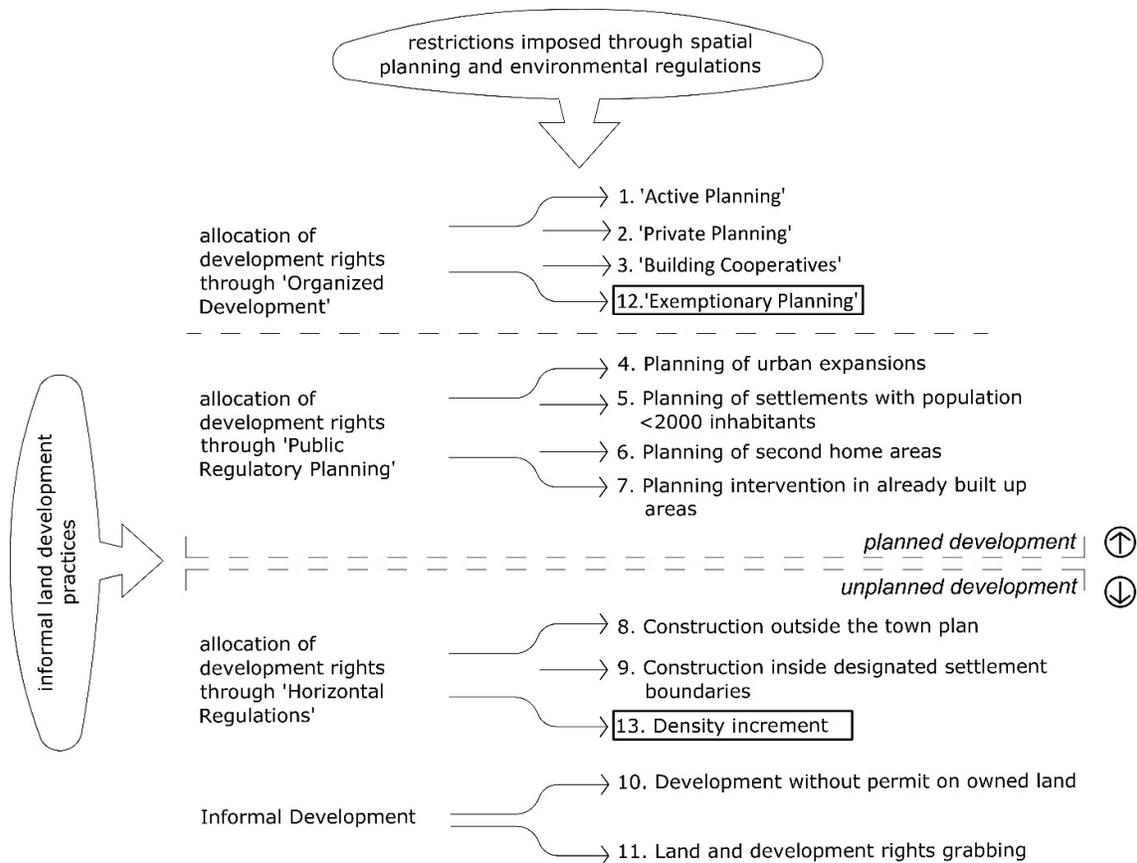


4.3 Regulating the allocation of development rights after 2009

The framework regulating the allocation of development rights has been subject to significant reform attempts under the recent Economic Adjustment Programmes. First, the reforms of the formal planning system (consolidated with Law 4269/2014) created a new pathway to fast-track large investment via comparatively streamlined centralised plan-making and licencing procedures. Secondly, the long-established policies of low property ownership taxation were reversed via Law 4223/2013. Since then, it has become less financially viable for many low

and middle income households to use property as a repository of wealth. Thus, social practices of land grabbing and usurpation were made much less attractive from a tax point of view, as was any form of land and property ownership. Last but not least, since 2011 but particularly after 2013, a legal framework for legalising various types of irregular and illegal construction has been put in place. This affected the informal development pathways (Nrs 10,11 in Figure 1) because many informal practices were integrated into a legal framework of ex-post allocation of development rights that operates in parallel to the planning system. Figure 3, below, shows the development pathways following the post-2009 wave of reforms.

Figure 3: The development pathways after 2009



The reform of the spatial planning system took place mainly in the period after 2011 and comprised a series of incremental changes leading to the Spatial Planning Act of 2014 (Law 4269/2014) and its revision in 2016 (Law 4447/2016). As mentioned, a key objective of the planning reform(s) was to create a more favorable institutional environment in order to facilitate investment. This would also make the privatization of public land more attractive to investors. The new provisions have effectively created a 12th pathway, 'Exemptionary Planning'. This pathway combines elements of 'Active Planning' (Pathway 1) and 'Private Planning' (Pathway 2), in order to speed up the process of transformation of space for schemes involving large capital investment on public land disposed as part of the privatization process. It is based on the special legal and institutional framework for the privatization of state property that was established after the first Memorandum Agreement was signed (Laws 3985 & 3986/2011).

The Hellenic Republic Asset Development Fund (HRADF) was set up following the first Memorandum Agreement and a large portion of public assets were transferred to it. Under the same agreement, special planning powers were granted to the Ministry of Finance to act as the promoter of special spatial plans for the development of state property (in Greek: ΕΣΧΑΔΑ). These plans followed a fast track approval process under the direct responsibility of the Prime Minister's Office. A similar mechanism was put in place to allow the Ministry of Development to promote 'Special Spatial Plans for Strategic Investments' (in Greek: ΕΣΧΑΣΕ). The main legal references concerning Pathway 12 are Law 3894/2010, Law 3982/2011, Law 4002/2011, Law 4072/2012, Law 4092/2012, Law 4146/2013, Law 4179/2013 and Law 4276/2014. The provisions (Law 4062/2012) concerning the biggest urban regeneration project in Greek history at the old Athens airport (Hellinikon) could also be considered to be part of this pathway, though this project is a sui generis case in legal and spatial planning terms.

The introduction of Pathway 12 was criticized on the grounds that it established a parallel planning framework that bypassed the existing planning system and transferred power to central government (Modlich et. al., 2014). The Spatial Planning Act of 2014 (Law 4269/2014) introduced the concept of the Special Spatial Plan (SSP, in Greek: ΕΧΣ) and clarified the relation between SSPs and other planning instruments at local and national level. However, this didn't reverse the exclusionary potential of SSPs, which retained their status as local scale, higher order, plans which supersede and circumvent the provisions of Local Plans (in Greek: ΤΧΣ, see pathways nr 4-6).

The 2016 revision of the Spatial Planning Act (Law 4447/2016), came after various interim amendments. It expanded the scope of 'Exemptionary Planning' to cover other types of projects. Hence, a reform that aimed at simplifying the planning system ended up enhancing exclusionary institutions in the allocation of development rights by creating yet another development pathway directly under the control of the highest levels of government.

The pathways of informal land development have also gone through significant changes from 2011 up to 2017. These changes had actually begun to take shape before the first Memorandum Agreement was signed. They were part the Ministry of the Environment's reform agenda to improve energy efficiency and to account for environmental costs in property development. The core idea behind those reforms (see Law 3819/2010, Law 4014/2011) was to give the opportunity to property owners who had engaged in informal development to be formally awarded those development rights retrospectively, by paying a fine. There were sporadic previous laws which provided retrospective legalisation of buildings or efforts to deal with entire settlements. The new legal regime tried to deal in a systematic way with issues like living

spaces (i.e. an extra room) which were created out of parts of the property that should have remained 'open' (ie balconies etc.). A similar measure was also introduced in the new Building Regulations as an incentive for promoting environmental improvements in densely built urban areas (L. 4067/2012).

Although these laws were very popular among property owners, the Council of State stipulated that permanent legalization was not in line with the constitution. Therefore Law 4178/2013 was introduced, which only allowed temporary legalization for 30 years. The cut-off date for declaring irregularities was set at February 2015. Law 4178/2013 also expanded the scope of legalization to cover a wider range of practices. Following 10 extensions of the cut-off date, Law 4178 was replaced by a law with a broader scope (Law 4495/2017) which further promoted informal development practices and established public land banks through the transfer of tradeable development rights. Thus a 13th development pathway ('Density Increment') was established as a form of '*a posteriori*' value capture mechanism which systematically and predictably legalizes irregular construction and channels the fines into a new 'Green Fund' (Law 3889/2010) in order to finance urban environmental improvement projects.

In practice, this pathway facilitates the appropriation of additional development rights by landowners and property owners because it systemically incentivizes them to build in addition to what planning and building regulations stipulate in order to legalize it after construction has finished (which they do, in large numbers). A total of 2.4 billion Euro had been collected from fines until 2017 (Lialios, 2018), a significant amount by Greek standards. However, since 2012 the Green Fund can only use up to 2.5% of that amount per year for investments into urban area improvements. The remaining funds count as surplus in public sector accounts and

therefore reduce the net total amount of public debt.

5. Discussion and conclusions

The paper refers to a period of major socio-economic change, during which the livelihoods of a significant proportion of the Greek population were impacted profoundly. The tough macroeconomic adjustment which Greece went through has also had an impact on the system regulating the allocation of development rights. This paper looked into how the institutions and practices governing the allocation of development rights changed as a result of the post-2009 reforms, whose stated aim was to improve the effectiveness and efficiency of the system, especially with respect to (foreign direct) investment.

The analysis in this paper supports the claim that the reforms follow the mentality of rule that preceded the crisis and therefore did not alter the extractive character of the institutions regulating land development and the associated social practices. The findings of this paper also confirm the arguments of Roy (2011) about the prevalence of informal practices across social strata and those of McFarlane (2012) and Sonin (2013) about the usefulness for the elites of rent-seeking practices and exclusionary institutions. The case of the development rights allocation in Greece confirms many of the other insights of the institutional approach, like institutional persistence and Michels' iron law of oligarchy.

In addition to these findings, the paper has also demonstrated how formal institutions and informal practices are interwoven into several land development pathways, associated with the operation of extractive institutions which, among other things, facilitate rent-seeking and the usurpation of development rights and public land by individuals or interest groups. Section 4 demonstrated how land development in Greece is underpinned by a system of development

rights allocation which tries to accommodate a range of interests through many different parallel processes, which were called pathways in this paper. These pathways, reflect a range of political rationalities as well as governmental technologies (Rose & Miller, 1992) and have emerged as a response to challenges which the political system was faced with at the time of their introduction (ie to give internal immigrants access to urban housing, to facilitate FDI etc.). Overall however, and in spite of the political benefits such a flexible approach has for maintaining social peace in the short term, the end result is a web of dualist practices, exceptionalism and very persistent extractive institutions.

Some of those pathways, mainly top-down formalist attempts, were rarely used. However, few (if any) of the pathways that ever emerged have actually been abolished. In most cases, a pathway evolves in order to adjust to contextual changes. This is a generic feature of the Greek system regulating spatial transformation, which helps the political elites to manage conflicting interests in the short term at the expense of efficiency and long-term policy effectiveness. The creation and survival of this system however is not due to lack of planning 'know-how' but reflects a 'mentality of rule' (Foucault, 1991) based on reactive short-termism i.e. keeping social peace by satisfying the demands of interest groups which have access to and can exert influence on the political system, as and when those demands arise.

It is within this context that the allocation of development rights in Greece contributes to sustaining the elite's hold on power. In similar fashion to what Sonin (2013) observed, fragmentation, complexity and the conflicting rationalities of the institutional landscape, combined with tolerance towards or active encouragement of social practices and norms which undermine formal planning processes and increase institutional complexity and regulatory ambivalence and contradictions, make it easier for the ruling elite to engage in extractive

practices. Greek ruling elites have the networks, the resources and the know-how which allows them to push their real estate investment projects through the system, even if it means that new legislation has to be passed, while investment projects of ‘outsiders’ are left stuck in a regulatory quagmire.

Insofar as development rights allocation is concerned, the crisis has affected both the formal and informal development pathways. The reform of the formal planning system, initiated through the Economic Adjustment Programmes, notionally aimed at improving efficiency, transparency and responsiveness and at utilizing public sector assets to attract FDI. Overall, 24 legal changes have taken place within a period of less than 5 years (Yiannakou, 2015b). The analysis in this paper shows that the reforms:

- a) reinforced centralization by shifting more powers back to central government,
- b) established an additional pathway which bypasses the main spatial planning system and brings potential investors in direct contact with the highest levels of government,
- c) systematized the formalization of specific ‘informal’ land development categories and thus rewarded property owners who had built irregularly in the past and directly incentivized future such practices. Some of the value these landowners had effectively usurped in the form of additional development rights was monetized and extracted in the form of a fine.

Relatively few SSPs have been prepared and approved so far because the flows of FDI which these legal changes aimed at streamlining were relatively limited. Anecdotal evidence suggests that, in some cases, SSPs drafted by foreign investors were blocked by central government when approvals by the archaeological service and by the forest service were sought. Additionally, several public asset privatizations resulted to a transfer of assets to consortia between Greek interests and international investors.

The new framework for legalizing irregular development (Pathway 13) uncovered all sorts of minor or major irregularities, some of them fictitiously created by the way older building and planning regulations were interpreted. Property owners paid a fine in order to formally acquire time-limited development rights while a new wave of ‘legalizable’ development which does not respect planning and building regulations in the first instance was initiated in order to take advantage of Pathway 13. Therefore, these laws converted informal densification and irregular development into a regularized practice of pre-sanctioned retrospective acquisition of additional time-limited development rights on a massive scale. However, this massive formalization and wealth transfer operation, does not adequately address the quality of life issues in densely built urban core areas or the social equity issues which informal development by marginalized groups is a facet of.

All this is in line with the long tradition of development rights allocation via state-sanctioned social practices which circumvent the planning system. If higher densities or converted balconies were acceptable in principle so far as planning policy is concerned then instead of creating a parallel system, the political elite could have put in place planning and building regulations which would allow that type of development in the first place (i.e. via higher plot ratios, a general permitted development order for extending homes or closing balconies etc.). Similarly, initiatives to provide access to land markets, social housing provision or seasonal settlement facilities for populations who need them would have gone a long way in directly addressing issues of that nature.

The choice of the political elite to provide ‘the people’ with opportunities to actively undermine the rule of law and any institutionally mitigated social consensus on the allocation of

development rights, as expressed in spatial plans, building regulations etc. is an expression of a phenomenon that Iordanoglou (2013) has observed and analyzed in generic terms. It is telling that the moral justification offered for putting in place Pathway 13 was that the money collected will be invested in environmentally degraded urban areas. Only a small percentage is used for that purpose every year while, regardless of intentions, the rest is offsetting public debt as a matter of fact.

This paper demonstrates that the reforms carried out after 2009 have not addressed some of the basic deficiencies of the development rights allocation system in terms of capturing development value for funding infrastructure or for addressing the urban quality of life issues plaguing Greece's cities. In fact, the reforms may well have enhanced de jure and de facto elite power: The dualist character of the system remained intact, pathways which allow the planning system to be bypassed have not been dismantled and additional such pathways were created. Pathways which allow development rights on public land to be allocated in parallel to the stipulations of local plans have been put in place as well. In that sense, the pre-existing 'mentality of rule' was sustained. Notwithstanding the challenges faced by those who were called to deal with the Eurozone crisis, the findings in this paper should be seen as an opportunity to re-think the scope, the goals and the eventual effectiveness of externally mandated structural reform programmes.

If the institutional hypothesis is anything to go by then, given the findings of this paper, it should not come as a surprise that the Greek economy suffers from low investment rates and thus from low growth, in spite of several rounds of structural reforms and although a dramatic macroeconomic adjustment was achieved. Clearly, the regulation of the allocation of development rights is just one of many factors affecting investment and economic

development. However, the persistence of the political elites in enhancing the existing ‘mentality of rule’ in spite of the crisis, invites the question why they seemingly have no interest in creating an efficient and effective state as well as in putting in place more inclusive institutions which would overtly and directly tackle social need and would spur growth by enhancing certainty, transparency and the rule of law. One hypothesis which might explain this behaviour is that part of the Greek elites and of Greek voters do not wish to run the risk of (political) substitution that comes with economic development (Acemoglu & Robinson, 2006b). Exploring this hypothesis further seems to be a very promising direction which future research could take.

Finally, it is intriguing that the theoretical contributions on which this paper relied were initially developed in order to explain phenomena occurring in countries much poorer and less developed than Greece. Many of the issues occurring in Greece can be encountered, at varying degrees, in other high income countries of the West. This it may be time to ask ourselves why that is and to re-examine concepts like the ‘Global North’ and the ‘Global South’ in the context of a rapidly transforming globalized economy.

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