



Samuel Neaman Institute
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Technology

Between Regulation and Over-Regulation

Planning and the Market from a Cross-National Perspective

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The Issue

- ❑ The “right balance” between planning regulation and over-regulations is difficult to find, and to sustain through changing market conditions and politics
- ❑ Indeed, planning laws in many OECD countries undergo frequent changes
- ❑ Planning laws draw much criticism from many stakeholders
- ❑ WHY???



Where did it all begin?

- ❑ Modern planning laws (land use/ spatial/ regulations) are much more recent than property rights, land appraisal or land registration
- ❑ They began through the sporadic initiatives of a few cities, not by national governments.
- ❑ The first national planning law was enacted by the UK Parliament in 1909
- ❑ By the 1950s, planning laws had spread globally **But**
- ❑ **BUT** Communist countries did NOT have any need for planning laws
- ❑ The next leap took place after 1990 with the gradual adoption of planning laws by former communist countries – and by China (!)

TODAY

- ❑ Most nations today do have planning laws (but in many developing countries these are dormant or irrelevant)
- ❑ All OECD countries do have active planning laws.

Why did it all begin? The original rationales for planning regulations

During the after the Industrial Revolution:

- **Desire to prevent or reduce health and fire hazards – building codes, plot sizes, floor-area ratios, basic land use categories**
- **Need to manage traffic so that the mass economy could function**
- **Desire to ensure minimal open and public spaces**
- **Designation of plots for schools and other public serves**
- **“Mixed use” was allowed! natural and accepted.**

- [MISUSE: In the USA and to some extent elsewhere: exclusionary use by elites to designate separated homogenous housing zones to keep away from less affluent groups]

So, “if it’s so good, why is it so bad”?

Or: why is it today so difficult to find an appreciate balance between the need of the market and public interests?

Inherent conflict between:

Reasonable **certainty**

and at the same time

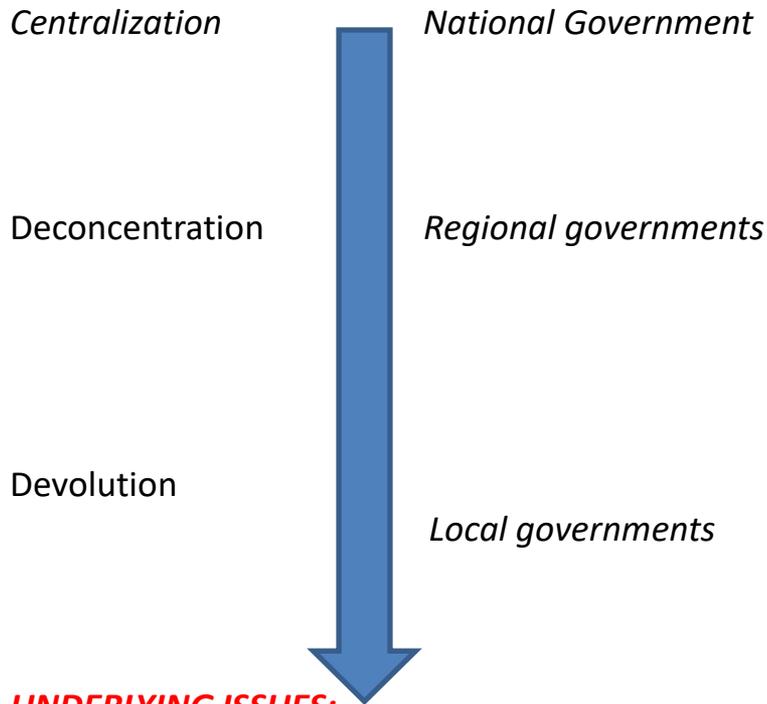
Reasonable and accountable **flexibility**

Dimensions of Planning Laws

(re. local development initiatives)

- 1) Institutional hierarchy – who must approve local plans, permits
- 2) Hierarchy of plans – how many levels of plans/ policies have to be taken into account to issue planning permit?
- 3) Degree of rigidity (detail) or flexibility for discretion within plans
- 4) Range of topics that a prone to over-regulation
- 5) Amendments or updates to plan: Can the system be **“project led”**?
- 6) Extent of rights of appeal to the courts – and degree of litigiousness (and: is planning constitutionalized?)
- 7) Time! time!**

Dimension 1: institutional hierarchy



UNDERLYING ISSUES:

Degree of trust in local elected governments

Or: Desire to overcome NIMBY objections

Or: Speed up development

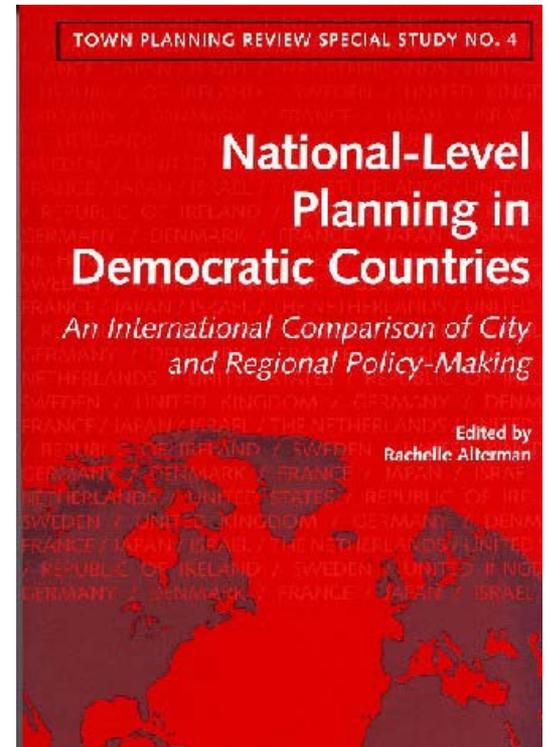
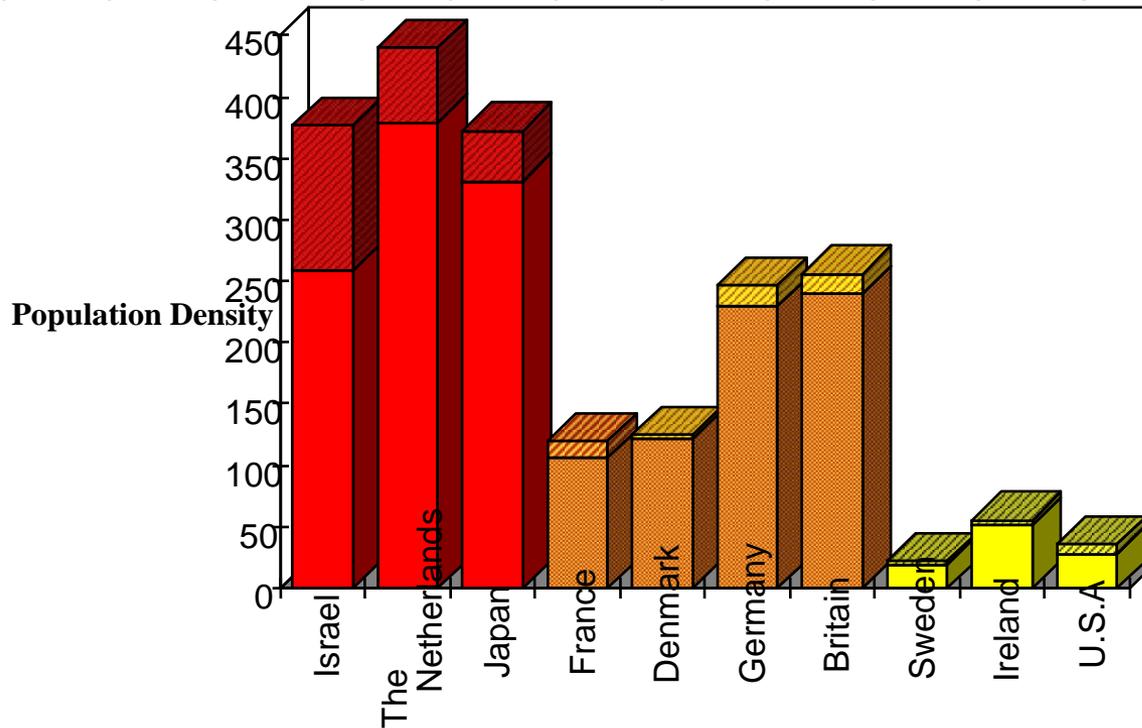


Fig. 1.1: Degree of Institutionalization of National Spatial Planning in Ten Countries by Population Density



Additional countries:

- Australia – NSW
- Spain
- Portugal
- Poland



Greece – MOST extremely centralized. Almost all planning decisions must be approved by national government or even the President!

Degree of Institutionalization

	High (The "Haves")		1995
	Medium (The "Half-Haves")		- Projection to 2020
	Low (The "Have-Nots")		

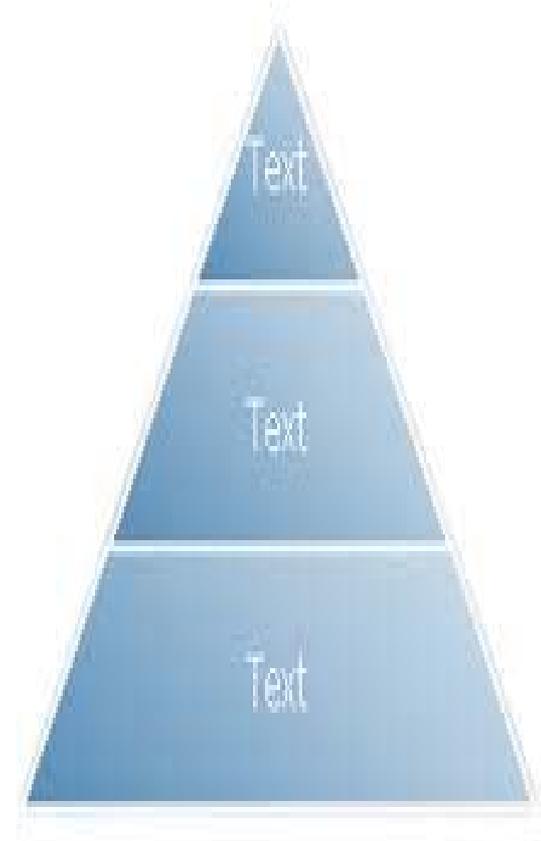
Population density = persons per square kilometer

Dimension 2. Hierarchy of plans

- More countries have added national-level policies – but they are usually not regulatory, not legally binding
- Some countries have added regional level plans, others (UK) have abolished them

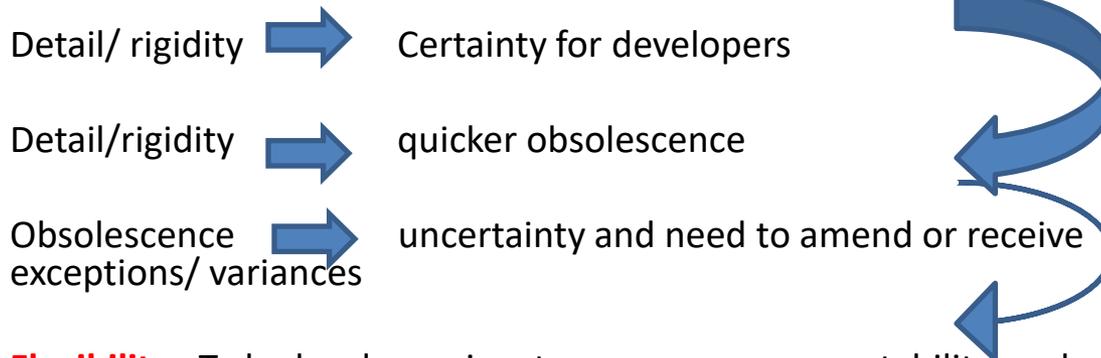


- **Greek law**: before the new 2014 planning law there were **6-7 level of plans**, now reduced. (Regional plans abolished?)
- Important: On the local level, 3 levels are to be merged into 2. **BUT!**



Dimension 3: Degree of rigidity (detail) vs. flexibility for discretion

Conundrum, “Catch 22” regarding the degree of detail in binding plans:



Flexibility: To be legal, requires transparency, accountability, and TRUST IN GOVERNMENT

Discretionary decisions if the courts tend to mistrust local governments too, then discretion might lead to more going to court



Greek law: 2014 substituted the previously “General Urban plan” with a more detailed “Local Spatial Plan”, and made it more regulatory in adding FAR and more detailed land uses



Dimension 4: Range of topics that are susceptible to over-regulation

Has the appetite to regulate gone too far? (depends on point of interest of course).
Examples:

- Monolithic land use specifications that don't allow mixing land uses even if there are no adverse effects
- Rules of expropriation that don't allow mixed public and private uses
- Subjective control of architectural design
- Excessive historic preservation (without consensus)
- Excessive control of fences, minor annexes, internal alterations etc.
- Excessive regulation might correlate with higher violations – illegalities
- Piling on the planning approval process extraneous requirements – example: that have paid all taxes unrelated to the permit



- I am not sure about Greece. What do you think?



5. Amendments or updates to plans

May landowners / developers propose amendments?

- In Greece: No. Some countries allow, others are like Greece; some are “softening” (eg. Sweden).

Are plans “frozen” for a period of time and cannot be amended until reevaluated comprehensively?

- Greece: 5 years for the Local Spatial Plan, except for national type of topics – a general vague list in the law. Could allow local needs, but local governments are unlikely to take the risk of an adversary court decision

- Plans should be reevaluated after 5 years. But evaluation, preparation and approval of an update will likely take several years.



- Greece: the 2014 new **Special Spatial Plans** were to be will be more developers-oriented and able to override the Local Spatial Plan for strategic topics. However, now frozen due to the current government’s political views.

Are small variances, exceptions allowed with a speedy local process?

- **Note:** in Greece, a spot changes in use – eg. From housing to office – must be approved by a Presidential Degree after evaluation by the Ministry and then the Council of State.

6. Extent of rights of appeal; litigiousness

- OECD countries vary widely in intervention by the courts – derived from legal rights of stakeholders and degree of litigiousness.
- Legislation and planning tradition vary in degree of vagueness open to contestation in courts
- Countries vary widely in the number of quasi-legal and court instances
- Some countries have planning obligations embedded in the CONSTITUTION in detail, among them Greece
- The Greek Constitutional Court has made significant decisions interpreting the legislation. It leans towards greater central control reflecting less trust in local governments
- **These differences can create significant additional uncertainties and costs to developers**



Dimension 7: Time time time

The ultimate question: HOW LONG?

My estimates (no data)

In Greece (and some other OECD countries) it takes several years. Too long.

But there are countries where approval is much faster – up to 2 years.

What are the costs to society and the economy?



Thanks

Special thanks for some instant-Greece updates by my two
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