2 Land policy

How to deal with scarcity of land

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Introduction: from land use planning to land policy

Land use planning is the 'process by which public agencies, mostly local governments, determine the intensity and geographical arrangements of various land uses in a community' (Fulton 1999: 7). In this book, land use planning is not framed by a scientific theory, a design activity, or a 'value-neutral' technique. It is understood as a *public policy*. As such, it aims to solve a public problem usually connected with inefficient use of public infrastructure or with the insufficient coordination of land uses that, for instance, leads to sprawl or induces nuisances. As a public policy, it draws its legitimacy from a legal basis (e.g. a constitutional article or the land use planning law), defines the public actors in charge of implementation (e.g. planning agency), and provides them with a budget, different competencies, or means of action. Through different *policy instruments*, a public policy aims 'at modifying the behavior of social groups presumed to be at the root of [. . .] the collective problem to be resolved (target groups) in the interest of the social groups who suffer the negative effects of the problem in question' (Knoepfel et al. 2007: 24). Land use planning has typically developed a series of hierarchical plans (policy instruments) to control the actions of those actors, namely the landowners, whose effective behavior has been identified as leading to uncoordinated growth. Therefore, landowners can be identified as the *target groups* of the land use planning policy (Knoepfel and Nahrath 2007). However, due to their strong position as titleholders, they are well equipped to resist. Here lies the conundrum of plan implementation: how can comparatively weak political-administrative actors impose land use restrictions (plans) on strongly protected target groups?

Historically this problem was de facto mitigated through a focus on areas with little conflict potential. At the margin of cities, new development could take place on greenfields where complexity was low and resistance weak. Similarly, large-scale redevelopments in American cities tended to take place in neighborhoods of lower socio-economic level with weak political connections (Bullard 1983; Wei and Knox 2015).

In a context of resource scarcity, this strategy that avoided directly facing the power of landowners or their representatives was reaching its limits.

But planners are typically insufficiently equipped to deal with power issues; they may sometimes feel helpless in front of the hidden power games at play in complex urban environments (Flyvbjerg 2006). However, the growing scarcity of land available for development in cities led to deep changes in the planning field. Land is more and more seen as a resource that needs to be properly managed, not only to comply with sustainability standards, but also to reduce the cost of an expensive way of life based on resource squandering.

In parallel to this changing reality of the planning field, theoretical concepts needed to evolve as well. In this chapter, we present four complementary 'shifts' or 'turns' that took place in the planning field – (1) the resourcial turn, (2) the institutional turn, (3) the actorial turn, and (4) the instrumental turn – and show how they have paved the way to the *land policy approach*. The main objective behind these theoretical considerations is to demonstrate that land policy is more than just an opening of land use planning towards other policy fields or property rights. While land use planning traditionally focused on the definition of development objectives, land policy focuses on their achievement. In this sense, while land use planning is about social or technical problem solving, land policy focuses on the actors and their interests in land. These actors actively devise strategies, e.g. select specific policy instruments, in order to bring their plan to life. In this book, we aim to show that land policy introduces a new paradigm putting strategic actors at the centre of the analysis. This analytical shift has great relevance not only for planning theorists, but also for practitioners.

This chapter is structured as follows: first, we define land policy (section 2). Land policy does not refer to a specific mode of regulation defined in the law. It refers to the strategic combination of instruments carefully thought through by public authorities in order to impose themselves in front of other private (or public) interests and reach public planning objectives. The next sections go back to the four shifts that led to the emergence of the land policy approach.

Second, we discuss the resourcial turn in planning. We show that sustainability objectives challenge planners (section 3). Land is more and more considered a resource that needs to be properly managed in order to meet quantitative and qualitative development objectives. This aids in generating new forms of scarcity: sustainability objectives constrain development because they reduce the set of available solutions due to stricter criteria. Scarcity is a source of conflicts among competing users.

Third, we present land use planning as a regulating intervention taking place within a tight web of existing rights and interests (section 4). To understand the full implication of land use planning and to measure its impact on sustainability, it is necessary to analyze institutions – the 'rules of the game' – and understand their repercussions. These rules are not only grounded in public law (public policies), but also in private law (property rights).[1] Property rights play a central role in explaining the outcomes of planning activities. Whenever possible, strategic actors try to rely on

property rights because they are much more resistant to change than public policies (van der Molen 2015).

Fourth, we discuss the human factor, which explains the difference between formal rules and their implementation (section 5). Land use plans are never implemented one to one. Power issues explain the fundamental difference between plan making and plan implementation. Public and private actors strategically activate certain rules ('institutional shopping') to defend their specific interests and to protect their particular use of the land.

Finally, we explain why an instrumental perspective in planning makes it possible to evaluate the different 'tools' or instruments that actors can use to either reinforce plan implementation or to delay it (section 6). Approaching public policies through instruments has a main advantage (Hood 1983): it provides a framework for the analyst to grasp the diversity of modern governments' operations. In view of the overwhelming complexity of social control through governments, an analysis in terms of instruments gives structure to this complex reality and reduces it to a relatively small set of basic tools.

Land policy – a shift of paradigm

'Land policy' is not a new term, but its definition varies depending on the context and the specific authors. Generally, there is an agreement that 'the term "land policy" commonly covers land development issues that are broader than land use' (Alterman 1990: 16). The concept of land policy aims to move the implementation of spatial development objectives towards a broader perspective than just land use planning alone, taking into account, in particular, the property-right dimension. The following sections will show that the land policy approach results from a broader shift of analytical focus in spatial research. As we show that land policy is more than an extension of land use planning, we also contend that resources, actors, and institutions – including property rights – are determining factors in explaining the outcomes of land policy processes.

By land policy, we mean all the political-legal measures implemented by a municipality to deal with the issue of land scarcity – thus attempting to match the real supply with the potential supply of parcels (Hartmann and Spit 2015). An active land policy refers to *all public decisions and actions aiming to implement politically defined spatial development objectives through changes in the use, distribution and value of land* (Hengstermann and Gerber 2015). Planning is often directed at avoiding undesirable developments (e.g. excessive development of agricultural land, uncoordinated settlement expansion). Land policy focuses on the actual implementation of planning objectives (e.g. high quality inward settlement development, coordination between housing and infrastructure supply, provision of socially fair housing).

With this definition, we refer to initial debates on land policy that took place through the first half of the twentieth century (George 1879; Howard 1898; Bernoulli 1946) and then to the public policies studies as a subfield of planning research that have arisen since the 1970s (Epping 1977; Seele 1979; Lichfield and Darin-Drabkin 1980). At the same time, we connect to an international debate and go beyond national discussions, which all have their own specificities. For instance, in the Netherlands, land policy has a much narrower definition as a tool used by municipal authorities to simultaneously coordinate development and boost public revenues (Needham 1997; Buitelaar 2010). In contrast, in the U.S., 'land policy' is used in connection with land distribution issues (e.g. the Homestead Act 1862 and the Federal Land Policy and Management Act 1976) and urban economics (e.g. Lincoln Institute for Land Policy).

Our understanding of land policy might be closer to the definitions used by international organizations. According to the European Commission,

> land policies determine who has legal rights of access and/or ownership to certain resources and under what conditions, and therefore how these productive assets are distributed among diverse stakeholders. Land policies therefore express, implicitly or explicitly, the political choices made concerning the distribution of power between the state, its citizens, and local systems of authority.
>
> (2004: 1)

The European commission continues: 'Land policy aims to achieve certain objectives relating to the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held' (2004: 3).

Land policy is not a public policy, but a strategy. It puts actors at the centre and analyzes how some of them activate, combine, or avoid specific rules, i.e. mobilize a strategic set of policy instruments in order to implement politically defined spatial development objectives. Therefore, land policy rests on a careful appraisal of power relationship between actors. Planners are often not the most powerful players because they are not titleholders, but they can combine instruments, including private-law instruments, in order to support the implementation of planning objectives.

Land policy, both as a strategy and as an analytical concept, evolved out of the observation that planners are not well equipped to deal with the complex institutional situations resulting from resource scarcity, which in turn results from competition on uses and vested interests in land. The land policy approach aims to put asymmetric power distribution in the centre of the analysis and to give planners the analytical tools to deal with it. As such, we defend the idea that land policy evolved out a shift of paradigm in land use planning. In times of scarcity and corresponding latent conflict

linked with complex webs of intermingled rights such as they exist in the urban environment, planning is about the institutional creativity of public and semi-public actors who are able to get their agenda through thanks to a detailed appraisal of power relations and a carefully considered strategy combining different policy instruments.

The resourcial turn in planning

In order to be sustainable, development should meet the needs of the present generation without compromising the ability of future generations to meet their own needs (Brundtland Report 1987: 51). The sustainability discourse has brought to a broader audience the message that resources can be depleted, that growth might have limits, and that our society has the responsibility to manage resources for the long run.

The resource-based approach promoted by the sustainability discourse is also justified by a pragmatic consideration of which lands are subject to different kinds of competing uses that lead to rivalries or conflicts. The main characteristic of the resource-based approach is that it places the human subject at the centre of the analysis (Zimmermann 1951). The resource-based approach relies on a constructivist perspective: a resource emerges from a relational process linking an 'object' – that can be material or non-material (water, soil, forest, landscape), constructed (housing, building land, infrastructure), or social and cultural (know-how, knowledge) – and an economic, cultural, or ecological 'production system' producing goods and services to satisfy human needs (Kébir and Crevoisier 2004; Kébir 2010). According to this constructivist and relational perspective, 'resources are not automatically viewed as factors with an inherent use-value and predetermined application. [. . .] The use-value of a resource depends upon the social context within which goals and capabilities are shaped' (Bathelt and Glückler 2005: 1547).

In a finite global ecosystem, resources are finite as well. Various forms of scarcity coexist. There are forms of absolute scarcity because of objective planetary boundaries: land is scarce because of its non-reproducibility. The total amount of land may not be extendable, but its quality is modifiable through human intervention. Even more central to our discussion, land of a given quality may be available, but access to it might not be possible. The constructivist definition of resource incites the analyst to adopt a constructivist approach to scarcity as well. One can thus distinguish socially or politically constructed forms of scarcity leading to relative forms of scarcity rather than absolute ones and contributing to time-limited, cyclical, or structural scarcities. Even in countries where land is not seen as a scarce resource, housing shortages or lack of green spaces exist in given locations. In any case, scarcity is closely related to the institutions regulating uses, but also to those leading to exclusive appropriation of resource units at the expense of redistribution (Sen 1981).

Faced with risks of scarcity, we can observe the establishment of more or less complex and constraining devices to regulate the rival uses of the resource. Land use planning's main objective is precisely to allocate use rights to spatial resources in order to minimize conflicts. The issue of the sustainability of a resource system is approached differently depending on whether resources are renewable or recyclable or not, whether units of the resource are substitutable or not, or whether users can be excluded or not. Use rights allocation is an easy process if resources are plentiful; it becomes much more conflicting if resources are scarce (Ostrom 1990). This is the new context that land use planning has to deal with when shifting the focus from greenfield development to the management of the built environment.

The institutional turn in planning

Questioning the sustainability of resource uses also implies that the institutions governing land uses be analyzed (North 1990; Gerber et al. 2009). Land use planning takes place within a tight web of existing rights and interests. A careful analysis of the architecture, operation, coherence, or regulation capacities of these devices needs to be carried out in order to understand the full implications of each planning intervention.

Land use planning as a public policy

Policy analysis consists in the 'study of the action of public authorities within society' (Mény and Thoenig 1989: 9). Appraising land use planning as a public policy means seeking to comprehend the complex functioning of the state 'in action', starting with the public and private actors involved in spatial planning, their resources, and the institutions that govern their actions. Political institutions, such as public policies, property rights, the division of competences among political levels, or procedural rules, are analyzed from the perspective of the constraints and opportunities they offer to the actors involved in planning.

Land use planning as a public policy can be defined as a series of intentionally coherent decisions or activities taken or carried out by planning administrations and authorities at different levels of government, whose resources and interests vary, with a view to resolving in a targeted manner the politically defined problem of uncoordinated land development. Hierarchically organized plans are the classical instruments of land use planning (Bühlmann et al. 2011; Bassett and McNamara 1940; Booth 1995). Among them, the zoning plan plays a central role because it is binding to landowners. Plans are the responses by public authorities to the problem of uncoordinated spatial development that might result from the involvement of unrestrained property titleholders (Adams et al. 2002; Jacobs and Paulsen 2009). Coordinating housing, industry and infrastructure development, securing density-related objectives, and fighting against uncoordinated

spatial development that leads to urban sprawl, and so on, are the main objectives of land use plans.

The proposed definition of land use planning as a public policy leads to a type of analysis ultimately focusing on describing, understanding, and explaining the workings of the planning process as a part of the political administrative system and its interactions with private actors. Planners, who have long focused on the policy dimension of planning, have often underestimated the role played by property rights (Jacobs and Paulsen 2009; Hartmann and Needham 2012). While land use planning traditionally focuses on the definition of planning/development objectives, a broader institutional perspective in planning analyzes *all rules and regulations*, including those based on property rights that impact spatial development.

Planning at the interface between public policy and property rights

Because it takes place at the interface between two major sources of legal constraint – property rights and public policy – land use planning translates the logic of one intervention into the other, and vice versa, mainly through delivering individual building permits (Gerber et al. 2011). Property rights are necessary, because they define the precise plots where planning decisions become concrete. They play an important role in protecting the way planning decisions materialize, and make planning decisions robust (Davy 2012). Planning would lack legal durability if it took place in a context where property rights were not clearly defined: such constellations would hamper investments in, and betterment of, the land (Soto 2000).

Finding a socially and politically acceptable balance between the defence of private and public interests is a never-ending challenge (Booth 2002). Strong property rights encourage and protect long-term investments in property (Davy 2012: 1–2; Steiger 2006). However, contemporary planning theory often criticizes property rights as being too inflexible to effectively cope with uncertainties, deadlock situations that hamper changes (Hartmann and Needham 2012; Gerber et al. 2017), changes in economic conditions (e.g. brownfield redevelopment), and evolution of political objectives (e.g. discussions about densification). Of course, in the same way that the state can create, define and shape property rights, the state can also terminate them under specific circumstances (e.g. construction of roads, railways). However, because of the constitutional guarantee of private property, termination enables the dispossessed titleholder to file claim for just compensation (Cooter and Ulen 2004). As depicted by the concept of 'incrementalism' (Lindblom 1959), planners, as public decision-makers, often have limited room for manoeuvre at their disposal.

Four paths of interventions

Figure 2.1 shows how land uses can be impacted by public interventions. Depending on the type of law (public or private) and their effects on the
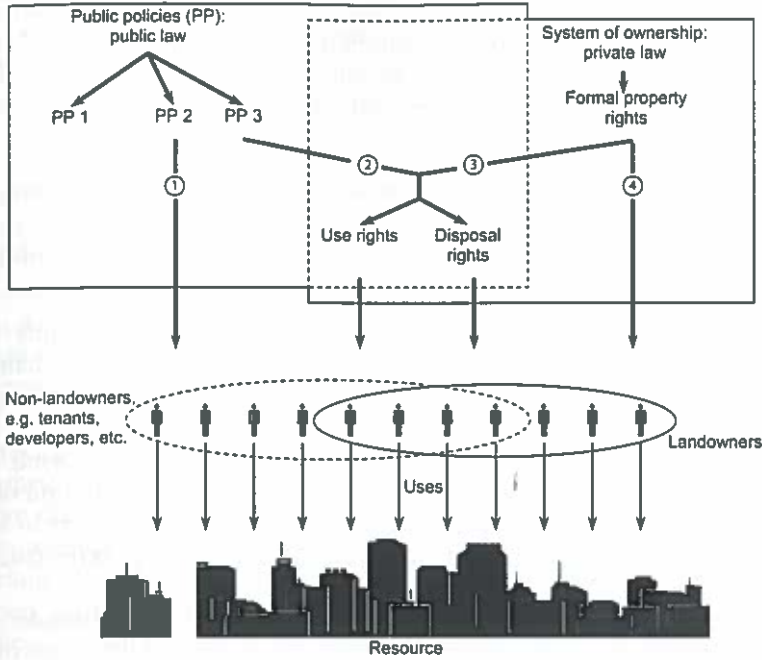
Figure 2.1 The behaviour of actors using the resource land can legally be con-
strained by (1) policies with no impact on the content of use or disposal
rights (e.g. information, incentives), (2) policies with an impact on the
scope and content of use or disposal rights (e.g. zoning), (3) re-definition
of property rights with an impact on the scope and content of use or
disposal rights (e.g. tradable development rights), and (4) redefinition
of the structure of the distribution of property titles (e.g. expropriation)

property title, we identify four paths of intervention which influence the
behaviour of landowners, developers, or investors towards land (Knoepfel
et al. 2001; Doremus 2003; Gerber et al. 2009).

The state can influence the behaviour of landowners and other resource
users through four paths:

1   Policies with no impact on the content of use or disposal rights, e.g.
    information campaigns, economic incentives (tax or subsidies).
2   Policies with an impact on the scope and content of use or disposal
    rights (e.g. zoning, land readjustment) leading to:

*   Regulation of use rights without infringing on formal ownership,
    e.g. limitations on the right to access the land, to emit pollutants, to
    build through different command-and-control instruments.
*   Regulation of disposal rights: prohibition of sale to certain purchas-
    ers (e.g. foreigners, non-farmers), etc.

3   Legal redefinition of property rights with an impact on the scope and content of use or disposal rights, e.g. introduction of tradable development rights, introduction of condominium ownership in the civil code, new right to expropriate 'rogue neighbors', or pre-emption rights (right of first refusal) granted to municipal authorities.
4   Redistribution of property titles:

   • Limited and punctual intervention, e.g. formal expropriation, targeted purchase of land.
   • Radical and profound intervention: privatization or nationalization (with or without compensation).

Policy interventions which have no impact on property rights (e.g. incentives) are comparatively easier to get through a parliament than initiatives aiming to redefine the institutions of property. In many countries, the definition of property rights hardly changes, because the delicate balance between use value and financial value of the land is the result of a subtle political-legal compromise (Harvey 2008). Direct redefinition of the structure of distribution of property rights is rare as well, except in large development projects which pursue a public interest (e.g. infrastructure development).

Figure 2.1 places land use plans (arrow 2 in Figure 2.1) in a broader context of public interventions as one possible way to modify the uses of the resource land. Planning competes with other interests that materialize in different public policies (agriculture, defence, transportation, etc.) and in the definition of the institution of property. An actor-centered analysis aims to link these different interests with the strategies of the actors defending them.

Actorial turn in planning

Actors and institutional rules

The neoinstitutionalist paradigm postulates that the actors and the institutions influence each other; the actors are influenced by the formal rules, while at the same time the rules evolve because of the actions and decisions of the actors. Neo-institutionalism has a different meaning in political science, economy, or sociology (Lowndes 1996; Koelble 1995). The prefix 'neo' distinguishes it from the classic institutionalism, which postulates that democratic rules determine collective decisions, and that actors limited by the institutional framework will act in compliance with the formal rules. In this context, the work of the policy analysts consists of describing, in a legalistic language, the functioning of institutions (Knoepfel et al. 2007: 102; Thelen 2003). But the question then arose as to what extent the institutions supervise, direct, or even determine the social or political decisions and actions of the individuals concerned.

Actors – more specifically, 'resource users' – have some leeway within a given set of institutions (Bourdieu 1986: 40). Actors use a given institutional context to develop strategies and use their power to shape decisions according to their interests; simultaneously the institutional framework also shapes their preferences, their perception, and their awareness of public problems. For instance, planners under pressure by new management standards focusing on cost effectiveness will not consider long-term public investments in the same way they would where the political majority targets sustainability objectives. Although actors are not entirely free, their behaviour is never completely determined by formal rules of law. A process of reformulation and adjustment of formal rules takes place at the time of their implementation. Actors never let go (Knoepfel et al. 2007: 41). Actors are never passive in relation to the rules: they adopt an active behaviour that gives them the potential to modify the content of the rule, both during adoption and implementation.

Three positions can be identified that explain the differences between rules and their implementation (Lascoumes and Le Galès 2007). First, actors may ignore the content and norms of policies and therefore not refer to them when attempting to solve conflicts or rivalries. This option should not be overlooked in the highly complex legal settings of advanced democracies. Second, actors may know the content of norms and policies but resist their application, with more or less success depending on their political strategies and power. Third, actors may divert the content of norms and policies according to their own objectives. They may resist the implementation of a rule by invoking another rule, by assuming that their behaviour will remain unpunished, or by choosing not to activate a rule (Schweizer 2015).

Actors have to comply with the new regulations, but they simultaneously enjoy a degree of autonomy allowing them to implement their own strategy. The degree of autonomy they have varies according to the degree of legal protection of their interests and the amount of power they have (e.g. in terms of information, organization, or personnel). Therefore, Figure 2.1 illustrates a bidirectional process. From a top-down perspective, formal institutions constrain the behaviour of resource users if they are defined as the target groups of a public policy. In contrast, from a bottom-up perspective, actors always attempt to resist when their interests are put at risk. Because this process is a game with several rounds, Figure 2.1 should also be understood dynamically. Implementation efforts always result in a compromise between political-administrative actors and target groups. Even if phases of greater stability can be observed, this compromise is constantly renegotiated as other legal or societal norms evolve and change.

In this regard, both formal and informal rules are important. Institutions encompass both formal rules, which have been explicitly and legally formalized, and implicit or informal rules, which correspond to commonly shared standards. Formal rules facilitate or limit the political participation

of certain actors. By institutionalizing the relations of power between social groups, institutional rules contribute to the stability and foreseeability of the system. In times of rapid global change, the stability of formal rules can also become a problem if they lead to inefficiencies or incoherencies (Gerber et al. 2017).

Power asymmetries in planning

Planners have long known the importance of power in planning (Castells 1977; Harvey 1978; Fainstein and Fainstein 1979). However, planners have always been ambivalent about power (Friedmann 1998). The works of communicative theorists (Forester 1989; Healey 1997) stress the importance of power, but because of their focus on Habermasian communicative rationality, they tend to remain strongly procedural, calling for deliberative fora, without the substantive understanding of realpolitik (Flyvbjerg 1998). Flyvbjerg (2006) calls for a better acknowledgement in planning 'for the working of power and for the passionate engagement of stakeholders who care deeply about the issues at hand' (p. 363).

The land policy approach relies on a detailed understanding of existing norms and institutions and aims to understand how public and private actors develop concrete political-legal strategies for the implementation of societally defined spatial development objectives. Formal and informal institutions inform about the *institutional opportunity structure* within which actors develop their strategies (Vatn 2009).

While land use planning law is regularly amended, and while zoning is revised every 15 years or so, property rights are stable over decades or more. Both the legal definition of the institution of property and the (socially unequal) distribution of ownership titles are stable over time. Therefore, a power asymmetry exists between landowners and non-landowners. The interests of landowners are well protected in the long term by an institution that barely changes and guarantees full compensation in case of expropriation. This is the situation that planning administrations face every day.

This brings us back to the fundamental conundrum of plan implementation: how can comparatively weak political-administrative actors (the planners) impose politically and societally defined spatial development objectives on strongly protected target groups (the landowners)? The instrumental perspective in planning provides some answers.

Instrumental turn in planning

In order to solve a public problem, a public policy defines the collective problem requiring resolution and identifies the target group, whose behaviour is thought to be the cause of the problem (Knoepfel et al. 2007). Each public policy also establishes *how* the problem can be resolved. In other words, it defines the means of public intervention, or public policy instruments that

will influence the activities of the target groups so that these will be compatible with the political aims (Knoepfel et al. 2007: 59). This section focuses on the policy instruments in the land use planning policy. We refer to the renewed interest in policy instruments of spatial development as the *instrumental turn in planning*.

Instrument typologies

Attempts to classify policy instruments pursue mainly two objectives (Hood 1983; Hood and Margetts 2007): first, making sense of the complexity of government intervention by looking at it through a set of generic predefined instrument types; second, picking the right tool for the job by comparing and assessing their selection and the effects they produce.

A common and frequently mentioned typology is E. Vedung's threefold classification of instruments *carrots, sticks, and sermons* (Vedung 1998). The idea is that three ways exist to exert power on subjects and make them comply: (1) the coercive power of the stick, characterized by (the threat of physical) sanctions, frustrations, and force, e.g. if developers do not comply with a building permit (threat to demolish); (2) the remunerative power of the carrot, which controls the material resources and their allocation, e.g. when the state grants tax cuts to new industries, or defines additional taxes on cars with high emission; and (3) the normative power of the sermon, which contains the allocation and manipulation of symbolic rewards, such as when eco-efficient initiatives are shown as examples by public authorities.

Refining this approach, Pierre Lascoumes and Patrick Le Galès (2007) distinguish among two broad types of state intervention: (1) historic classic routine intervention relying on a legal basis, including (i) legislative and regulatory 'command and control' instruments and (ii) fiscal and economic tools; (2) less authoritative conventional intervention such as (i) 'govern and contract' approaches including agreement and incentive-based instruments, (ii) communication and information-based instruments that rely on audience and opinions, including citizens' rights to access information, and (iii) de jure and de facto standards and best practices negotiated among private actors (among target groups, and with third parties).

These typologies classify instruments in a generic manner, but they do not explain the reasons of instrument selection, nor the effects instruments produce.

Ways to analyze policy instruments

Three research questions complement the issues left open by the generic tool classification approaches (Hood and Margetts 2007): Why do decision-makers chose certain instruments over others? What instruments are the most effective in solving a given problem? How does instrumental change explain broader change of perception of a given public problem? These three

questions result in three complementary research streams. Each stream relies on a distinct conceptual framework that puts the variable 'instruments' at a different spot: the first stream conceives an instrument as a dependent variable, the second treats it as an independent variable, and the third stream defines an instrument as an intermediary variable.

The dependent-variable approach focuses on actors' perceptions of instruments in the political decision-making process (Linder and Peters 1989, 1990). According to Linder and Peters, four main attributes play into the trade-offs policymakers face when adopting a policy instrument: (1) the administrative and implementation costs linked with the instrument (resource intensiveness), (2) the degree of selectivity and flexibility when defining the instrument's target groups (targeting), (3) the market or state orientation of the instrument (degree of constraint), and (4) the instrument's visibility, as well as the adverse effects it may produce (political risk). Underlying and empirically tested hypotheses show that policymakers tend to adopt instruments (1) whose implementation can be delegated to an existing administration, (2) that would face minimal resistance from the target group, (3) that comply with the ideology of the political majority in power, and (4) that have already been experienced elsewhere (Varone 1998; Kuhlmann and Wollmann 2013).

The independent-variable approach focuses on the effects of policy instruments on the policy's target group. Policy instruments are conceived as a 'method through which collective action is structured to solve a public problem' (Salamon 2002: 19). This conception of instruments also includes broader political institutions, which *structure* interactions among individuals: one can mention the type of organization in charge of implementation (e.g. public, central, agency, independent regulator, private, local), procedural rules that shape the political process, and other general rules, such as the nature of the political regime in place (e.g. central, majoritarian) or societal conceptions of property, justice, and administration.

The intermediary-variable approach relies on a more holistic conception of instruments (Lascoumes and Le Galès 2007; Halpern et al. 2014). Instruments are conceived as technical and social devices that organize social interaction between public authorities and target groups based on the representations and meanings instruments carry in the eyes of the actors who decide upon their adoption and their implementation. Therefore, instruments are conceived as *markers of change*: they crystallize a political compromise on specific public problems in a certain moment in time, and produce effects of their own. Such a perspective allows for long-term analysis of the conception and (re-) orientation of public problems, of the evolution of public policies, and of the effects they produce.

The land policy analyst's perspective

In a land policy perspective, accounting simultaneously for both instruments stemming from public policies and instruments stemming from property

rights is central. The exposed typologies and approaches each offer respond to different questions and help define a suitable approach to land policy analysis. This book focuses on instruments that (1) are already formally adopted by national governments, (2) contribute to the resolution of a public problem, *and* (3) are implemented in emblematic situations in a specific moment in time. Therefore, the perspective adopted defines policy instruments as an independent variable.

However, even once an instrument is adopted, uncertainties in the balance of power remain: instruments create inertia to outside pressure and induce conflicts of interests; they foster a particular representation of the issue at stake; they also induce a particular framing of the issue, and a specific explanatory model rationalizing the understanding of the issue (Lascoumes and Le Galès 2007: 10). The selection and use of policy instruments is often presented functionally, as though the choice only depends on mere technical questions (Lascoumes and Le Galès 2007). However, instruments are not axiologically neutral; they correspond to a particular understanding of the public problem, to a specific interpretation of the role of the state and/or its private partners, they denote a precise conception of intervention mechanisms, and they are value loaded (Salamon 2002; Landry and Varone 2005). Public policy instruments structure the social relationship between a public authority and the target groups according to the representations and meanings that they are carrying (Lascoumes and Le Galès 2007). As such, the selection of policy instruments generates political activity.

Accounting for power games around the instrument does not stop with the instrument's choice or adoption, but continues during the implementation stage. Even once an instrument is adopted, it might be mobilized (or not) by actors, depending on their strategies. One policy instrument might be preferred over another instrument, or the instrument might be circumvented, or diverted, from its original purpose, or passively implemented by actors (Schweizer 2015).

Instruments and instrument shopping

Questioning the contribution of policy instruments to solve a given public problem requires one to account simultaneously for organizational types, general rules, and procedures (Hood and Margetts 2007: 168–169). In this book, we rely on the framework depicted in Figure 2.1 which encompasses the entire legal framework – public policies and property rights – regulating the use of the land resource (Gerber et al. 2009). Instruments are appraised separately according to the four paths of intervention defined in Figure 2.1. Such an approach makes it possible to include private law instruments into the analysis of regulations and sets the focus on the actors' games surrounding instrument implementation. Instruments are defined as 'the detailed forms of intervention or measures planned to fulfil the objectives of a public policy'; they are 'means used to motivate those affected (particularly target groups) to comply with the policy provisions' (Knoepfel et al. 2007: 156–157).

In order to account for the strategic thinking of actors underlying each policy implementation process, we introduce the concept of *instrument shopping*. In reference to the concept of venue shopping, defined as 'the activities of advocacy groups and policymakers who seek out a decision setting where they can air their grievances with current policy and present alternative policy proposals' (Pralle 2003: 233), instrument shopping can be defined as the actors' choice of specific instruments over others, based on the objectives they want to achieve (Benda-Beckmann 1981). The term stresses the fact that (1) instruments have to be activated by actors, (2) actors select the instruments strategically according to their specific interests, and (3) the actors operate within a given framework that simultaneously limits the actors' understanding of the problem and the strategies available. In fact, strategic thinking of actors is limited by a lack of thorough information on all available instruments, by actors' preferences for certain types of outputs or styles of political intervention, and the ideological concerns conveyed to the constituency when using a specific instrument (Pralle 2003: 240–241).

In contrast to land use planning approaches, which traditionally focus on the definition of planning and development objectives, land policy analysis insists on the adoption and implementation of instruments in order to solve a public problem and to achieve the objectives. The distinct consideration of instruments, together with the concept of instrument shopping, allows an accounting of all policy instruments that both political-administrative actors and target groups use (or not) to achieve their objectives, and the strategies and power games underlying their implementation. The choice of embedding public policy analysis in a land use planning perspective is intended to fill the existing gap in the literature on land policy instruments implementation.

Note

1 Public policy relates to public law, which involves the state using its authoritative power, including regulatory statutes, penal law, and other laws of public order. It is distinguished from private law, which deals with the relationships between individuals (i.e. property law, the law of contracts, torts, and obligations). Public policies and property rights are the two main types of formal rules that actors can mobilize to defend their use interests in the land resource.

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