

STUDIA JURIDICA

STUDY SPACE VIII
**PHOENIX CITIES:
URBAN RECOVERY
AND RESILIENCE
IN THE WAKE
OF CONFLICT, CRISIS
AND DISASTER**

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UNIVERSITY OF WARSAW
15-19 JUNE, 2015



Studia Iuridica tom 63

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PHOENIX CITIES: URBAN RECOVERY AND RESILIENCE IN THE WAKE OF CONFLICT, CRISIS AND DISASTER

UNIVERSITY OF WARSAW, 15–19 JUNE, 2015

*Papers from the Conference Study Space VIII organized
by the Center for the Comparative Study of Metropolitan Growth,
College of Law, Georgia State University in collaboration
with the Center for Dispute and Conflict Resolution,
Faculty of Law and Administration UW*

STUDY SPACE VIII

MIASTA FENIKSY: URBANISTYCZNE ODRODZENIE PO KONFLIKTACH, KRYZYSACH I KATASTROFACH

UNIwersytet Warszawski, 15–19 CZERWCA 2015

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**PROGRAM STUDY SPACE VIII. PHOENIX CITIES:
URBAN RECOVERY AND RESILIENCE IN THE WAKE
OF CONFLICT, CRISIS AND DISASTER
WARSAW, 15–19 JUNE, 2015**

June 14, Sunday

17:00 Welcome Cocktail Reception – Golden Room in Kazimierzowski Palace, Main Campus of University of Warsaw

Day 1, June 15 (Monday)

Resurrecting Warsaw's Past: Resourceful Methods, Strategic Choices and Politics of the Post-War Reconstruction

9:00 Introduction to the Study Space Program, Dr. Ewa Gmurzyńska, Faculty of Law and Administration, University of Warsaw and Professor Julian Juergensmeyer, Georgia State University

9:30 Professor Michał Kopczyński, Museum of History of Poland, *Conflict, Crisis and Disasters in the History of Poland and Warsaw*

10:15 Adam Tyszkiewicz, Museum of the University of Warsaw, *Historical, Urbanistic and Cultural Role of University of Warsaw for City of Warsaw*

11:00 Coffee break

11:15 Professor Grzegorz Gorzelak, Center for European Regional and Local Studies University of Warsaw, *Local and Metropolitan Function of the City*

12:30 Lunch in the Kazimierzowski Palace (Main campus of the University)

14:00 Departure for Warsaw Uprising Museum (visit with the tour guide in English). Taxis will wait in front of the main gate of the University of Warsaw. Returning by taxis around 5 pm.

19:00 Gala Dinner at Villa Foksal (address: Foksal 3/5 street – 15 min walking from Sofitel – off Nowy Świat)

Day 2, June 16 (Tuesday)

Warsaw Housing Redevelopment in Two Acts: Post-World War II and Post-Communist Regime

8:45 Overview of the Day

9:00–10:15 Professor Andrzej Lisowski, Dean, Faculty of Geography and Regional Studies University of Warsaw, *Elements and Consequences of Suburbanization in Warsaw in the Past and Present*

- 10:15 Coffee break
- 10:30 Dr. Łukasz Bernatowicz, Attorney at Law, *Reprivatisation of Warsaw Properties. Bierut Decree and its Influence on the Development of Warsaw*
- 12:00 Departure for the bus trip (bus waits for the participants in front of Kazimierzowski Palace)
- 12:30 Lunch in the Milk Bar (bar typical for communist Poland)
- 13:30 Continuation of the bus trip: Praga, Palace of Science and Culture, Ursynów – Housing Area
- 17:00 End of the bus tour. Participants will be dropped at the main gate of the University of Warsaw, Wola
- Evening and dinner on your own

Day 3, June 17 (Wednesday)

Local Governance Comes to Poland: Managing Growth during Decentralization of Government Authority

- 9:00 Overview of the day
- 9:15 Professor Hubert Izdebski, Faculty of Law and Administration, University of Warsaw, *City Planning versus Metropolitan Planning: Historical Experience on the Example of Warsaw*
- 10:15 Coffee break
- 10:30 Professor Hanna Gronkiewicz-Waltz, Mayor of the City of Warsaw, *Financing Infrastructure from EU funds and Modern Development of Warsaw*
- 11:30 Professor Janice Griffith, Suffolk University Law School, *Comments on U.S. Local Government Parallels*
Dr. Helmut Aust, Faculty of Law in Berlin, Humboldt University, *The International Legal Framework for Local Self-Government*
- 12:00 Dr. Maria Francesca Huidobro, City University of Hong Kong, *Carbon Footprints and the Implications for Low Income Households in Hong Kong*
- 12:30 Lunch on your own. Free afternoon

Day 4, June 18 (Thursday)

Protecting the Pastoral City: Uncertain Future and Fortunes for Warsaw's Environmental, Natural, and Open Space Resources

- 8:45 Overview of the day
- 9:00 Dr. Dawid Sześciło, Faculty of Law and Administration, University of Warsaw, *Influence of "Participatory Funds" on Redevelopment of Warsaw*
- 10:15 Michal Olszewski, Vice Mayor of the City of Warsaw, *Sustainable Development of City of Warsaw*

-
- 11:45 Departure for boat trip on the Vistula River (15 minutes walk from University of Warsaw main campus)
- 12:00 Lunch on the boat
- 13:00–14:30 Lecture on the boat, Professor Artur Magnuszewski, Faculty of Geography and Regional Studies, University of Warsaw, *Historical and Modern Meaning of Vistula River for Development of the City of Warsaw*
- 16:00 End of the boat tour
- Free evening. Dinner on your own

Day 5, June 19 (Friday)**Post-War Public Infrastructure: The Eras of Reconstruction and Rapid Post-Communist Growth**

- 9:00 Overview of the day
- 9:15 Anna Zasadzińska, Museum of City of Warsaw, *Restoration and Historic Preservation in the City of Warsaw*
- 10:30 Tour of the Center for Historic Preservation Interpretation, New Town, Brzozowa no. 11/13 and Tour of the Old Town
- 12:45 Lunch – Restaurant Kultura on Krakowskie Przedmieście
- 14:15 Dr. Mirosław Grochowski, Faculty of Geography and Regional Studies, University of Warsaw, *Changes in Demography of Warsaw Caused by Historic Events*
- 15:30 Group Reflections and Next Steps; Publication Plans
- 16:45 Adjournment
- 19:00 Farewell Dinner, Dawne Smaki Restaurant, Nowy Świat 49 (15 minutes walking from Sofitel)

INTRODUCTION

Before World War II, Warsaw was called the Paris of the East. The citizens of Warsaw, known for their subtle humor, said, to underline the beauty of their capital, that Paris was the Warsaw of the West.

Both of my parents are from Warsaw and they lived here when WW II erupted in 1939 and for the five following years of Nazi occupation, including the Warsaw Uprising. My father, 11 years old in 1944, as a member of the scouts received orders to join the Warsaw Uprising. Before his scout troop reached the meeting place, the streets were closed by Nazis and he never joined his friends. Many of them were killed and he never got to see them again. My mother's family, after the Uprising failed on October 3, 1944, was forced out, together with all the citizens of Warsaw, to Pruszków, a transitional camp. After staying there for several weeks, they were spread throughout Poland. They left everything behind – their apartment, belongings, furniture and memories of the beautiful city. It was a city with almost 1,300,000 citizens before the War began and right after the Warsaw Uprising only a handful remained living in the ruins. During and after the Uprising, 80% of the city was destroyed in planned and systematic destructions. In modern history it is hard to find another example of a city with almost total destruction. To punish the Warsaw citizens, Himmler decided after the Warsaw Uprising collapsed that, "The city must completely disappear from the surface of the earth and serve only as a transport station for the Wehrmacht. No stone can remain standing. Every building must be razed to its foundation".

My father's family never came back to Warsaw, until my father started to study here many years later. For them there was nothing to come back to. My mother's family, on the other hand, came back to Warsaw after the War ended and took part in the heroic rebuilding of the capital, struggling for everyday life and normality. The attempt to definitely erase the city was not successful and from its disastrous destruction, Warsaw was rebuilt with the effort of a whole nation. However it became a very different city compared to the one it was before not only because of the mass destruction, but also its multicultural character. Before the War, besides Poles there were many Jews (who made up about 30% of Warsaw's

population) Ukrainians, Germans, and Russians formed a colorful picture of the City. After the War they never came back after having escaped from the violence, were forcibly removed from the city, or exterminated in concentration camps. They were replaced by others who came to Warsaw from all over Poland and brought their own cultural heritage, customs and life styles.

The history of rebuilding Warsaw was strongly influenced by different visions within modernist architects from the Office of Rebuilding Warsaw connected to the new communist regime to those who wanted to preserve what was left from the past and reconstruct Warsaw in the pre-war style. Although the communist government underlined the importance of a planned economy, Warsaw is an example of a city which had no comprehensive plan of urban development and was consequently not able to conclude many of the urbanistic plans beside examples such as: Old Town, King's Tract and New Town. Lack of urban planning for many years caused Warsaw to remain a quite chaotic city, which can still be seen today. The communist regime governed the country until 1989, when Poland began the fast transition into a market economy and introduced the key reform for the democratic changes – local government reform.

Warsaw is an example of rebuilding and resilience after a political disaster but also an example of a big success and renaissance in the market economy, after many years of communist administration. This process continues even after 70 years. Poland is the one of the fastest growing economies in Central Europe, and was able to minimize economic crisis undergoing a period of notable growth. This positive economic situation reflects on the development of Warsaw which is the country's political, cultural and economic center. Relatively strong economy, foreign investment and one of the largest stock exchanges in this part of Europe helped Warsaw to develop industry, particularly in high tech area.

However, those fast changes are causing many challenges. One is uneven economic growth, causing differences and disparities within the metropolitan area of the capital of Poland, in regard to wealth distribution, living conditions and education. Another one is lack of a comprehensive urban development policy. Only sixteen percent of the city is covered by the development plan, with increasing housing, transportation, and infrastructure needs. Also the insufficient tax laws governing the taxation of real property has caused Warsaw's comprehensive urban development issues. Additionally, the mass destruction of Warsaw and the course of the reconstruction caused many problems including those of a legal nature. For many years, previous owners and their legal successors, were denied by the communist government rights to claim their property, as well as any compensation. After 27 years from the transition time, the reprivatisation has never been regulated in a comprehensive way and no reprivatisation law in regard to Warsaw properties is in force.

The focus of the Study Space VIII: Phoenix Cities: Urban Recovery and Resilience in the Wake of Conflict, Crisis and Disaster was to engage in the dis-

cussion among academics, government officials, and urban planners about challenges of the city which raised, developed and adapted to the expanding role of the metropolitan area. Although the history of destruction and rebuilding is unique for Warsaw, particularly because of the scale of the destruction, many cities went through similar paths. Atlanta, Berlin, Dresden, New Orleans are all examples of some of the Phoenix cities “rising from the ashes” and facing similar problems to those of Warsaw.

The authors of the papers prepared in the connection with Study Space VIII discuss a variety of topics which include the necessity for the economic and financial reforms to help cities with problems like those found in Warsaw to overcome certain challenges, issues concerning comprehensive urban planning and social function of the cities in a comparative perspective, European Union law in regard to comprehensive development, and comparison of similar problems concerning urban development in other cities such as Sao Paolo, Barcelona and Atlanta.

We hope you will enjoy this issue of *Studia Iuridica*, which focuses on comparative and international perspective and interdisciplinary approach to metropolitan growth problems.

Ewa Gmurzyńska
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Janice C. Griffith
Suffolk University

METROPOLITAN-WIDE GOVERNANCE AND AN INNOVATION DISTRICT: SMART GROWTH REFORMS TO INCREASE ECONOMIC COMPETITIVENESS IN WARSAW, POLAND

1. INTRODUCTION

The Capital City of Warsaw, with a population of 1.7 million persons, seeks to be a dynamic urban center in Central and Eastern Europe. During World War II more than 80% of its buildings were destroyed¹. From this disastrous demolition, Warsaw continues to rebuild itself. Following the collapse of Soviet Communist rule in 1989, Poland began the transition to a market economy. The Warsaw metropolitan region now hosts the management of large international and domestic companies, and it accounts for 30% of Poland's imports and services and 16% of the country's exports².

International capital has helped finance Warsaw's transition from industry to knowledge-intensive services³. Warsaw attracts international capital that requires highly skilled personnel due to its high percentage of residents with university-level education and the development of both private and public academic institutions attracting 285,000 students⁴. The internationalization of Warsaw's economy, however, has resulted in uneven economic growth causing disparities within the region as to levels of education, livability conditions, wealth, and level of development.

¹ A. M. Tung, *Preserving the World's Great Cities: The Destruction and Renewal of the Historic Metropolis*, New York 2001, p. 82. The Nazis carried out a systematic destruction of Warsaw as punishment for the Warsaw Uprising in the summer of 1944. D. Crowley, *People's Warsaw / Popular Warsaw*, *J. of Design Hist.* 1997, Vol. 10, No. 2, p. 206.

² See G. Gorzelak, M. Smętkowski, *Warsaw as a Metropolis – Successes and Missed Opportunities*, *Regional Sci. Pol'y & Prac.* 2012, Vol. 4, No. 1, p. 27.

³ *Ibidem*, p. 34.

⁴ *Ibidem*.

Warsaw faces certain challenges in its desire to be a center of innovation and global player. As housing costs rose in Warsaw's central core, residents and new workers migrated to suburban areas surrounding the Capital City creating spatial disorder. The lack of metropolitan-wide planning and a viable transport system have also contributed to urban sprawl and environmental degradation. The serious deficiencies in the region's infrastructure have further exacerbated the region's quality of life issues.

This article argues that the Capital City of Warsaw cannot succeed in its quest to increase its competitiveness in a global economy based on knowledge-intensive services until public infrastructure and the Warsaw economy progress on an integrated, metropolitan-wide basis. Following the introduction in Part I, Part II describes the nature of global competitiveness and the policies adopted by the European Union (EU) and Poland to increase economic competitiveness. Part III describes the challenges faced by the Capital City in implementing these policies so as to become increasingly competitive in a global economy. The article presents both Warsaw's strengths and the challenges it faces in developing as a center of innovation that will spark new breakthroughs in science and technology. European Union funding is examined as a source of funding infrastructure and urban development in the Warsaw metropolitan area. In particular, the article examines how Warsaw could compete for Integrated Territorial funding by undertaking some of the institutional reforms required by EU regulations.

Part IV presents two suggestions to enable Warsaw to improve its standing as a hub for innovation and entrepreneurship. First, the article argues that metropolitan-wide governance would further spur the internationalization of the Warsaw metropolitan area by ensuring the implementation of spatial plans on a regional basis and the integration of disparate infrastructure investments throughout the region. The European Union's strategy for smart, sustainable, and inclusive growth compels an integrated approach to strategic investments, and the Capital City of Warsaw would be wise to make the institutional changes needed to meet the EU's new emphasis on an integrated approach to innovation and sustainable growth. The EU policy now affirms that economic growth is not a one-way street. Economic activity must be pursued in a manner that maximizes sustainable development and improves the quality of life of its inhabitants.

Second, the article urges Warsaw to examine the feasibility of creating a new city center that will increase connections between Warsaw's communities. This center could be formed as an Innovation District, modeled on Barcelona, Spain's Innovation District. Ideally, it would be created in the underdeveloped Praga area on the eastern bank of the Vistula River, which cuts through the City. Innovation and entrepreneurship are enhanced by the creation of a compact, attractive residential and business district that facilitates networking, a predominant feature of the high-tech, global economy. In an innovation district, businesses, retail enterprises, start-up companies, entrepreneurial firms, educational institutions,

and science-based industries exist side by side in close proximity to each other so as to share ideas and implement projects involving a range of expertise.

2. THE EUROPEAN UNION'S RESPONSE TO GLOBAL ECONOMIC COMPETITIVENESS

2.1. THE GLOBAL ECONOMY'S CHALLENGES

The world has become increasingly globalized, a phenomenon that results in the spreading of local practices, customs, ideas, and technology beyond their origin to all parts of the globe⁵. Globalization is a process that results in both homogeneity and heterogeneity: as practices and ideas travel from one place to another they create homogeneity, but through so-called local translation these practices are recast and adapted to their new environment creating diversity⁶. Thus, Warsaw, as a player on the global scene, will respond to new trends as a result of globalization, but it will incorporate them in a way that is unique to itself⁷.

New technological developments and the rapid globalization of the economy have disrupted many established business models. The advent of ridesharing services such as Uber and Lyft now compete with the regulated taxicab industry. In the second decade of the twenty-first century, the economy has been characterized as one that “worships speed, extols collaboration, rewards customization, demands differentiation, and champions integrated thinking”⁸. Technological innovations have automated jobs, increased productivity, and created a demand for highly skilled employees⁹.

The global economy has transformed how governments think about their future prosperity. The economy is no longer based on the productivity of individual nation states; instead, success is based upon greater interdependence among nations and regions throughout the world. Recognizing the interlinkage among European economies, the European Union believes that European competitiveness will succeed only if all of its 28 members pursue common goals¹⁰.

⁵ B. Czarniawska, *A Tale of Three Cities: Or the Glocalization of City Management*, Oxford 2002, p. 7.

⁶ *Ibidem*, p.11.

⁷ *Ibidem*, p. 13–15.

⁸ B. Katz, J. Bradley, *The Metropolitan Revolution: How Cities and Metros Are Fixing our Broken Politics and Fragile Economy*, Washington D.C. 2013, p. 6.

⁹ M. Woolhouse, *Bringing It Home: As Cost Differences Shrink, Some Manufacturers Moving Jobs Back to US*, Boston Globe, July 27, 2015, p. B7.

¹⁰ European Commission, *Europe 2020: A European Strategy for Smart, Sustainable and Inclusive Growth* March 3, 2010, at <http://ec.europa.eu/eu2020/pdf/COMPLET%20EN%20BARROSO%20%20%20007%20-%20Europe%202020%20-%20EN%20version.pdf>.

2.2. EUROPEAN UNION'S STRATEGIES TO INCREASE ECONOMIC COMPETITIVENESS

The European Commission has laid out long-range plans for strategic growth for each of its members to follow, including Poland. Its *Europe 2020* plan calls for three priorities to guide Europe:

1. Smart growth – developing an economy based on knowledge and innovation.
2. Sustainable growth – promoting a more resource efficient, greener and more competitive economy.
3. Inclusive growth – fostering a high-employment economy delivering economic, social and territorial cohesion¹¹.

The first priority recognizes that the global economy runs on the discovery and use of knowledge in an innovative and creative manner. The second priority expresses the European Commission's top priority of achieving competitiveness in a global economy. Efficiency is expected to play a role in the pursuit of this goal, but the sustainability of the physical environment is not to be overlooked in the achievement of competitiveness. The EU now measures success by the degree to which its members have created a green environment that combats climate change and uses energy efficiently. The last priority of inclusive growth underscores the need to empower people to participate in the new economy through modernization, training, and social protection programs¹². The goal's purpose lies in the development of cohesion among disparate groups throughout the Union while managing change¹³.

Europe is not alone in basing its economic development plans on the pursuit of knowledge and innovation. "Innovation" has become a worldwide buzz word commonly found in strategic plans for future growth. Europe has embraced a culture of innovation¹⁴ and Poland as an EU member since 2004 has followed suit¹⁵. Warsaw's existing development strategy until 2020 states that a City goal is to develop a modern economy based on scientific research and knowledge¹⁶.

¹¹ *Ibidem*, p. 8.

¹² *Ibidem*, p. 16.

¹³ *Ibidem*.

¹⁴ *Ibidem*, p. 8.

¹⁵ See Ministry of Regional Development of the Republic of Poland, *An Integrated Approach to Development in Poland*, Warsaw 2011, pp. 20–21. Poland's present and future needs call for a development policy that will increase competitiveness of its economy through the creation and absorption of innovation, including the reinforcement of the research and development sector and its ties with business.

¹⁶ City of Warsaw, PL, *Complex Challenges Innovative Cities (4th Strategic Objective of the Development Strategy for the City of Warsaw until 2020)*, at <http://www.ccic-project.eu/partners/city-of-warsaw-poland/> (visited Sept. 11, 2015).

2.3. EUROPEAN INVESTMENT IN REGIONS TO ENHANCE ECONOMIC GROWTH AND INNOVATION

The European Union has adopted a policy of making investments in all EU cities and regions to boost economic growth and improve the quality of life in Europe¹⁷. This investment, which comprises the largest portion of the EU budget, endorses European solidarity by directing the major portion of funding to EU's less developed regions. EU's resources for European regions are designed to help regions fulfill their economic potential by making funds available for such purposes as transport and communications infrastructures, environmental projects, support for small and medium-sized enterprises (SMEs), the creation of more job opportunities, modernization of educational systems, and innovation enhancement¹⁸. Designed to be a catalyst for both economic competitiveness and a more inclusive society, EU's regional policy also obliges EU countries to help co-finance EU targeted investments¹⁹.

The European Union's Regional Policy is also referred to as Cohesion Policy because it seeks to create cohesion on an economic, social, and territorial basis²⁰. In broader terms, the EU's investments in boosting regional economic competitiveness and green economic growth are designed to result in regional economic growth and a better quality of life²¹. The achievement of territorial cohesion will connect regions to capitalize on their territorial strengths and to tackle common challenges, thus benefitting Europe as a whole²².

As the EU's main investment policy²³, the Cohesion Policy provides for funding in all European regions and cities in support of attaining the Europe 2020 strategy goals²⁴. All projects that receive funding must be aligned with the delivery of *Europe 2020* growth goals²⁵. Although the Cohesion Policy seeks to reduce disparities among EU Regions²⁶, it was revamped in 2013 to focus much more

¹⁷ European Commission, *The European Union Explained: Regional Policy: Making Europe's Regions and Cities More Competitive, Fostering Growth and Creating Jobs* 1 (updated Nov. 2014), at http://europa.eu/pol/pdf/flipbook/en/regional_policy_en.pdf (visited July 31, 2015).

¹⁸ *Ibidem*, p. 3.

¹⁹ *Ibidem*.

²⁰ *Ibidem*, p. 5.

²¹ *Ibidem*.

²² *Ibidem*.

²³ European Commission, *An Introduction to EU Cohesion Policy 2014–2020*, June 2014, at http://ec.europa.eu/regional_policy/sources/docgener/informat/basic/basic_2014_en.pdf (visited Sept. 11, 2015).

²⁴ *Ibidem*.

²⁵ See European Commission, *The European Union Explained...*, p. 10.

²⁶ European Commission, *Investing in Regions: The Reformed EU Cohesion Policy 2014–2020*, at http://ec.europa.eu/regional_policy/en/information/publications/presentations/2014/investing-in-regions-the-reformed-eu-cohesion-policy-2014-2020 (visited Sept. 11, 2015).

strategically on increasing growth in all territories within the European Union²⁷. Because too often in the past countries spent Cohesion funds in an ad hoc fashion without strategic oversight, the new focus highlights the importance of improving how money is spent²⁸. Half of the funds are invested in less developed regions, of which Poland is a major beneficiary²⁹. In 2005, Poland's GDP per capita ranked it among the bottom five EU Member States³⁰.

Emphasizing performance guided investments, the EU has set eleven thematic objectives to spearhead growth under its Cohesion Policy for the period 2014–2020:

1. Strengthening research, technological development and innovation.
2. Enhancing access to, and use and quality of, information and communication technologies.
3. Enhancing the competitiveness of SMEs.
4. Supporting the shift towards a low-carbon economy.
5. Promoting climate change adaptation, risk prevention and management.
6. Preserving and protecting the environment and promoting resource efficiency.
7. Promoting sustainable transport and improving network infrastructures.
8. Promoting sustainable and quality employment and supporting labor mobility.
9. Promoting social inclusion, combating poverty and any discrimination.
10. Investing in education, training and lifelong learning.
11. Improving the efficiency of public administration³¹.

To carry out its Regional Policy in support of economic growth, the EU has created three funds, the European Regional Development Fund (ERDF), the European Social Fund (ESF), and the Cohesion Fund³². Investments in the ERDF fund until 2020 support all eleven goals, but the first four goals constitute the Fund's priorities:

- 1) innovation and research;
- 2) information and communication technologies;
- 3) the competitiveness of SMEs; and
- 4) efforts to boost a low-carbon economy³³.

²⁷ H. Mahony, *EU Cohesion Policy: 'No More Business as Usual'*, EU Observer, Oct. 22, 2013, at <https://euobserver.com/regions/121470> (visited July 31, 2015).

²⁸ *Ibidem*.

²⁹ European Commission, *Investing in Regions...*, p. 13. Poland's allocation is over 75 billion euros. *Ibidem*, p. 14.

³⁰ Ministry of Regional Development of the Republic of Poland, *Regional Policy in Poland*, September 9, 2011, at http://esponontheroad.eu/dane/web_espon_library_files/671/pl_regional_policy.pdf (visited July 29, 2015).

³¹ European Commission, *An Introduction to EU Cohesion...*

³² See European Commission, *Investing in Regions...*, p. 11.

³³ *Ibidem*, p. 13; European Commission, *An Introduction to EU Cohesion...*

The ESF Fund also supports goals one through four, but its main priorities are goals eight through eleven that focus on social inclusion, poverty and discrimination, needed investments in education, training and lifelong learning, and public administration efficiency³⁴. The Cohesion Fund supports the previously mentioned goal eleven, public administration improvement, and goals four through seven relating to energy efficiency, climate change management, environmental protection, resource efficiency, development of a sustainable transport system, and network infrastructures improvement³⁵.

The ERDF fund has a sustainable urban development focus, and over half of ERDF funds between 2014 and 2020 are targeted for urban areas³⁶. ERDF funding “invests in growth-enhancing sectors to foster competitiveness and create jobs in all EU regions and cities”³⁷. This ERDF funding also promotes European territorial cooperation including joint transport infrastructure, innovation and communication networks, and the linking of urban and rural areas³⁸.

The ESF fund finances training programs to enhance worker employability, provides aid to marginalized communities to spur their integration into the broader society, and invests in the efficiency of public administrations and services³⁹. The Cohesion Fund invests in transport networks and proposed solutions to environmental challenges in EU countries that have a GDP lower than 90% of the average of EU’s 28 countries⁴⁰. Central and Eastern European countries and Greece, Cyprus, Malta, and Portugal are the primary beneficiaries of the Cohesion Fund⁴¹. The Cohesion Fund promotes green economic growth and seeks to make investments that will improve regional connectivity and accessibility, thereby reducing economic and social disparities⁴². More specifically, it funds climate change adaptation, the water supply and waste sectors, the urban environment, and energy efficiency projects⁴³.

Poland’s drive to increase economic competitiveness can be assisted by Cohesion Policy funding. For the period 2014–2020, 351.8 billion euros have been budgeted to focus on the above eleven thematic objectives⁴⁴. Urban innovation actions, of which Warsaw could be a participant, are budgeted at 0.4 billion euros⁴⁵. The Cohesion Policy calls for three authorities to oversee funding: a managing author-

³⁴ *Ibidem*.

³⁵ *Ibidem*.

³⁶ European Commission, *The European Union Explained...*, p. 7.

³⁷ *Ibidem*.

³⁸ *Ibidem*.

³⁹ *Ibidem*.

⁴⁰ *Ibidem*.

⁴¹ European Commission, *An Introduction to EU Cohesion...*

⁴² *Ibidem*, p. 7.

⁴³ *Ibidem*.

⁴⁴ European Commission, *An Introduction to EU Cohesion...*

⁴⁵ European Commission, *Investing in Regions...*, p. 13.

ity to implement and monitor programs, a certification body to verify expenditures, and an auditing body for each operational program to ensure efficiency in the managing and monitoring system⁴⁶. In Poland, the Ministry of Infrastructure and Development serves as the managing authority⁴⁷.

2.4. THE INTEGRATED APPROACH TO URBAN DEVELOPMENT

The European Union's main investment policies prompt regions and cities throughout the Union "to support job creation, business competitiveness, economic growth, sustainable development, and improve citizens' quality of life"⁴⁸. Great emphasis is placed upon urban development in view of the fact that over two thirds of Europe's population live in cities and towns⁴⁹. Given the focus in *Europe 2020* on the three disparate growth goals – smart, sustainable, and inclusive – the Commission favors an integrated approach that ensures that cities excel in all three areas⁵⁰. It believes that to achieve sustainable urban development, a bundle of integrated measures are needed⁵¹. Integrated urban development calls for a cohesive approach to both urban strengths and challenges; strengths encompass economic activity, innovation, education and culture; challenges include urban sprawl, congestion, climate changes, and poverty⁵². The development of strong partnerships form an indispensable element of an integrated approach to regional development⁵³.

The next round of EU Cohesion Policy investments will implement two territorial delivery modes that have been branded as Integrated Territorial Development (ITI) and Community Led Local Development (CLLD)⁵⁴. Both methodologies are

⁴⁶ *Ibidem*, p. 16.

⁴⁷ European Commission, *Managing Authorities, Regional Policy InfoRegio*, at http://ec.europa.eu/regional_policy/en/atlas/managing-authorities/?search=1&keywords=&periodId=3&countryCode=PL&typeId=ALL (visited Sept. 11, 2015).

⁴⁸ European Commission, *The EU's Main Investment Policy*, at http://ec.europa.eu/regional_policy/en/policy/what/investment-policy/ (visited July 28, 2015).

⁴⁹ European Commission, *Urban Development, Regional Policy InfoRegio*, at http://ec.europa.eu/regional_policy/en/policy/themes/urban-development/ (visited Oct. 2, 2015).

⁵⁰ *Ibidem*.

⁵¹ Z. Szokolai, *Integrated Territorial Development and their Application to ETC in the Cohesion Policy 2014–2020*, at http://admin.interact-eu.net/downloads/5035/Presentation_Territorial_development_instruments_EU_Commission.pdf (visited July 29, 2015).

⁵² European Commission, *Urban Development...*

⁵³ European Commission, *Integrated Sustainable Urban Development: Cohesion Policy 2014–2020*, March 2014, at http://ec.europa.eu/regional_policy/sources/docgener/informat/2014/urban_en.pdf.

⁵⁴ P. Ramsden, *New Programmes for Integrated Territorial Development: ITI and CLLD at a Glance*, Urbact Blog, April 23, 2014, at <http://www.blog.urbact.eu/2014/04/new-programmes-for-integrated-territorial-development-iti-and-clld-at-a-glance/>.

driven by partnerships, but ITI, led by public sector actors, is more likely to be top down whereas CLLD, multi-sector in nature (public, private, and civil society actors), is always bottom up⁵⁵. Many CLLDs, which are neighborhood based, may exist in one city, but an ITI is created to address larger city areas such as large-scale regeneration zones⁵⁶. The key elements of an ITI have been described as

- a designated territory with an integrated (multi-sectorial) territorial development strategy to serve as the basis for the implementation of the ITI; the strategy underpinning the ITI should be a single cohesive strategy; and
- an arrangement that draws on funds from at least two different priority axes or programs and ensures that these funds are used in an integrated manner.

The ITI territorial delivery mechanism can be beneficial to Warsaw because it enables the implementation of a territorial strategy in an integrated manner – funding can be drawn from different programs to address the challenges and needs of a specific geographical area⁵⁷. It could be established for a distinct part of Warsaw, the Warsaw metropolitan area, or a region encompassing Warsaw and surrounding towns⁵⁸. Part of an ITI package can also be delivered through the CLLD approach⁵⁹.

The utilization of ITI and CLLD as delivery mechanisms will incorporate more local input than the administration of past EU funding. The ITI model contemplates “possible delegation of the management to intermediate bodies, including local authorities”⁶⁰. For the 5% of ERDF funding that has been allocated for ITI projects, management has been delegated to cities, in contrast to little involvement of cities in the 2007–2013 funding⁶¹. CLLD investments are to be both designed and implemented by local community groups with no public sector or interest group to exercise more than 49 per cent of voting rights⁶². Warsaw stands to be benefitted by the urban dimension in the Cohesion Policy for 2014–2020⁶³, and it should incorporate these integrated approaches in its investment strategies to ensure and maximize EU funding.

⁵⁵ *Ibidem*.

⁵⁶ *Ibidem*.

⁵⁷ See *ibidem*.

⁵⁸ See *ibidem*, pp. 11–13.

⁵⁹ See *ibidem*, p. 12.

⁶⁰ Z. Szokolai, *Integrated Territorial Development...*

⁶¹ *Ibidem*.

⁶² *Ibidem*.

⁶³ See B. Crome, *The Urban Dimension in the Cohesion Policy 2014–2020*, European Commission, 30 January 2014, at http://www.eib.org/attachments/general/events/2014_01_30_csi_europe_crome_en.pdf.

2.5. POLAND'S REGIONAL POLICY IN SUPPORT OF ECONOMIC GROWTH

Following the *Europe 2020 Strategy*, Poland's Regional Policy (Policy) emphasizes competitiveness, cohesion, and efficiency; more specifically, its main objectives are:

- 1) support for regional competitive growth;
- 2) territorial cohesion preventing the marginalization of problem areas; and
- 3) the efficient implementation of development measures⁶⁴.

The new Policy reflects the EU's emphasis upon more localized, integrated development. Polish regional policy has gone from a model based on central management to one adhering to an integrated policy coordinated on multi-levels of governance⁶⁵. Recognized as the hubs of economic, social, scientific, and cultural activity, urban centers are viewed to be of key significance because they influence the development of the entire region in which they are located⁶⁶.

This new Polish regional development policy greatly benefits Warsaw and other metropolitan areas that will become more important actors in the development process. At the beginning of the transformation towards a market economy in the 1990s, hesitancy existed to conduct active regional policy, which was seen as distorting conditions of competition in a market economy⁶⁷. Poland's accession to the European Union in 2004 enabled Poland to use Cohesion Policy funds, thereby paving the way for a more decentralized development management system at regional levels of government to monitor and manage projects so funded⁶⁸.

3. CHALLENGES TO WARSAW'S QUEST TO DEVELOP AS A CENTER OF INNOVATION

3.1. WARSAW AS A MUNICIPALITY AND ECONOMIC LEADER

Poland, which is slightly smaller than the state of New Mexico in the United States⁶⁹, with a population of 38.5 million (2007), is defined by its constitution as

⁶⁴ Ministry of Regional Development of the Republic of Poland, *Regional Policy...*, p. 11.

⁶⁵ *Ibidem*, p. 4.

⁶⁶ *Ibidem*, p. 9.

⁶⁷ *Ibidem*, p. 14.

⁶⁸ *Ibidem*, p. 16.

⁶⁹ NationMaster, *Country vs Country: Poland and United States Compared: Geography Stats*, at <http://www.nationmaster.com/country-info/compare/Poland/United-States/Geography> (visited Aug. 13, 2015).

a republic⁷⁰. During the Soviet socialist era following World War II, power was centralized. In January 1999, a new national administrative structure was instituted that created central, regional, and local levels of government, a structure that provides opportunities for economic and democratic development at all levels of governance⁷¹. Sixteen voivodeships provide regional governance while 2479 local governments called gminas (sometimes referred to as boroughs or communes) have been created; at the county level, 379 powiats provide public services⁷².

The Local Government Act (Act of 8 March 1990) granted self-governance to Poland's gminas. Local government is constituted by residents living within its territory in the form of either direct democracy or a republican form of government with elected officials⁷³. Under this decentralization, "organs of local government enjoy legally established autonomy and independence, being merely subject to supervision administered on the state's behalf"⁷⁴.

At the gmina level, the commune council serves as the legislative body and a city mayor (cities over 100,000) performs executive functions⁷⁵. The Local Government Act specifies the basic public services a commune must perform; optional tasks may also be performed to the extent that the municipality possesses the financial resources to fund them⁷⁶. In addition, to these internal tasks, a commune performs tasks that are delegated to it by central authorities, which provide the funding for them. A commune may also undertake entrusted tasks that "are fulfilled through an agreement or contract with central authorities or other local government entities"⁷⁷. Thus, although Warsaw lacks leverage over other municipalities within its metropolitan region, it has the option to seek cooperative agreements or form contracts with them to accomplish metropolitan-wide public service objectives.

⁷⁰ P. Swianiewicz, *Republic of Poland, UCLG Country Profiles I*, United Cities and Local Governments, at http://www.cities-localgovernments.org/gold/Upload/country_profile/Poland.pdf (visited Aug. 4, 2015). Poland covers an area of 312,679 square kilometers.

⁷¹ European Commission, *1999 Regular Report, from the Commission on Poland's Progress Towards Accession*, October 13, 1999, at http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/poland_en.pdf (visited Aug. 4, 2015).

⁷² See Ministry of Regional Development of the Republic of Poland, *Regional Policy...*, p. 5; European Commission, *1999 Regular Report...*, p. 13. For a more detailed description of the functions performed by a voivodeship, powiat, and gmina, see J. Wróblewska-Jachna, *Emergence of Urban Governance – After the Accession to the EU – in Poland: The Case of Old Industrial Cities in the Upper Silesia Industry Agglomeration*, (in:) F. Eckardt, I. Elander (eds.), *Urban Governance in Europe*, Berlin 2009, pp. 321–322.

⁷³ See E. Sękowska-Grodzicka, *The Local Government in Poland*, (in:) K. A. Wojtaszczyk (ed.), *Poland: Government and Politics*, Warsaw 1997, p. 140.

⁷⁴ *Ibidem*.

⁷⁵ A. Milewska, M. Józwick, *Organization and Changes of Local Government Finance System in View of Implementation of Participatory Budgeting*, *Oeconomia* 2014, Vol. 13, No. 4, p. 126.

⁷⁶ *Ibidem*, pp. 126–27.

⁷⁷ *Ibidem*, p. 127.

The Capital City of Warsaw was created by Warsaw's merger with ten suburban municipalities⁷⁸. The Act on the Political System of the Capital City of Warsaw of March 15, 2002 granted city status to the Capital City of Warsaw as a gmina and also gave it the rights of a powiat⁷⁹. The Capital City stands on a formal equal status to the municipalities surrounding it, not an elevated one, because it is just an ordinary municipality vested with rights and duties common to the approximately 2,500 other such units of local government in Poland⁸⁰.

Warsaw enjoys a number of advantages that strengthen its position as an economic powerhouse. Both the capital of Poland and the largest city in the Voivodeship of Mazovia, it holds a predominant position over other Polish cities in terms of the size of its economic base⁸¹. The Warsaw metropolitan area possesses a national reputation for research, academic activity, and specialization in high-rate services, such as finance and real estate⁸². It attracts high quality labor and small and medium-sized enterprises⁸³. Poland's Ministry of Regional Development projects that the future of the Mazovia region lies in strengthening Warsaw's position in the global network of metropolitan centers and the further internationalization of its economy⁸⁴. The development of cooperative activities between the science and business fields is viewed as vital to further the innovativeness of the Warsaw regional economy⁸⁵.

Warsaw and the Mazovia region of which it is a part clearly want to join the growing number of cities known for innovation and entrepreneurial activity. In comparison to other Polish regions, the Voivodeship of Mazovia accounts for the highest share of total Polish GDP⁸⁶, generating over one fifth of Poland's

⁷⁸ See B. Czarniawska, *A Tale of Three Cities...*, p. 20.

⁷⁹ The Capital City of Warsaw, *The Spatial Policy of Warsaw*, Warsaw 2007, at https://architektura.um.warszawa.pl/sites/default/files/files/PP_studium_ang_lekki.pdf (visited Sept. 26, 2015). Expenditures made by powiats fund the following types of activities: education, social welfare, public security, transport, health protection, central and local administration, culture and the arts, agriculture, forestry, and tourism. M. Wójcik, *The Powiat (County) Local Government Public Administration Reform Implementation Experience in Poland in 1999, Final Report of the "Supporting and Monitoring of the Local Government Reform in Poland" Project, Training Center of the Foundation in Support of Local Democracy in Szczecin*, Szczecin 2000.

⁸⁰ G. Gorzelak, M. Smętkowski, *Warsaw as a Metropolis...*, p. 43.

⁸¹ See D. Sokolowski, *The Economic Base of the Major Cities in Poland in the Political and Economic Restructuring Period*, (in:) L. Parker (ed.), *European Economic and Political Developments* 2011.

⁸² Ministry of Regional Development of the Republic of Poland, *Regional Policy...*, p. 25.

⁸³ *Ibidem*.

⁸⁴ *Ibidem*.

⁸⁵ *Ibidem*.

⁸⁶ J. Walendowski, *Regional Innovation Report (Mazovia)*, Regional Innovation Monitor, Technopolis Group, April 11, 2012, at https://ec.europa.eu/growth/tools-databases/regional-innovation-monitor/sites/default/files/report/mazovia_region_rim_report_120412.pdf (visited Aug. 5, 2015).

GDP⁸⁷. Mazovia has developed a regional strategy that calls for increased investments in research and development; emphasis on increasing the number of high-tech industries, including biotechnology, biomedicine, and nanotechnology among others; and the pursuit of innovative manufacturing enterprises⁸⁸. The article next addresses how Mazovia and Warsaw can create the foundation for the realization of these goals.

3.2. FRAMEWORK FOR INNOVATION CENTERS

Leading authorities have mapped out the ingredients for success in the post-industrial economy, now dominated by talent and technology. Europe's drive for smart, sustainable, and inclusive growth depends upon the success of businesses to generate, access, and use knowledge, technologies, and innovations. Innovation has been defined as "the implementation of new developments into economic practice: new or significantly improved solutions in respect of a product (goods and services), a process, marketing or an organization"⁸⁹. Among several initiatives, the *Europe 2020 Strategy* calls for an "Innovation Union to improve framework conditions and access to finance for research and innovation so as to ensure that innovative ideas can be turned into products and services that create growth and jobs"⁹⁰.

The achievement of an innovation ecosystem involves a complex set of new challenges for nations and cities. In the past, cities could provide basic public services, leaving the economy for the most part in the hands of private firms and individuals. Certain innovation centers developed, but they were usually isolated corporate corridors accessible only by car, such as California's Silicon Valley, and not focused on quality of life issues or integrated with housing and recreation⁹¹.

An economy based on knowledge and innovation, however, requires cities to be active participants in laying the foundation for a culture of innovation to thrive. Success stems from the ability to work collaboratively with networks of public, private, and civic leaders across administrative boundaries to align actions

⁸⁷ J.-M. Rousseau, *Smart Mazovia Starting Pushing a Green Wave within Central Europe*, (in:) *Mazowsze Studia Regionalne*, Warsaw 2009.

⁸⁸ See European Commission, *Regional Development Strategy of the Voivodeship of Mazovia until 2030*, 2013, at <https://ec.europa.eu/growth/tools-databases/regional-innovation-monitor/policy-document/regional-development-strategy-voivodeship-mazovia-until-2030> (visited Aug. 5, 2015).

⁸⁹ M. Grochowski, *The Creative Sector – An Instrument to Strengthen the Economic Base for Urban Development*, (in:) I. Kołodkiewicz, J. Cieślak (eds.), *Shaping Local Business Communities: The International Conference "Entrepreneurial Cities" Proceedings*, Warsaw 2014.

⁹⁰ European Commission, *Europe 2020...*, p. 3. *The Europe 2020 Strategy* states that "Europe can succeed if it acts collectively, as a Union".

⁹¹ B. Katz, J. Wagner, *The Rise of Innovation Districts: A New Geography of Innovation in America*, Washington D.C., May 2014, p. 6.

around a common economic strategy⁹². Coalition building energizes innovative problem solving and willingness to seize opportunities. To compete globally cities must have the capacity to coordinate cross-jurisdictional matters such as the economy, transportation, and the environment so as to avoid duplication of effort and other inefficiencies⁹³. Networking European cities now “design and deliver key economy shaping investments and initiatives”⁹⁴.

The public sector must also assure an environment rich with education and culture that will stimulate innovators and entrepreneurs. The city’s role should become one of a facilitator and active player in a network in which entrepreneurs, start-up firms, educational institutions, medical campuses, inventors, and researchers interact with each other to produce employment opportunities and economic growth. The necessity for a local region or government to become an integral actor in economic growth has led the European Union to prescribe an “integrated” approach to economic development⁹⁵.

Culture-based creativity also has been claimed to be a necessary condition to generate and introduce innovations in varied economic sectors⁹⁶. Culture impacts economic performance by generating internal and external demand for innovation – it is a tool for transmitting values, mobilizing social groups, and honing competencies necessary to participate in public life and the workplace⁹⁷. A climate that fosters creativity and change supports the production and introduction of new ideas and products⁹⁸.

In order to create an environment in which entrepreneurs and creative people thrive, cities must excel in providing the physical spaces and infrastructure that meets creative sector needs. They must ensure the existence of necessary infrastructure and spatial designs that will provide opportunities for interaction and brainstorming. The new class of innovative workers like to network in close proximity, and they demand both working and living space that optimize their productivity. Young talented workers like to congregate in vibrant urban neighborhoods that provide housing, outdoor recreational opportunities, and viable transport systems⁹⁹.

⁹² OECD, *Local Economic Leadership*, Paris 2015, p. 10, at <http://www.oecd.org/cfe/leed/OECD-LEED-Local-Economic-Leadership.pdf> (visited Sept. 26, 2015).

⁹³ See B. Katz, L. Noring, *Europe for Cities*, Washington D.C., Aug. 17, 2015, p. 1.

⁹⁴ *Ibidem*.

⁹⁵ See European Commission, *Urban Development...*, p. 1.

⁹⁶ M. Grochowski, *The Creative Sector...*, p. 17.

⁹⁷ *Ibidem*.

⁹⁸ L. Kaliszczak, *The Development of A Favorable Climate for Entrepreneurship at the Local Level*, (in:) I. Koładkiewicz, J. Cieřlik (eds.), *Shaping Local Business Communities: The International Conference “Entrepreneurial Cities” Proceedings*, Warsaw 2014, p. 86.

⁹⁹ B. Katz, J. Vey, J. Wagner, *One Year After: Observations on the Rise of Innovation Districts*, Washington D.C., June 24, 2015, p. 1.

Further, the cities' institutional structure must be one that supports, advances, and stimulates a net-worked economy based on knowledge and innovation. The attitudes of local authorities definitely impact entrepreneurship, which is culturally determined¹⁰⁰. Many authorities believe that a metropolitan-wide regional institutional structure best serves economic productivity due to the regional scale of today's economy¹⁰¹. The development of global cities transforms them into becoming an integral part of the region of which they are a part¹⁰².

3.3. WARSAW SHORTCOMINGS FOR INNOVATION

Warsaw faces a number of challenges in building a knowledge driven economy that generates innovation. It has been criticized for a deficiency in both long-term strategic policies and comprehensive innovation and science policies¹⁰³. In the post-communist transformation little enthusiasm existed for any activist regional policy; after Polish governmental decentralization in 1999 and EU accession in 2004, planning has come to be viewed more favorably¹⁰⁴. A Warsaw metropolitan area plan, however, has not been elaborated, and no metropolitan institutions competent in spatial planning presently exist¹⁰⁵. The Voivodeship of Mazovia, however, has defined a Warsaw metropolitan area and developed a spatial plan for the Mazovia region¹⁰⁶.

Warsaw lacks any institutional governance structures on a metropolitan scale, making cooperative regional activities more difficult. Warsaw does cooperate on a case by case basis with municipalities within its metropolitan area¹⁰⁷. In the Lodz, Poznan, and Gdansk metropolitan areas, governance bodies have been established although they are largely associations of local governments that pro-

¹⁰⁰ L. Kaliszczak, *The Development of A Favorable Climate...*, p. 86.

¹⁰¹ See D. Mandelker, J. Welch Wegner, J. Griffith, K. Bond & C. Tyson, *State and Local Government in a Federal System*, New Providence N.J., U.S.A. 2014, p. 146.

¹⁰² See M. Osińska, *Hong Kong Was an Island. The Process of Creating a Global City*, (in:) I. Koładkiewicz, J. Cieślak (eds.), *Shaping Local Business Communities: The International Conference "Entrepreneurial Cities" Proceedings*, Warsaw 2014, p. 99.

¹⁰³ A. Kukliński, *Mazoviz Quo Vadis? The Panel of International Experts*, (in:) *Mazowsze Studia Regionalne*, Warsaw 2009, p. 88.

¹⁰⁴ See G. Blazyca, K. Heffner, E. Helińska-Hughes, *Poland – Can Regional Policy Meet the Challenge of Regional Problems?*, Eur. Urb. & Regional Stud. 2002, Vol. 9, No. 3, p. 263.

¹⁰⁵ H. Izdebski, *City Planning Versus Metropolitan Planning: Historical Experience on the Example of Warsaw*, June 17, 2015 (slide presentation at *Study Space VIII, Warsaw, A Weeklong Intensive Workshop Entitled Phoenix Cities: Urban Recovery and Resilience in the Wake of Conflict, Crisis and Disaster* held on June 15–19, 2015).

¹⁰⁶ See R. Ahrend, A. Schumann, *Approaches to Metropolitan Area Governance: A Country Overview*, OECD Regional Development Working Papers, No. 2014/03, Paris 2014, p. 15, at <http://dx.doi.org/10.1787/5jz5j1q7s128-en> (visited Aug. 6, 2015).

¹⁰⁷ *Ibidem*.

vide a forum for policy exchange¹⁰⁸. In the Upper Silesia Voivodeship, fourteen cities with county status, have formed a union, known as the Silesian Metropolis (Metropolia Silesia) to strengthen the area's economic competitiveness through such measures as the development of a common growth strategy¹⁰⁹. Although each of the fourteen cities is relatively small, together they form the largest Polish agglomeration in terms of population¹¹⁰. The Union manages roads and public transport; it also conducts economic research, enhances local education, and supports the development of the local workforce¹¹¹.

In addition to the lack of spatial plans that help ensure livable and workable space for the innovative/creative sector, Warsaw suffers from the effects of internationalization that have resulted in urban sprawl, high housing costs, and greater marginalization of the undeveloped areas surrounding Warsaw. Conflicts of interest between Warsaw and neighboring municipalities hinder the development of a regional identity that could spur greater economic growth and innovation¹¹². As Brookings Institution scholars contend, the vesting of power in hundreds of small urban European localities may have made sense in the past, but today it significantly undermines a metropolitan area's ability to compete globally¹¹³.

The insufficiency of metropolitan-wide infrastructure affects environmental sustainability and the quality of life in the Warsaw area. Although Warsaw has successfully constructed new metro rail lines and modernized its waste-water treatment plant, transportation deficiencies in mass transport and roadways continue to exist. A highway along the western bank of the Vistula River in Warsaw diminishes access to this waterway, and the failure to construct a ring road around the city core causes congestion and makes commutes more difficult.

A 2006 report examining 33 cities, ranked Warsaw near the bottom in terms of quality of life¹¹⁴. Although Warsaw has made a number of environmental improvements in the last 20 years, including the elimination of many industrial uses, inhabitants complain about noise and insufficient recreational space¹¹⁵.

¹⁰⁸ *Ibidem*.

¹⁰⁹ T. Kaczmarek, A. Ryder, *Top-Down and Bottom-Up Metropolitan Integration in Poland*, (in:) J. Buček, A. Ryder (eds.), *Governance in Transition*, Dordrecht, Netherlands 2015, p. 32; J. Wróblewska-Jachna, *Emergence of Urban Governance...*, p. 325.

¹¹⁰ *Ibidem*.

¹¹¹ *Ibidem*.

¹¹² See G. Gorzelak, M. Smętkowski, *Warsaw as a Metropolis...*, pp. 36–37, 41.

¹¹³ B. Katz, L. Noring, *Europe for Cities...*

¹¹⁴ A. Bertaud, M. A. Bertaud, *The Spatial Development of Warsaw Metropolitan Area, Comments on "Warsaw Development Strategy until the Year 2010"*, World Bank June 11, 2000, revised Dec., 2000, p. 9, at http://alainbertaud.com/wp-content/uploads/2013/06/AB_Warsaw_Dec_2000.pdf (visited Aug. 24, 2015); G. Gorzelak, M. Smętkowski, *Warsaw as a Metropolis...*, p. 37. The source of the ranking was the authors' own elaboration based on Cushman and Wakefield, 2008.

¹¹⁵ G. Gorzelak, M. Smętkowski, *Warsaw as a Metropolis...*, p. 37.

In comparison to other cities, Warsaw's transportation coherence ranks low as well as its quality of telecommunications¹¹⁶.

4. METROPOLITAN-WIDE GOVERNANCE AND AN INNOVATION DISTRICT TO BOOST WARSAW'S ECONOMIC COMPETITIVENESS

4.1. CREATION OF A WARSAW METROPOLITAN GOVERNMENT

Many suggestions have been made as to how Warsaw can further develop itself as a center for innovation and technologically advanced enterprises¹¹⁷. This article proposes the creation of a metropolitan government for the Warsaw region that is empowered both to make and implement regional plans that could address urban sprawl, transportation deficiencies, and Warsaw's underdeveloped infrastructure. Until Warsaw improves transportation mobility and creates a green, sustainable environment, it will not be able to compete with other cities as an attractive center for the creative, innovative business sector.

Metropolitan areas are the major generators of GDP in a global economy, which consists of a network of metropolitan economies. The reason for the rise of metropolitan-based economies has been described as follows: "Metros dominate because they embody concentrations and agglomeration — networks of innovative firms, talented workers, risk-taking entrepreneurs, and supportive institutions and associations that cluster together in metropolitan areas and coproduce economic performance and progress. There is, in essence, no American (or Chinese or German or Brazilian) economy: rather, a national economy is a network of metropolitan economies"¹¹⁸.

To be competitive in such an economy, metropolitan cities need to be able to facilitate networks and create the conditions that will maximize innovation. These conditions, which include the provision of public infrastructure, a transportation system, communication technologies, housing, green space, and public space can be optimized, by a governmental institution with the power to guide

¹¹⁶ *Ibidem*.

¹¹⁷ See e.g., M. Czerny, A. Czerny, *An Emerged New Centre of Warsaw, Poland*, (in:) L. Parker (ed.), *European Economic and Political Developments 2011*, pp. 172–173; G. Gorzelak, M. Smętkowski, *Warsaw as a Metropolis...*, pp. 40–44; E. Korcelli-Olejniczak, *Berlin and Warsaw: In Search of a New Role in the European Urban System*, J. Hous. & Built Env't March 2007, Vol. 22, No. 1, p. 64; T. Slawinski, *Innovative Metropolitan Strategy: A Challenge for Warsaw City Region*, Mazovian Office for Regional Planning in Warsaw, at http://www.eurometrex.org/Docs/Meetings/amsterdam_2008/Presentations/Tomasz_Slawinski_Metropolitan_Strategy_Warsaw.pdf (visited Aug. 7, 2015).

¹¹⁸ B. Katz, J. Bradley, *The Metropolitan Revolution...*, p. 1.

and coordinate them on a metropolitan-wide basis. Further, urban cities must seek out private parties, non-profit organizations, and other political, economic, and social actors to join them in building a milieu that will be attractive to investors, entrepreneurs, and the creative sector.

The creation of a Warsaw metropolitan government would most likely be difficult to achieve as it has been met with resistance in the past¹¹⁹. Nonetheless, strong advocacy has been made for passing a law in Poland to facilitate the implementation of regional policy and regional contracts¹²⁰. In the United States only two metropolitan regional entities have been created, the Portland Metropolitan Service District (Metro) and the Minneapolis-St. Paul Metropolitan Council¹²¹. A strong history of local home rule in the United States and state constitutional structures that do not recognize general-purpose governments at the regional level present barriers to the creation of metropolitan governments there. Elsewhere, major cities are in the process of transforming themselves to become an integral part of the region – Hong Kong’s reach now includes the Pearl River Delta¹²². The Uusimaa Regional Council in the Helsinki-Uusimaa Region in Finland serves as both a strategic and land-use planner as well as a consensus builder for this metropolitan area, which, in terms of economic performance and innovation, has been ranked among the highest in Europe¹²³.

Metropolitan governance raises the question frequently debated over which governmental functions should be left for local control. The devolution of power to the local level brings governmental decision making closer to the citizenry and enhances civic participation. Public choice advocates argue that greater efficiency in the delivery of services and the allocation of resources is achieved by giving citizens the opportunity to choose their residence among a variety of localities, thereby creating competition among them¹²⁴. Governments closer to the people should be better informed about their priorities. Community building around shared values should also occur more readily at the local level of governance. Certain municipal-type functions, however, may be performed more efficiently on a metropolitan basis, especially if their use or delivery requires crossing local

¹¹⁹ See R. Ahrend, A. Schumann, *Approaches to Metropolitan Area...*, p. 15.

¹²⁰ M. Wójcik, *The Powiat (County)...*, p. 83. “There is an urgent need to pass a law on regional policy, introducing partner ways to make and to implement that policy based on regional contracts. This requires, among other things, to provide regions with their own finance and assets, and transparent regulations concerning the access of all local authorities to national and European funds allocated to support regional and local development”. *Ibidem*.

¹²¹ See J. Griffith, *Regional Governance Reconsidered*, *J. Law & Pol.*, Fall 2005, Vol. 21, No. 4, pp. 530–532 (discussing regional functions of Portland Oregon’s Metro and the Twin Cities Metropolitan Council).

¹²² M. Osińska, *Hong Kong Was an Island...*, p. 99.

¹²³ See O. Pekka Hatanpää, *Development of the Uusimaa Region. Outlining the Region*, (in: *Mazowsze Studia Regionalne*, Warsaw 2009, pp. 145, 148.

¹²⁴ See J. Wróblewska-Jachna, *Emergence of Urban Governance...*, p. 319.

jurisdictional boundary lines. The supply of water, for example, may have to come from a reservoir distant to a number of localities.

While a proposed Warsaw metropolitan government would coordinate and control certain metropolitan-wide functions, primarily regional growth management, regional land use, and transportation planning, many local governmental functions would continue to be performed at the gmina level. Portland Oregon's Metro, for example, provides regional oversight and services, but local governments, within the context of regional guidelines, develop comprehensive plans and enforce zoning regulations¹²⁵. Although a metropolitan government would assume region-wide functions, its scale of operations would be local rather than central. It would be operating on a smaller territorial scale than the Voivodeship of Mazovia. Possibly, this form of governance could result in greater local control than currently exists should it successfully bring municipalities together to take greater control of their own destinies.

After World War II Poland's Communist Party controlled the state's actions and gave rise to uniformity of power in which the state hierarchically controlled economic, political, and social relationships¹²⁶. Despite the 1989-1990 reforms that resulted in self-governance at the local level, tendencies toward Polish state centralization still remain¹²⁷. Increased governmental centralization has been attributed, in part, to globalization, which has strengthened supranational forms such as the European Union because the global economy cannot be contained within national boundary lines¹²⁸. EU funding, for example, can increase central state power by giving control over the expenditure of EU funds to national administrations. The forces of globalization have also triggered Polish mobilization efforts at the national level to attract transnational capital through centrally initiated negotiations, regulations, and licensing agreements¹²⁹.

The Voivodeship of Mazovia might oppose the creation of another regional level of governance that could diminish its powers. Poor collaboration has been cited as a source of tension between strong Polish cities and regional governments¹³⁰. Metropolitan governance, however, could conceivably result in greater cooperation between Mazovia and Warsaw metropolitan-area constituents because both entities would be charged with finding regional solutions; only the

¹²⁵ See D. Mandelker, J. Welch Wegner, J. Griffith, K. Bond & C. Tyson, *State and Local Government...*, pp. 158–159 (describing the institutional framework of Portland, Oregon's Metro).

¹²⁶ J. Regulska, *Governance or Self-governance in Poland? Benefits and Threats 20 Years Later*, Int'l. J. Pol. Culture & Soc. 2009, Vol. 22, pp. 538, 540.

¹²⁷ P. Kotka, *The Development of Local Self-government in Poland after the End of Socialism in 1989: from Centralism Towards Localism?*, (in:) K. A. Wojtaszczyk (ed.), *Poland: Government and Politics*, Warsaw 1997, p. 155.

¹²⁸ J. Regulska, *Governance or Self-governance in Poland?...*, p. 541.

¹²⁹ S. Shields, *Global Restructuring and the Polish State: Transition, Transformation, or Transnationalization?*, Rev. Int'l Pol. Econ. 2004, Vol. 11, No. 1, pp. 135, 144.

¹³⁰ G. Gorzelak, M. Smętkowski, *Warsaw as a Metropolis...*, p. 43.

scale of the region would be different – Mazovia would be responsible for inter-regional planning on a province level whereas the Warsaw metropolitan regional body would oversee intra-regional functions and cooperation.

Under the 1990 reform legislation, Polish municipalities were given autonomy over their respective jurisdictions. Thus, municipalities lying beyond Warsaw's boundary lines do not have to accede to initiatives or regional plans that the Capital City might view as beneficial or instrumental to its future development as a center of innovation. Instead, the City must rely upon cooperative arrangements with the municipalities surrounding it. While such agreements may help to develop a regional identity or be beneficial to the region, they do not result in the efficiency or comprehensiveness needed to ensure economic competitiveness. The possibility exists that a party to such an agreement may refuse to perform it, making investment decisions less secure.

Warsaw's sustainable development strategy for its transportation system points out two major weaknesses in this system:

1. Lack of any institution managing and coordinating public transportation on an agglomeration level; and
2. Insufficient participation on the part of boroughs in the costs of maintaining suburban bus routes throughout Warsaw's suburban boroughs¹³¹.

This plan further notes that Warsaw is hindered by the absence of uniform legislation on public transportation and the difficulty it experiences in creating metropolitan associations¹³². The creation of a metropolitan-wide governance body with both land use and transportation powers would be needed to address these deficiencies adequately. Because land use classifications determine density, a viable transportation system cannot be devised without some control over land uses. Mass public transit, for example, becomes more cost effective in areas with greater density. Because metropolitan associations cannot always be readily formed among Warsaw and its suburban neighbors, a metropolitan regional body should be created to ensure the existence of a long-term, sustainable transportation network. In today's networked information economy, an urban center with a balkanized transportation environment cannot be competitive.

Well thought-out plans for building dispersal and spatial planning are essential to a viable transportation system. Warsaw understands that stimulating economic development depends upon rational spatial development¹³³. In the absence of metropolitan-wide planning, municipalities may make land use and transportation decisions that increase transportation demand. In order to meet sustainability

¹³¹ Capital City of Warsaw, *The Transportation System of Warsaw: Sustainable Development Strategy Up to the Year 2015 and Successive Years Including the Sustainable Development Plan for Warsaw's Public Mass Transit System: Synthesis*, Warsaw 2010, p. 26.

¹³² *Ibidem*, p. 27.

¹³³ *Ibidem*, p. 32.

goals of lowering carbon dioxide emissions, well provided public transportation needs to be available in areas where residences, businesses, and retail services are concentrated¹³⁴. The implementation of a centralized metropolitan transportation plan that increases mobility throughout the Warsaw metropolitan area would dramatically improve Warsaw's ability to ascend to a spot among Europe's centers of innovation.

Mass rail transportation must be available throughout the metropolitan Warsaw area in order for the Capital City to develop as an economic powerhouse. The quality of such a system "will define the efficiency of the functioning of the agglomeration (metropolitan area), especially its downtown area"¹³⁵. Should public transport not produce convenient and comfortable passage so as to encourage people to use it, greater automobile traffic will ensue causing environmental degradation and decreasing the quality of life within the City. Again, Warsaw plans show that the achievement of a more sustainable urban environment, less dependent upon the automobile, depends upon the creation of an institution to manage and coordinate public transportation within Warsaw's agglomeration area¹³⁶.

Given the number of transportation subsystems, including pedestrian walkways and bicycle lanes as well as roadways and public transportation, a high level of integration of these different transportation modes is of key importance¹³⁷. The Capital City must also be well linked externally to other Polish and European centers to meet the mobility demanded by current economic conditions. A complete system of ring routes to facilitate the bypassing of the downtown area and to connect Warsaw with Europe's road network must also be facilitated. A metropolitan government most likely will be able to accomplish this goal more efficiently than the present agglomeration. Such a government could more easily provide the spatial development plans that such integration and expansion will necessitate.

Metropolitan governance could also make Warsaw a more attractive city for investment by enhancing environmental protection and spearheading quality infrastructure to ensure a clean water supply, sufficient energy resources, waste water treatment, and solid waste disposal in addition to transportation works¹³⁸. Top performance of all of these functions characterizes a center for innovation and entrepreneurship. Should such a metropolitan agency be vested with an independent source of raising revenue, such as the power to levy taxes or issue bonds, greater investment in infrastructure would be ensured. It has been pointed out that the Warsaw metropolitan area's future, including its spatial structure, will be determined by the interaction of market forces with three municipal tools –

¹³⁴ See *ibidem*, p. 30.

¹³⁵ *Ibidem*, p. 34.

¹³⁶ *Ibidem*, p. 35.

¹³⁷ *Ibidem*, pp. 39–40.

¹³⁸ See G. Gorzelak, M. Smętkowski, *Warsaw as a Metropolis...*, p. 43.

the administrative regulatory structure, infrastructure investments, and the local system of taxation¹³⁹.

In addition to its transportation sustainable transportation plan, Warsaw has approved a sustainable energy action plan that includes a goal to reduce its greenhouse gas emissions by 20% by 2020¹⁴⁰. Other sustainability measures include renewable energy investments and conservation of its green spaces, which constitute 25% of its territory¹⁴¹. Green space, however, is not evenly distributed throughout Warsaw's 18 districts, making it important to conserve and expand parks in dense urban areas. Should metropolitan-wide planning not be implemented or enforced, Warsaw will face increasing pressure to cede open space for development because it will be in competition from surrounding municipalities who may offer more attractive options to developers. Thus, Warsaw will most likely have to give up green space to encourage inner-city development that otherwise could move to suburban communities with more lax environmental protections in place.

A metropolitan structure, which would also be supported by individual municipal functions, is very much in keeping with the European Union's Cohesion Policy. In fact, Warsaw should be in the process of examining the kind of institutional structures that must be created or strengthened to ensure continued EU funding. The integrated approaches discussed in this article could be implemented much more positively in a metropolitan-wide manner because cohesion funding calls for multi-sector territorial approaches. The Polish Ministry of Regional Development, which manages EU funding, should be supportive of metropolitan governance that could facilitate the integrated approach to regional development supported by the EU. The Ministry recognizes that a new way of thinking has been instituted by *Poland's National Strategy of Regional Development* that calls for the enhancement of regional policy, public intervention mechanisms to support regional policy, and greater emphasis on spatial development in Poland¹⁴². It characterizes the paradigm for Poland's new regional policy as follows: "It departs from the traditional model of funds redistribution towards improving and using territorial potentials of all regions. It also departs from dispersed intervention towards more selective (concentrated) investments, and from highly centralized (top-down) governance, including the role of regional authorities in development processes' implementation"¹⁴³.

¹³⁹ See A. Bertaud, M. A. Bertaud, *The Spatial Development of Warsaw Metropolitan Area...*, p. 9.

¹⁴⁰ A. J. Sulkowski, *Integrated Sustainability Report 2013*, p. 4, at http://www.um.warszawa.pl/sites/default/files/warsaw_g4_integrated_sustainability_report_2013.pdf.

¹⁴¹ *Ibidem*, pp. 4, 6.

¹⁴² Ministry of Regional Development of the Republic of Poland, *Regional Policy...*, p. 7.

¹⁴³ *Ibidem*.

The Ministry acknowledges that the transformation towards a market economy resulted in the effective empowerment of gminas, but that necessary adjustments at the regional level of governance were not made¹⁴⁴. While voivodeships were created as regional bodies between the national government and local governments, the so-called interregional level, no mechanisms were established to effectuate intraregional policy, the policy of self-government conducted within a given region¹⁴⁵. The Ministry thus makes a strong argument for the creation of metropolitan-wide or other intraregional bodies to integrate and coordinate the activities of numerous gminas at the local level.

Should a full-scale democratically elected metropolitan government not be feasible in the Warsaw region, a mechanism to provide for the regional delivery of metropolitan-wide services in the metro area encompassing Warsaw and its surrounding municipalities should be sought. Regional District's legislation of the Province of British Columbia, Canada provides a model that could be adapted to Polish metropolitan regions. The British Columbia legislation provides for the incorporation of a regional district to provide services the regional district deems necessary or desirable in all or any part of its territorial jurisdiction once it obtains the consent of affected local governments lying within its territorial reach¹⁴⁶. By agreement, local governments can transfer their municipal services for delivery on a regional basis by the district. The district is governed by a regional board comprised of directors appointed by an affected municipal council from among its members¹⁴⁷.

4.2. CREATION OF AN INNOVATION DISTRICT IN WARSAW

Today a new urban model based on linkages between work and quality of life issues is emerging – the rise of the so-called “innovation district”¹⁴⁸. Some cities, such as Barcelona, Spain and Boston, Massachusetts, have created innovation districts to transform unproductive, underutilized urban areas into mixed-use hubs that enable workers to live and work in attractive accommodations with parks and other amenities. These districts are location specific showing the preferences of people engaged in technology and innovation to live in close proximity to each other for collaboration and idea sharing¹⁴⁹. Although all innovation districts possess economic, physical, and networking assets, their form and functions will vary according to the regional economy of which they are a part¹⁵⁰. They

¹⁴⁴ *Ibidem*, p. 14.

¹⁴⁵ *Ibidem*.

¹⁴⁶ J. Griffith, *Regional Governance...*, p. 533.

¹⁴⁷ *Ibidem*.

¹⁴⁸ B. Katz, J. Wagner, *The Rise of Innovation Districts...*, p. 1.

¹⁴⁹ *Ibidem*, p. 1–2.

¹⁵⁰ See *ibidem*, p. 2.

have been described as the “ultimate mash up of entrepreneurs and educational institutions, start-ups and schools, mixed-use development and medical innovations – all connected by transit, powered by clean energy, [and] wired for digital technology”¹⁵¹.

Innovation districts require regional planning that link them to other parts of the metro area through a well-functioning transport system. Such districts must be developed in a manner that respects historical heritage and incentivizes the use of information and communication technologies that will attract highly qualified workers. An innovation district also includes well-planned public amenities such as infrastructure, housing units for those who chose to live in the district, and a highly sustainable, livable environment that offers green and recreational space. The development of an innovation district would help fulfill the EU’s top priorities of boosting economic competitiveness while promoting sustainable living by opening up green space and reducing the need for automobile transport. It would be very much in keeping with the European Commission’s drive for integrated sustainable urban development as evidenced in this Commission statement: “[M]easures concerning physical urban renewal should be combined with measures promoting education, economic development, social inclusion and environmental protection”¹⁵².

The innovation district in Barcelona, Spain provides Warsaw with a useful model to explore¹⁵³. There, an under-utilized industrial area was converted into a smart city innovative sector. Barcelona’s innovation district, known as the 22@ Project, combined housing, work space, park space and public amenities in a compact area, close to the central city and served by public transit. Warsaw’s Praga district could be a good candidate for a similar project as it also contains under-utilized buildings and is situated close to Warsaw’s center and higher educational institutions. New metro transit lines connecting Praga to Warsaw’s mass transit system further support its desirability as an innovation center. As Praga is already undergoing some revitalization¹⁵⁴, a well-thought-out plan for the area as an innovation district would enhance its long-term development. Artists have flocked to Praga in recent years, and it enjoys a nightlife with many cafes¹⁵⁵, thus making it an urban enclave that would attract millennials.

Warsaw and its central district has been characterized as formed by “modern, impulsive development [that] causes the area in the center of the city to appear

¹⁵¹ *Ibidem*, p. 3.

¹⁵² European Commission, *Integrated Sustainable Urban Development...*

¹⁵³ See generally 22@ Barcelona, *State of Execution*, Barcelona, December 2009 (describing activities accomplished since the approval of the 22@ Barcelona project in 2001), at http://www.22barcelona.com/documentacio/Estat_execucio_2009_ang.pdf (visited July 30, 2015).

¹⁵⁴ See Polish Vodka Museum at Koneser, at <http://koneser.eu/en/news/polish-vodka-museum-at-koneser/> (visited July 2, 2015).

¹⁵⁵ *Warsaw Sightseeing*, at <http://www.inyourpocket.com/warsaw/sightseeing> (visited July 2, 2015).

chaotic from an aesthetic and spatial point of view¹⁵⁶. Multi-lane highways in the City's center cause pedestrian distress and gigantic, high-rise buildings without human-scale connections at the street level create an unwelcoming environment to a passer-by. Empty lots and boarded-up buildings can be seen in close proximity to towering office buildings and retail outlets. Commentators have pointed out that Warsaw needs to develop an attractive city center that promotes historical buildings, includes parks, and creates connections to the Vistula River¹⁵⁷.

It has been suggested that Praga terrain on the bank of the Vistula River opposite of Old Town should be redeveloped as a central Warsaw area¹⁵⁸. The modernization and revitalization of the Praga District's historic built environment would enhance Warsaw's reputation as a center for culture and the arts. Such redevelopment would also fulfill the quest of those who have urged the City to move its center towards the Vistula River. Warsaw's 2007 Spatial Policy also includes Praga's historical buildings as within the City's center¹⁵⁹. This article concurs in this recommendation that Praga be transformed as a new City center. Designating Praga also as an innovation district would help formalize its status as a significant City asset and provide greater recognition of an innovation center's unique features.

The implementation of an innovation district would not require the creation of a metropolitan Warsaw government, but it would be facilitated by metropolitan-wide planning so as to link the district with outlying areas through a coherent and coordinated land use planning and transportation system. An innovation district would require, however, spatial planning because its formative, essential elements, which include housing, retail space, office spaces, green space, and public infrastructure such as the Warsaw Metro, would have to be integrated and planned in a coordinated manner. The creation of such a district would require more governmental intervention than has occurred since Warsaw began the transformation towards a market economy.

Because some large-scale mixed use developments have already been undertaken in Warsaw¹⁶⁰, the City should be able to embrace and effectuate the type of planning and market interventions necessary to carry out a multi-year development project. Most likely the City would need to turn to public-private partnerships in order to gather the funding and resources necessary to complete an

¹⁵⁶ M. Czerny, A. Czerny, *An Emerged New Centre...*, p. 172.

¹⁵⁷ *Ibidem*.

¹⁵⁸ *Ibidem*.

¹⁵⁹ The Capital City of Warsaw, *The Spatial Policy...*, p. 5 (visited Aug. 31, 2015).

¹⁶⁰ See e.g., *Mixed Use Residential and Retail Development*, at <http://www.architecturenewsplus.com/project-images/27203> (visited Aug. 25, 2015); *South Park Mixed-Use Development*, at <http://www.epsteinglobal.com/case-studies/south-park-mixed-use-development> (visited Aug. 25, 2015); *Zlote Tarasy*, at <http://www.macegroup.com/projects/zlote-tarasy> (visited Aug. 25, 2015).

innovation district. Funding for such a district should attract EU cohesion funding as the approach calls for integrated development.

For long-term economic competitiveness Warsaw must have sufficient resources to finance its infrastructure. Poland's local governments generate revenues "through a mixture of (a) local taxes and other own-source revenues, (b) local shares in central taxes, and (c) central general-purpose and specific grants"¹⁶¹. Own-source revenues have been diminishing, and local taxes do not raise sufficient revenues to cover municipal needs, especially in larger cities¹⁶². Critics have suggested that Poland's public finance system needs various reforms, including authorization for the levy of ad valorem property taxes¹⁶³. Obviously, metropolitan governance could not be instituted without an adequate source of revenues to fund its operations, and the creation of an Innovation District would necessitate capital financing, most frequently raised through local government borrowing. Hopefully, Polish decentralization reforms will continue to be implemented so as to maximize the potential the Capital City has already demonstrated in modernizing itself and creating a culture of innovation.

5. CONCLUSION

Despite the terror and destruction of World War II, which was followed by authoritarian rule under a socialist regime, the Capital City of Warsaw has met success in reconstructing itself to attract international investment in a market economy. Because the global economy operates through a network of metropolitan regions throughout the world, Warsaw can achieve greater economic competitiveness through intra-regional integration with surrounding municipalities that together with the Capital City form the Warsaw metropolitan region. But Warsaw faces a number of challenges, some of which are rooted in its recent history, to achieve cohesion with other metropolitan localities not subject to its jurisdiction. Deficiencies in land-use and spatial planning, underdeveloped infrastructure, and a transportation system overly dependent upon the automobile, present major challenges to Warsaw and its metropolitan region.

This article argues that the creation of a metropolitan government could help address these barriers to Warsaw's optimum development. In a global economy that heralds innovation, entrepreneurship, and high-tech industries, the article

¹⁶¹ P. Swianiewicz, *Local Government Organization and Finance: Poland*, (in:) A. Shah (ed.), *Local Governance in Developing Countries*, World Bank 2006, p. 312, at <http://siteresources.worldbank.org/PSGLP/Resources/LocalGovernanceinDeveloping.pdf> (visited Aug. 25, 2015).

¹⁶² *Ibidem*, pp. 314, 319, 324.

¹⁶³ *Ibidem*, p. 320.

also suggests that Warsaw create an Innovation District, which could become its dominant city center. Other cities have created such districts to help build a physical, cultural, social, and economic environment that is conducive to discovery and innovation. Both of these suggestions neatly dovetail the strategies that the European Union has established for this decade. Thus, Warsaw should seriously examine these options that will increase its economic competitiveness and make it a good candidate for EU funding.

METROPOLITAN-WIDE GOVERNANCE AND AN INNOVATION DISTRICT: SMART GROWTH REFORMS TO INCREASE ECONOMIC COMPETITIVENESS IN WARSAW, POLAND

Summary

The Capital City of Warsaw, Poland faces several challenges in becoming a global city that thrives on innovation and high-tech, knowledge-based service industries. Almost totally destroyed during World War II, the City has reconstructed itself from scratch, but it lacks a good spatial design, and its underdeveloped infrastructure and transportation system remain problematic. Further, urban sprawl has enveloped Warsaw's metropolitan area, and the City has no authority outside of its jurisdictional boundary lines to address this issue unless it obtains cooperation from surrounding municipalities. This article contends that Warsaw cannot be economically competitive in the global economy unless it creates conditions conducive to innovation and sustainable growth. Because the world economy is one that revolves around net-worked regional communities, the article proposes the establishment of a Warsaw metropolitan-wide regional government. Investments that improve regional connectivity, accessibility, and economic competitiveness not only improve Warsaw's climate for innovation, but they also enhance its ability to receive European Union funding, which prioritizes integrated economic development that fosters sustainable and inclusive growth. The article also suggests that Warsaw develops a new city center, ideally in the Praga area, to become a showcase for exemplary urban design and sustainable techniques. Barcelona, Spain serves as an excellent model for such a center because its innovation district balances the urban elements necessary to create an environment in which the creative, entrepreneurial sector can work and live in close proximity, namely public amenities, public space, parks, housing, and infrastructure.

ZARZĄDZANIE OBSZARAMI METROPOLITARNYMI I DZIELNICE INNOWACJI: INTELIGENTNE REFORMY ROZWOJOWE ZAPEWNIAJĄCE WZROST KONKURENCYJNOŚCI EKONOMICZNEJ W WARSZAWIE

Streszczenie

Miasto Stołeczne Warszawa ma ambicje, aby zostać światową metropolią, która rozwija się dzięki innowacjom i zaawansowanym technologiom. Miasto odbudowano z ruin po II wojnie światowej, ale wciąż brakuje mu dobrego zagospodarowania przestrzennego i problematyczna pozostaje kwestia nieodpowiedniej infrastruktury i systemu komunikacyjnego. Co więcej, niekontrolowany rozwój miasta poza jego granice administracyjne powoduje, że władze Warszawy nie mają kontroli nad całym obszarem metropolitalnym, chyba że dojdą do porozumienia z władzami okolicznych gmin. Niniejszy artykuł wskazuje, że Warszawa nie może być ekonomicznie konkurencyjnym miastem w skali światowej, dopóki nie stworzy się warunków sprzyjających innowacjom i zrównoważonemu rozwojowi. Autorka proponuje utworzenie samorządu regionalnego w Warszawie dla obszaru całej metropolii, z tego względu, że gospodarka światowa jest oparta właśnie na współpracy regionalnej. Inwestycje usprawniające łączność regionalną, dostępność i konkurencyjność gospodarczą nie tylko stwarzają lepszy klimat dla innowacji w Warszawie, ale także zwiększają jej zdolność do pozyskiwania funduszy z Unii Europejskiej, która określa priorytety zintegrowanego rozwoju gospodarczego sprzyjającego zrównoważonemu rozwojowi i inkluzyjnemu wzrostowi. Artykuł sugeruje również, że Warszawa wkrótce będzie miała nowe centrum, w rejonie Pragi, które stanie się przykładem dla urbanistyki i zrównoważonego rozwoju. Model rozwoju Barcelony to doskonały przykład do naśladowania dla wspomnianego centrum, ponieważ barcelońska dzielnica innowacji łączy w przestrzeni miejskiej elementy sektora kreatywnego i prywatnego, który może rozwijać się w bliskości publicznej infrastruktury, udogodnień, parków i mieszkań.

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KEYWORDS

innovation district, global economy, economic competitiveness, metropolitan governance, urban development, urban sprawl

SŁOWA KLUCZOWE

obszary innowacyjne, gospodarka światowa, konkurencyjność gospodarcza, zarządzanie metropolitalne, rozwój urbanistyczny, zagospodarowanie zabudowy miejskiej

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WARSAW RISING: THE WARSAW STOCK EXCHANGE A SUCCESSFUL MODEL FOR TRANSITION ECONOMIES

*Success is not final; failure is not fatal:
It is the courage to continue that counts.*

Winston S. Churchill¹

1. INTRODUCTION

The Global Financial Crisis, and subsequent Global Recession have severely wounded, and to some extent crippled, the financial infrastructure of many countries. Arguably, the most vulnerable countries that have struggled to regain some measure of stability are transition economies² because of the vulnerability of transition economies; they lack the anchoring of developed domestic industries or governmental acumen in providing access to capital to stabilize the domestic economy.

As a result, economic and financial crises can be devastating for such transition economies. It is often true that economic crises often serve to catapult fundamental institutional paradigms to shift towards more positive, and innovative measures such as new governance structures, policies, and enhanced business regulation³. However, for transition economies the challenge to create innovative economic development programs, and business opportunities for domestic indus-

¹ Sir Winston Churchill, British Prime Minister during World War II, at http://thinkexist.com/occupation/famous_prime_ministers/.

² M. Blyth, *Great Transformations: Economic Ideas and Institutional Change in the Twentieth Century*, Cambridge 2002.

³ L. Pierre Louis, G. Fernandez Evangelista, *Cooperative Banking: A Means of Sustainable Development in the Barcelona Housing Market*, *Revista de Derecho Urbanístico y Medio Ambiente*, Barcelona 2015, p. 323.

tries are exceedingly difficult. And, at times insurmountable. However, when a particular transition economy, which was completely destroyed by the invading Nazi Army approximately 75 years ago, painstakingly rebuilt every cobbled street, every garden, every tea shop in its historic Old Town section; as a living testament to a culture's unwavering will to survive, the world takes notice. Warsaw, Poland is such a transition economy.

Warsaw has one foot firmly planted in its breathtaking history of incomprehensible violence, and survival despite insurmountable odds, and another foot tentatively planted in a hybrid governance structure; one that is heavily influenced by eastern-styled protectionist policies while simultaneously infused with western-styled capital markets access and a thriving tourism industry throughout its historical cities from Warsaw to Krakow to Gdansk. The result is an entrepreneurially driven economic structure which has intentionally steered away from the traditional neo-classical economic philosophy. Poland instead has implemented a new governance structure that:

- relies on domestic ownership of large domestic companies;
- has the ability to access international capital markets through the lure and presence of multinational American, and European banks without depending on foreign capital funds; and
- encourage entrepreneurship by implementing interventionist, and protective governmental policies.

2. EAST CENTRAL EUROPE'S OLD WORLD IDEOLOGY AND GOVERNANCE MODEL

European political economy literature prior to the 1970s reflected governance structures that favored neo-Keynesian, and "liberal Keynesianism"⁴ policies such as public spending and demand-side policies rather than currency devaluations or protectionist trade policies⁵. The interesting factor concerning the old world political ideology is the "enduring strength of neoliberalism which is so impressive"⁶. Some scholars have noted the remarkable "resilience" of neo-liberal ideas

⁴ J. Pontusson, D. Raess, *How (and Why) is this Time Different? The Politics of Economic Crisis in Western Europe and the United States*, Annual Review of Political Science 2012, No. 15, pp. 13–33.

⁵ S. Haggard, *Politics in Hard Times Revisited: The 2008–9 Financial Crisis in Emerging Markets*, (in:) M. Kahler, D. A. Lake (eds.), *Politics in the New Hard Time*, Ithaca 2013, pp. 52–74.

⁶ W. Grant, G. Wilson, *Introduction*, (in:) W. Grant, G. K. Wilson (eds.), *The Consequences of the Global Financial Crisis: The Rhetoric of Reform and Regulation*, Oxford 2012.

in the wake of the 2008 Financial Crisis⁷. However, recent studies have shown that the governments in East Central Europe (“ECE”) countries primarily in Poland, Hungary, Slovakia, and the Czech Republic have begun to jettison the traditional neo-liberal policy for interventionist policies that are strikingly similar to East Asian countries’ state-led development strategies⁸ with a twist. In particular, Poland has fully embraced the westernized capital markets and financial services sector. It has successfully used the international capital markets and international commercial lending to stabilize Poland’s domestic economy, and create select opportunities for foreign investment in Poland’s transition economy.

Ironically, the ECE countries were “global leaders in the adoption of neo-liberal ideas and policies during the 1990s and 2000s”⁹. During that time, the ECE countries were heavily influenced by the European Union, international financial institutions such as the International Monetary Fund (IMF), the World Bank, and western multinational companies (MNCs), which strongly encouraged the ECE governments to focus on attracting foreign direct investment¹⁰. The capital that the ECE governments accumulated from foreign direct investment was used to modernize their manufacturing and financial industries¹¹, which greatly benefited the western countries whose own manufacturing sectors had been in a steady state of decline, in part, due to increase labor costs, and enhanced health and safety regulations in western countries.

It was during this period of western influence that many of the ECE countries’ largest state-owned enterprises were privatized, and sold to foreign “strategic investors, primarily Western European MNCs”¹². Unfortunately, as time progressed, for most ECE countries that had engaged in wholesale privatization, western MNCs became the ECE economies’ leading form of enterprises¹³, especially for countries who had engaged in wholesale privatization of state-owned enterprises such as domestic banks. The ECE governments’ heavy dependence on foreign capital and technologies, led some countries to become “dependent

⁷ V. A. Schmidt, M. Thatcher (eds.), *Resilient Liberalism in Europe’s Political Economy*, Cambridge 2013.

⁸ M. Orenstein, *Reassessing the Neo-Liberal Development Model in Central and Eastern Europe*, New York 2013 (citing Poland as the East Central Europe’s largest country, economy and most innovative business oriented governance structure).

⁹ *Ibidem*, p. 74.

¹⁰ N. Bandelj, *From Communists to Foreign Capitalists: The Social Foundations of Foreign Direct Investment in Postsocialist*, Princeton 2008.

¹¹ J. Drahokoupil, *Globalization and the State in Central and Eastern Europe: The Politics of Foreign Direct Investment*, New York 2009.

¹² D. Bohle, B. Greskovits, *Neoliberalism, Embedded Neoliberalism and Neocorporatism: Towards Transnational Capitalism in Central-Eastern Europe*, West European Politics 2006, No. 30 (3), pp. 443–466.

¹³ D. Bohle, B. Greskovits, *Capitalism without Compromise: Strong Business and Weak Labor in Eastern Europe’s New Transnational Industries*, Studies in Comparative International Development 2006, No. 41 (1), pp. 3–25.

market economies” with a “competitive advantage in the assembly of goods such as cars or consumer electronics”¹⁴. However, such strategies did not encourage the development of domestic industry or entrepreneurship for the ECE countries. Poland would become one of the few exceptions.

The Polish Government did not engage in the wholesale privatization of its state-owned enterprises. In contrast, the Polish Government continued to retain, and increase significant equity positions in a number of large domestic companies, primarily financial services, and industrial corporations during the 2008 Financial Crisis¹⁵. Poland began its transition towards a market economy in the early 1990s. It required an overhaul of the legal framework, and regulations governing commercial transactions¹⁶. By early 2000, Poland had adopted a new Code on Commercial Companies (CCC). Unfortunately, EU member states began to implement tougher corporate governance procedures, primarily in response to the corporate scandals involving Enron, Adelphi, WorldCom, and Kmart that had occurred in the United States. As a new member of the EU, Poland had to implement European law into its domestic laws. The newly minted CCC did not survive the scrutiny. It was abolished a few years later.

Poland soon realized that it had to forge a new governance model in order to create development and growth opportunities that would sustain Poland’s rise in to the global economy. The Polish Government made choices that differed from the existing development model that the IMF, the World Bank, and EU member states had recommended. Poland’s singular focus was on making Polish companies sustainable players in the international capital markets without depending on international funds or international control of major Polish companies. This strategy proved to be life-sustaining for Poland’s transition economy during the 2008 Financial Crisis, and the Global Recession.

Prior to the 2008 Financial Crisis, certain Polish companies had begun to implement strategic anti-takeover provisions in their corporate charters because there was a general sense of malaise within the Polish business community that western MNCs were attempting to gain ownership and control of Polish companies. In 2004, PKN Orlen, the largest Polish oil refiner and petrol retailer, was one of the first Polish companies to implement an anti-takeover poison pill strategy¹⁷. The measures were designed to insulate Polish companies from foreign control. It also to a large extent, protected Polish companies from the 2008 Financial Crisis

¹⁴ A. Noelke, A. Vliegthart, *Enlarging the Varieties of Capitalism: The Emergence of Dependent Market Economies in East Central Europe*, World Politics 2009, No. 61, pp. 670–702.

¹⁵ Warsaw: Platforma Obywatelska, *Program PO: Polska zasługuje na cud gospodarczy [PO’s Program: Poland Deserves an Economic Miracle]* 2007, p. 21.

¹⁶ K. Oplustil, A. Radwan, *Company Law in Poland: Between Autonomous Development and Legal Transplants*, (in:) C. Jessel-Holst, R. Kulms, A. Trunk (eds.), *Private Law in Eastern Europe, Autonomous Developments or Legal Transplants?*, New York 2011.

¹⁷ Polish News Bulletin, *Orlen Oil Giant Limits Voting Rights for Shareholders*, June 29, 2004.

because Polish companies, and domestic markets were not as dependent on international capital markets, and international lending as other members of the ECE countries or EU member states.

3. GLOBAL FINANCIAL CRISIS STRENGTHENS WARSAW'S PROTECTIVE GOVERNANCE MODEL

The 2008 Financial Crisis revealed many truths. Arguably, the most daunting truth was the level of vulnerability that was systemic within the westernized development model of “privatization of state-owned banks and dependency on foreign capital”¹⁸, which was imposed on transitional economies. The subsequent Great Recession was instrumental in the collapse of several ECE countries’ export markets, in part because of weakened domestic banks, and the inability of domestic banks to access the international capital markets. It became clear that excessive dependence on foreign capital threatened the survival of ECE countries’ financial, and economic development¹⁹. The ECE countries’ domestic banking structure was heavily interlinked, and to a large extent dependent on large western international banks that are based in the original 15 EU member states and the United States.

For example, by late 2007 approximately 75% of ECE countries’ banking assets were controlled by primarily foreign Western European banks. In contrast, approximately more than 80% of the original EU 15 member states’ banking assets were controlled primarily by the original EU 15 member banks²⁰. The ECE countries’ banks’ status as subsidiaries of MNCs gave the ECE countries’ banks easy access to foreign liquidity. Unfortunately, the vulnerability of such a dependent system became apparent when West European governments, and regulators began to place pressure on EU member banks to focus their lending in the domestic markets. The result was deleveraged (reduction of) lending to foreign markets including their ECE countries’ foreign-subidiaries. It was an immediate withdrawal of international liquidity from ECE countries, and freezing of the credit market in the ECE countries²¹. The impact was devastating.

¹⁸ M. Orenstein, *Out of the Red: Building Capitalism and Democracy in Post Communist Europe*, Ann Arbor 2000.

¹⁹ D. Bohle, B. Greskovits, *Capitalist Diversity on Europe’s Periphery*, Ithaca 2012.

²⁰ R. Epstein, *The Social Context in Conditionality: Internationalizing Finance in Post Communist Europe*, Journal of European Public Policy 2008, No. 15 (6), pp. 880–898.

²¹ R. Epstein, *Central and East European Bank Responses to the Financial ‘Crisis’: Do Domestic Banks Perform Better in a Crisis than their Foreign-Owned Counterparts?*, Europe Asia Studies 2013, No. 65 (3), pp. 528–547.

In contrast, during the 2008 Financial Crisis and Great Recession, the Polish Government still held substantial equity positions in a number of large financial and industrial Polish companies²². The Polish Government was able to eject liquidity into the domestic markets, and provide flexible credit terms to Polish companies. As a result, Poland was able to withstand, and thrive during the 2008 Financial Crisis when many other ECE countries were crippled by the weight of debt, and inability to access the international capital markets for much needed liquidity and credit.

Interestingly, Polish companies were able to withstand the aftermath of the 2008 Financial Crisis, in part, because many of the largest Polish companies had implemented anti-takeover defense strategies that limited ownership interest in Polish companies to 10% for any single foreign investor inclusive of its subsidiaries before the crippling effects of the 2008 Financial Crisis could take a foothold in the Polish economy. However, the Polish State Treasury, Poland's primary agency responsible for overseeing the privatization of Polish enterprises, was not subject to the 10% restriction, which meant that the Polish State Treasury could purchase, and hold as large an equity position as it was able to purchase on the Warsaw Stock Exchange. Much of the money for the Polish State Treasury's purchase of the domestic stocks came from allocations of the EU Fund for Central Eastern Europe Countries. Poland received sizable funding allocations from the EU.

By 2009 at the height of the 2008 Financial Crisis, the Polish Government began to strongly encourage Polish companies to implement western anti-takeover defenses such as the poison pill strategy to protect the ownership interests of Polish companies that wish to remain Polish owned and controlled. For example, one of the first companies to adopt the poison pill strategy was Bank Pekao SA, Poland's second largest bank, and the subsidiary of the Italian group Unicredit²³. It is within this context that the State Treasury began to collaborate with the management of state-owned enterprises to introduce anti-takeover defense provisions into Polish companies' corporate charters. The synergy between the Polish Government and the business community worked extremely well. Influential persons within the Polish business community began to express strong pro-Poland sentiments that Polish company ownership should remain within Polish hands; phrases such as "our state-owned firms are chickens that lay golden eggs"²⁴, and "state-owned, but modernized itself, just like Brazilian, Chinese and Indian firms"²⁵.

²² M. Naczyk, *Budapest in Warsaw: Central European Business Elites and the Rise of Economic Patriotism since the Crisis*, SASE 26th Annual Conference, July 2014.

²³ G. Garcia, *Inter-State Banking in the EU and the U.S.: Similarities, Differences and Policy Lessons*, Oxford Business & Economics Conference, June 2007.

²⁴ *Tu i teraz Tuska [Tusk's Here and Now]*, Gazeta Wyborcza, August 5, 2010.

²⁵ *Forum Ekonomiczne w Krynicy: Fuzje i prywatyzacja szansą na rozwój [Krynica Economic Forum: Mergers and Privatization, a Chance for Development]*, Rzeczpospolita, September 10, 2010.

This resulted in several large Polish companies modifying their corporate charter to prevent controlling-share ownership by foreign investors.

For example, the board of directors of Polish insurance company, PZU, the largest insurance company in Poland, had little difficulty “adding to [their] articles of incorporation something that in the West is called ‘poison pill,’ a pill that one cannot swallow or, in other words, that prevents a hostile takeover of PZU”²⁶. Similarly in 2010, the Warsaw Stock Exchange introduced the poison pill strategy into its own corporate charter. Presumably, the modification was necessary in “order to protect its role in promoting Warsaw as an international financial center”²⁷. Soon afterwards, in 2011, PKO BP, Poland’s largest bank, and PGE, Poland’s largest power company implemented poison pill strategies in their corporate charters to thwart anti-take-over efforts by foreign investors²⁸. The following year in 2012, Poland’s largest gas company, PGNIG; oil company, Lotos; and chemicals conglomerate, Grupa Azoty, all adopted anti-takeover defense strategies to prevent control of the companies by foreign investors. The result, Poland’s largest companies had made it impossible for any foreign shareholder to have more than 10% controlling interests in arguably the most powerful Polish companies. The stage was set for Poland to implement the next stage of its new governance model; embracing the international capital markets, and enhancing its securities regulation laws to stabilize and attract foreign investment in the companies listed on the Warsaw Stock Exchange.

4. WARSAW’S NEW GOVERNANCE MODEL SUPPORTS ACCESS TO INTERNATIONAL CAPITAL MARKETS

The governments of ECE countries have to a large measure adopted a hybrid East-West governance structure to provide support for emerging industries, and converted outdated industries into modern industries. For example, the Hungarian Government has adopted “unorthodox” policies that moved away from the traditional practices, and have challenged the core elements of the neo-liberal creed, including central bank independence, and attracting foreign direct investment²⁹.

²⁶ Interview, Andrzej Klesyk z PZ gościem, Radio PiN, April 1, 2014, at <http://www.bankier.pl/wiadomosc/PZUzostanie-sponsorem-stadionu-narodowego-2316934.html> (visited June 18, 2015).

²⁷ M. Naczyk, S. Domonkos, *The Global Financial Crisis and Changing Coalitional Dynamics in East European Pension Politics*, 2014, p. 27, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2549715.

²⁸ R. Epstein, *Central and East European Bank...*, pp. 528, 534–535.

²⁹ J. Johnson, A. Barnes, *Financial Nationalism and its International Enablers: The Hungarian Experience*, *Review of International Political Economy*, 201, No. 22 (3), pp. 535–569.

The Polish Government has introduced mechanisms that protect several of Poland's largest domestic companies from hostile takeover bids. It has also tried to increase the market share of banks controlled by domestic capital. The Polish Government has introduced elements of a state-coordinated industrial policy; it decided not to adopt the ideology of MNCs. Instead, the Polish Government used MNCs to provide the capital needed for development of domestic industries without becoming dependent on MNCs' financing³⁰.

Since 2007, Poland has been ruled by a "coalition government" which has traditionally defended liberal economic policies³¹. As the 2008 Financial Crisis reached the ECE countries, the Polish Government tried to distance itself from other ECE countries, and was successful in negotiating special "flexible credit line" with the International Monetary Fund for strongly performing economies like Poland. The Polish Government's focus was to "strengthen Poland's role as a pillar of stability" in the region³². Poland has been the only EU member state to sustain the global impact of the 2008 Financial Crisis by not experiencing a domestic recession. It is a fact that the Polish Government is extremely proud; it has voiced its strategic governance model by repeatedly stating that Poland had remained a "green island on a red background of falling GDP"³³. The Polish Government has heralded its success in maintaining growth as being attributable to its "common sense" rather than to the "pseudo expertise" of "doctrinaire economists'" policies³⁴. Certainly, the Polish Government's perspective of a strong, and thriving Polish economy is adequately captured in statements such as "[T] here will come a day – when we will succeed – that we will have Budapest in Warsaw"³⁵.

Poland's success can be measured in terms of performance. A comparison performance of the Warsaw Stock Exchange to the Prague Stock Exchange unequivocally indicates that the Warsaw Stock Exchange has consistently outperformed the Prague Stock Exchange based on the sheer number of listed companies, and volume of trades from 1995–2006.

The Prague Stock Exchange attempted to tighten listing requirements to drastically decreasing the number of listed firms in order to increase the quality of the firms listed relative to their market capitalization. As a result, the market capitalization of firms listed on the Prague Stock Exchange have been higher in comparison to the Warsaw Stock Exchange. The Prague Stock Exchange has

³⁰ *Ibidem*, p. 28.

³¹ R. Markowski, *The 2007 Polish Parliamentary Election: Some Structuring, Still a Lot of Chaos*, *West European Politics* 2008, No. 31 (5), pp. 1055–1068.

³² *Poland to Ask IMF for Flexible Credit Line*, Associated Press, April 14, 2009.

³³ *Polska liderem Europy [Poland, European Leader]*, *Rzeczpospolita*, December 1, 2009.

³⁴ *Tu i teraz...*

³⁵ *Wieczór w PiS: Ponuro i smutno [Election Night at PiS: Grim and Sad]*, *Rzeczpospolita*, October 10, 2011.

approximately 32 firms listed compared to the Warsaw Stock Exchange, which has approximately 384 companies. Yet, the market capitalization per capita is still higher in the Czech Republic compared to Poland³⁶. The Prague Stock Exchange has roughly \$7,000 USD of equity for every Czech resident whereas the Warsaw Stock Exchange has roughly \$5,000 USD of equity for every Polish resident, which as a mathematical calculation simply reflects that the Czech Republic is not as densely populated as Poland.

As the ECE countries discovered, one of the benefits of stock markets is that they give companies access to the capital markets for companies to raise money very inexpensively and quickly. The Czech market had hardly any initial public offerings (IPOs) in the mid-2000s. As a result, the Czech companies had to go elsewhere for funds. Many of the Czech companies, and many other companies throughout the ECE countries went to Poland. “The regulated Polish stock market grew faster, maintained greater liquidity, and has been a better source of capital for firms than the less regulated Czech [stock] market”³⁷. Additionally, many ECE companies that were successful in originally raising money in the Warsaw Stock Market through an initial public offering, returned to the Warsaw Stock Market for second and third rounds of capital financing. As a result, “the Polish data show[s] rapidly growing equity financing by both new [companies] and [previously] listed firms”³⁸.

5. THE WARSAW STOCK EXCHANGE’S CORPORATE GOVERNANCE STRUCTURE SERVES AS A SUCCESSFUL MODEL FOR TRANSITION ECONOMIES

The primary purpose of stock markets has been to raise capital for companies. An attendant result of raising capital is the emergence of corporate governance structures that are driven by the market for managerial talent (skilled labor), and the market for corporate control. For transition economies, the primary purpose has often been to allow state-controlled enterprises to privatize. As such, stock market driven measures assume the role of corporate governance without first being the source of investment capital³⁹.

³⁶ E. E. Stringham, P. Boettke, J. R. Clark, *Are Regulations the Answer...*, P. Boettke, J. R. Clark, *Are Regulations the Answer for Emerging Stock Markets? Evidence from the Czech Republic and Poland*, *The Quarterly Review of Economics and Finance* 2008, No. 48, pp. 541–566, 548.

³⁷ E. Glaeser, S. Johnson, A. Shleifer, *Coase...*, p. 892.

³⁸ *Ibidem*, p. 897.

³⁹ *Ibidem*, p. 892.

The Warsaw Stock Market has often been referred to as a successful model for transition economies to implement. The success of the Warsaw Stock Market, to a large extent is, in part, due to Poland's strictly regulated capital market, and enhanced securities regulation structure. The legal framework that Poland has implemented to attract foreign investment is a much more complicated structure than other ECE countries have implemented. The heightened level of securities regulations has provided stability and integrity, which have attracted foreign companies to be listed on the Warsaw Stock Exchange, and foreign investors to provide capital to companies that are in need of financing. The Polish Government's efforts to stabilize the Warsaw Stock Exchange is in tandem with the historical literature that the emergence of a stock market requires the state to play a significant role promoting, creating, and sustaining order in the stock market⁴⁰.

The market capitalization of the firms in the International Finance Corporation Investable Index illustrated that the Polish market vastly outperformed the Czech market. The International Finance Corporation Investable Index is only composed of stocks that have a "legal and practical availability to foreign institutional investors", and must "meet the more stringent size and liquidity screens"⁴¹. In a robust stock market like Warsaw, listed companies are required to have strong corporate governance structures that are in compliance with the Polish Government's securities regulations reporting, disclosure, and dispute resolution mechanisms, if the companies wish to remain listed on the Warsaw Stock Exchange.

Interestingly, when the companies are state-owned they do not have to raise capital to attract foreign investors. They only need to implement a corporate governance structure that meets the "legal and practical availability for the foreign investors". It is the beauty of privatization. The corporate governance structure adopted is based on the circumstances of the particular market economy. To be fair, foreign investors do not expect that the newly created stock markets in transition economies to have the same corporate governance structures of developed markets, rather the corporate governance structures adopted should reflect the transition economies' values⁴². However, at a minimum foreign investors do expect that the corporate governance structures implemented in transition economies should provide stability, legal, and practical availability to foreign institutional investors for investment dispute resolution.

⁴⁰ B. Black, *The Legal and Institutional Preconditions for Strong Securities Markets*, University of California Law Angeles Law Review 2001, No. 48, pp. 781–855; X. Zhang, *Financial Market Governance in Developing Countries: Getting the Political Underpinnings Right*, Journal of Developing Societies 2006, pp. 169–196.

⁴¹ E. Stringham, P. Boettke, J. R. Clark, *Are Regulations the Answer...*, p. 547.

⁴² A. Santomero, *Design of Financial Systems and Economic Transformation*, (in:) J. Doukas, V. Murinde, C. Wihlborg (eds.), *Financial Sector Reform and Privatization in Transition Economies*, Bingley 1998, pp. 153–174.

6. RECOMMENDATION

Securities laws and regulations implemented by the Polish Government provide a sense of integrity to foreign investors of a strong corporate governance structure and regulation. The securities laws provide foreign investors seeking new markets in which to invest, the indicia of political and economic stability, and integrity based on the effective implementation, and enforcement of securities regulations in transition economies. It is a model that can be successfully replicated in transition economies in Eastern Europe.

As such, governments of transition economies should consider implementing critical elements of effective securities regulations that are crucial to foreign investors implementation of strong corporate governance procedures for listed companies that are in compliance with government regulations, appropriate financial disclosures, effective financial reporting requirements, enforcement of securities regulation violations, and investment dispute resolution processes. The corporate governance structure adopted is based on the circumstances of the particular market economy. The corporate governance structures adopted should reflect the transition economies' ideals and standards. The Warsaw Stock Exchange has effectively implemented all of the critical elements that provide foreign investors with the sense of economic, legal, and structural stability, and integrity in the Warsaw Stock Market and its listed companies. As a result, the Warsaw Stock Exchange serves as a successful model for transition economies.

7. CONCLUSION

Stock market exchanges in transition economies typically fail. The failure is, in part, due to weak or non-existing securities regulations in the transition economy. The Warsaw Stock Exchange is the exception. The Warsaw Stock Exchange serves as a successful model for newly created stock exchanges in transition economies. The Polish Government implemented strong securities laws to attract foreign investors. Large Polish companies implemented anti-takeover provisions in their respective charters. As a result, Poland's strong securities laws, and the Warsaw Stock Exchange listed companies' requisite compliance with government mandated corporate governance protocols provide a sense of legal, political, and economic stability to foreign investors that are seeking to invest in developing markets.

Each Eastern European country's transition economy has its own story of failure or prosperity. Few Eastern European countries have a history that includes attempted annihilation by invading armies within the immediate past. Even fewer

have a story of survival, and exponential growth that can replicate the success of Warsaw, Poland. The success of the Warsaw Stock Exchange is a testament to the will and spirit of a people to survive, and rise victorious from the ashes.

WARSAW RISING: THE WARSAW STOCK EXCHANGE A SUCCESSFUL MODEL FOR TRANSITION ECONOMIES

Summary

Stock market exchanges in transition economies typically fail. The failure is, in part, due to weak or non-existing securities laws in the transition economy. The Warsaw Stock Exchange is the exception. The Warsaw Stock Exchange serves as a successful model for newly created stock exchanges in transition economies. The Polish Government implemented strong securities laws to attract foreign investors. Poland's strong securities laws and the Warsaw Stock Exchange listed companies' requisite compliance with government mandated corporate governance protocols provide a sense of legal, political, and economic stability to foreign investors that are seeking to invest in developing markets.

WARSZAWA POWSTAJE: WARSZAWSKA GIEŁDA PAPIERÓW WARTOŚCIOWYCH JAKO PRZYKŁAD DO NAŚLADOWANIA DLA GOSPODAREK PRZEJŚCIOWYCH

Streszczenie

Wymiana papierów wartościowych w warunkach gospodarki przejściowej zwykle napotyka na różne wyzwania. Trudności te są częściowo spowodowane słabym lub w ogóle nieistniejącym prawem papierów wartościowych. Warszawska Giełda Papierów Wartościowych jest wyjątkiem. Służy ona za modelowe rozwiązanie dla nowo tworzonych giełd w gospodarkach przejściowych. Rząd polski wprowadził konsekwentne i spójne prawo papierów wartościowych, aby zachęcić zagranicznych inwestorów do inwestowania w Polsce. Polskie prawo papierów wartościowych i firmy notowane na Warszawskiej Giełdzie Papierów Wartościowych, od których wymaga się ładu korporacyjnego, zapewniają poczucie stabilności prawnej, politycznej i gospodarczej inwestorom zagranicznym, którzy zamierzają inwestować na rozwijających się rynkach.

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KEYWORDS

Warsaw stock exchange, Eastern Europe, corporate governance, international capital markets, Polish stock exchange, securities regulation

SŁOWA KLUCZOWE

GPW, Europa Wschodnia, ład korporacyjny, międzynarodowe rynki kapitałowe, Polska giełda, prawo papierów wartościowych

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**FISCAL POLICY AND URBAN GROWTH CHALLENGES:
U.S. PERSPECTIVES ON PROPERTY TAX REFORM
IN WARSAW**

1. INTRODUCTION

This Article was written as part of a series of scholarly works generated from the fascinating and insightful sessions of *Study Space VIII* at the University of Warsaw, organized by the George State University College of Law's Center for the Comparative Study of Metropolitan Growth. The focus of the conference, like that of other Study Space programs prior to it, was to engage with policy makers, government and legal scholars, urban designers, and planning professionals in an intensive study of how a particular city or municipality has grown, developed, and adapted to the ever-changing and expanding roles of the metropolis. Interestingly, this year's conference focused on the experience of Warsaw, a city known in the eighteenth and nineteenth centuries as the Paris of the East but that was later destroyed almost entirely by the German Nazi government during World War II¹. Under Soviet rule, and through the herculean efforts of the Polish people, Warsaw was rebuilt brick by brick back into the beautiful and historic baroque city that exists today². This tremendous undertaking has been lauded by historians and planners alike as a grand achievement³, and despite its relatively recent construction, the Old Town of the city enjoys the status of being a UNESCO World Heritage Site⁴.

¹ D. Crowley, *People's Warsaw / Popular Warsaw*, Journal of Design History 1997, No. 2, p. 10.

² A. M. Tung, *Preserving the World's Great Cities: The Destruction and Renewal of the Historic Metropolis*, New York NY 2002, p. 80.

³ *Ibidem*, p. 8 ("One of the unexpected phenomena of World War II was that in cities subject to bombardment, planners recognized the inadvertent opening of a unique possibility for advantageously restructuring the metropolis").

⁴ *UNESCO: Historic Centre of Warsaw*, at <http://whc.unesco.org/en/list/30> (visited July 1, 2015).

Nevertheless, Warsaw faces a series of urban planning and development challenges⁵. This is due, in part, to the relative economic success Poland, and Warsaw in particular, has experienced over the course of the last several years. With one of the fastest growing economies in central Europe, one of the largest stock exchanges on the continent, and having escaped the 2008 financial crisis relatively unscathed, the country is undergoing a period of notable growth and prosperity⁶. This success is particularly true of the City of Warsaw, the country's political, economic, and cultural hub⁷. But with these successes come the challenges of growth. With a ballooning population, increasing housing needs, new buildings and high-rise towers popping up all over downtown, and much of the labor force needing to commute into the city center for work, urban planning and development has been a major focus for government leaders, academics, and policy advocates⁸. Indeed, although the city center, with its baroque palaces, reliable mass transit, and picturesque squares, is reasonably able to mask its growth problems, the nearby Praga district that lies a mere several minute walk from the Royal Castle in the middle of the Old Town suffers from dilapidated buildings, regularly struggles with crime, and until fairly recently even lacked many basic utilities⁹.

What lies at the heart of the Warsaw metropolitan area's urban planning problems is a perhaps justifiable aversion to centralization. Under the command and control economy of the Soviet Union that dominated Poland's political and economic life for so many years, virtually all power was concentrated in a central administration¹⁰. It was this centralized and monolithic bureaucracy – alongside the dispensing with private property rights – that made the reconstruction of Warsaw, completed in a mere six years, a relative success in the eyes of many¹¹. But what has resulted in contemporary times is a strong sense of municipal autonomy. Individual local governments that surround and comprise the greater Warsaw

⁵ G. Gorzelak, M. Smetkowski, *Warsaw as a Metropolis – Success and Missed Opportunities*, Regional Science Policy & Practice 2011, pp. 38–42.

⁶ S. Faris, *How Poland Became Europe's Most Dynamic Economy*, Bloomberg Business, November 27, 2013; J. Feffer, *Reinventing Republicanism in Poland*, Lobelog, April 17, 2015.

⁷ See G. Gorzelak, M. Smetkowski, *Warsaw as a Metropolis...*, pp. 38–42.

⁸ *Ibidem*, p. 4 (“The city is still lacking land-use plans that would control and influence the location of major private investment projects. Only 16 percent of the city area is covered by master plans. Urbanistic chaos and uncontrolled investment are the results. In several major projects financed from foreign sources have been located without related public investment, leading to severe malfunctioning of the urban space and aesthetic contrasts in the very city centre”).

⁹ See generally T. Saltzman, *The Crumbling Beauty of Warsaw's Praga District*, The Globe and Mail, November 21, 2010, at <http://www.theglobeandmail.com/life/travel/destinations/the-crumbling-beauty-of-warsaws-praga-district/article571562/>.

¹⁰ See N. Davies, *God's Playground: A History of Poland*, Vol. 2, New York NY 2005, pp. 539–643.

¹¹ S. Dziewulski, S. Jankowski, *The Reconstruction of Warsaw*, The Town Planning Review 1957, No. 28, pp. 209–221.

metropolitan area have historically shown very little ability to cooperate and coordinate urban planning strategies and initiatives¹². This is particularly problematic since truly effective planning involves a variety of services and infrastructure regimes that cross municipal borders and require an ongoing and interlocking relationship between various governmental entities. This is especially true since the high cost of housing has pushed many Warsawians into the suburbs, while the jobs and major industries remain located in or near the central city¹³.

But as with all politics, it is important to follow the money. What projects move forward and with whom such initiatives are undertaken is often dictated by the size of the purse and the hand holding its strings. In this Article, I argue that one of the chief impediments to effective urban and growth planning in the Warsaw area comes from Poland's laws relative to municipal finances – specifically those related to real property taxation. Although real property taxation is an important source of revenue for local governments in Poland, municipalities have surprisingly little control or autonomy over them. Indeed, although local governments reap the benefits of property taxation and administer its collection, the processes by which these taxes are assessed and the rate at which they are set is entirely dictated by the national government¹⁴. This, combined with a system that bases tax liability on parcel size rather than parcel value and restricts the types of local government entities that enjoy property taxing powers, has resulted in a financial structure that leaves little incentive for cooperation and almost no flexibility or ability to respond to changing needs¹⁵.

This Article argues for a limited reformation of Poland's property tax system as a way to build better planning capacity between local governments through the adoption of the special taxing district device found in the United States (U.S.). Part 1 gives an overview of the local government structure in Poland, as well as how municipal finances more broadly and property taxation more narrowly are designed. Part 2 describes the U.S. system of real property taxation, including a brief discussion of the U.S. governmental hierarchy. Part 3 identifies two major deficiencies in Polish real property taxation and how they do harm to effective urban and growth planning in Warsaw. Lastly, this Part concludes by suggesting that the U.S. special taxing district might offer a real property tax-related model that could be helpful in remedying Warsaw's urban planning difficulties when it comes to cross-municipal cooperation.

¹² See J. Feffer, *Reinventing Republicanism...*, pp. 2–5.

¹³ S. Tsenkova, *The Social Housing Sector in Prague and Warsaw: Trends and Future Prospects*, *GeoJournal* 2014, No. 79, pp. 433–447.

¹⁴ G. Liszewski, *Evolution of the Rules Pertaining to the Issuing of 'Official' Interpretations of Tax Laws in Poland*, n. 12, *Studies in Logic, Grammar and Rhetoric* 2013, No. 33, p. 46.

¹⁵ See *infra* Part 4 and accompanying discussion.

2. REAL PROPERTY TAXATION IN POLAND: AN OVERVIEW

During the Soviet period, local government rule was non-existent, as all power was concentrated in the centralized bureaucracy. However, starting in 1990 and then continuing through 1999, the gradual creation of municipal entities and the loosening of financial regulations heralded local government's arrival in Poland¹⁶. Alongside these reforms fiscal powers were accorded to local governments, although in quite a limited fashion. The following sections on the Polish local government structure and how municipal entities are financed provides key insights into Warsaw's larger planning and development challenges.

2.1. POLISH GOVERNMENTAL STRUCTURE

In Poland the government structure is broken down into three tiers. There are 2,500 municipalities, 315 counties (65 of which are actually cities), and 16 regions¹⁷. Of these, only municipalities are actually designated in the Polish constitution, with the others being the subject of individual legislation. As noted by comparative local government scholar Pawel Swianiewicz, regional, county, and municipal governments hardly ever cooperate in the delivery of public services, and the regulations imposed by the national government are so strict that "local government's role is to a huge extent reduced to being an agent of central government and implementing central policies"¹⁸. The local governments nominally coordinate efforts in the realm of economic development, but since such endeavors are often tied to infrastructure and other capital incentives, efforts can leave much to be desired.

Municipalities are perhaps the most important of the three tiers. They are charged with delivering a wide array of public services, including water supply, sewage treatment, lighting, public transportation, waste disposal, local roads, most public education, housing, a host of social welfare programs, and, importantly, urban planning and building regulation¹⁹. While regional governments are nominally charged with coordination and strategic planning, their duties are confined to rail services, main roads, and higher education²⁰.

¹⁶ See P. Swianiewicz, *Local Government Organization and Finance: Poland*, (in:) A. Shah (eds.), *Local Governance in Developing Countries*, Washington D.C. 2006.

¹⁷ *Ibidem*.

¹⁸ See *ibidem*, p. 305.

¹⁹ *Ibidem*, p. 310.

²⁰ *Ibidem*.

2.2. LOCAL GOVERNMENT FINANCE

Local governments generally receive their funding from the national government—about 38% of the national budget goes to local governments²¹. Of the recipient entities, municipalities have the largest budgets, accounting for 77% of all monies allocated to local governments, with 18% going to counties and 5% to regional governments. This is due, in large part, to how big municipalities are in Poland as compared to their counterparts in other European countries²².

Although the local government funds are channeled from the national government, their source comes from a revenue sharing of central taxes, national government grants, and local tax revenues²³. Importantly, of the tiers, only municipalities have the power of taxation, and it is quite limited. The other tiers are financed completely from the central government, despite language in the constitution according them independent taxing authority²⁴.

Municipalities collect local taxes related to property, agriculture, vehicles, forests, civil legal activities, legacies and donations, and even dog ownership. Importantly, although the municipality generally collects all of these taxes itself and the local government may decrease the tax rate, the maximum rate is dictated by the national government²⁵.

2.3. PROPERTY TAXES AND MUNICIPAL REVENUE

Swianiewicz notes that “without a doubt, property tax is by far the most important source of local revenues”²⁶. Generally, the tax is paid by the owner on a per square meter-basis, with only a few and financially insignificant number of improvement-related items being based on value. By way of example, as of 2003 Poles paid .51 *zlotych* per square meter for residential property and 17.31 *zlotych* for commercial buildings²⁷. And lastly, unlike natural persons, legal entities that own property are obligated to determine their own property tax liability and remit payment to the government, regardless of whether they received official notification.

²¹ See *ibidem*, p. 308–309. The budgets of cities with county status (larger cities like Warsaw) are comprised of 35.4% from own-source revenues, 13.8% from property taxes, 27.5% from local government shares in central taxes, 23.6% in general grants, and 13.5% in conditional grants. See *ibidem*, p. 315.

²² See *ibidem* (“Only a few Polish municipalities have populations under 2,000, and none have fewer than 1,000 inhabitants”).

²³ *Ibidem*, p. 312.

²⁴ See *ibidem* (citing the Article 168 of the Polish Constitution: “territorial self-government units have a right to set rates of local fees and taxes, within limited decided by law”).

²⁵ *Ibidem*.

²⁶ See *ibidem*, p. 313.

²⁷ *Ibidem*.

Similar to the property tax is the agricultural tax paid by farm owners and renters²⁸. Although the tax is paid by hectare, other factors such as quality of the soil and economic and environmental variables relative to farming activities also play a part in determining the ultimate tax liability owed to the municipality.

3. SUMMARY OF AMERICAN REAL PROPERTY TAXATION

Although it shares some surface-level similarities, the real property tax structure in Poland and the United States is markedly different. Some dissimilarity derives from the divergent federal-state-local government hierarchy that pervades the American governmental landscape, but a significant portion derives from political norms involving competition and specialization among U.S. local governments and their various sub-entities²⁹. The following describes the U.S. local government pyramid, how municipal finance is devised, and lastly, explains the special taxing district model.

3.1. US LOCAL GOVERNMENT STRUCTURE

The United States ascribes to a federal system whereby national and state governments share power³⁰. The power of the states is considered plenary; it is not constrained by anything other than what is in the applicable state constitution and, by virtue of the supremacy clause, what is contained in the U.S. constitution³¹. The federal government, however, is a government of limited authority; it only has those powers delegated to it by the U.S. constitution³².

Within the ambit of the states comes the role of local governments³³. As early American colonies had little actual government structure other than the involvement of trading companies and the general sovereignty of the British monarchy,

²⁸ See *ibidem* (“A farm is defined as an area larger than one hectare that is used as arable land, that contains a pond, or that contains buildings used for farming activity, [regardless of whether cultivated]”).

²⁹ See generally C. K. Odinet, *Fairness, Equity, and A Level Playing Field: Development Goals for the Resilient City*, Idaho L. Rev. 2014, No. 50, p. 217.

³⁰ A. L. LaCroix, *The Ideological Origins of American Federalism*, Cambridge MA 2011.

³¹ See generally J. Martinez, *Nature and Scope of Local Government Powers*, Local Government Law 2015, No. 2.

³² P. M. Garry, *Liberty Through Limits: The Bill of Rights as Limited Government Provisions*, SMU L. Rev. 2009, No. 62, pp. 1745, 1747.

³³ Local governments are said to operate under *Dillon’s Rule*, which is a jurisprudential doctrine stating that local governments have no power except that which is given to them by their state legislature or constitution. See *Hunter v. Pittsburgh*, 207 U.S. 161 (1907)

settlers began to form their own local governing entities³⁴. Since that time, local government structures have become much more formalized and sophisticated. Under the U.S. constitution, rather than having an inherent right to self-government at the local level, as is contained in the Polish constitution and that of other countries, the creation and allocation of powers, rights, and duties of local governments is delegated to the states³⁵.

Local government in America operates at two levels — counties and then within those counties various municipalities, such as cities, towns, and villages³⁶. Generally speaking, the residents of these local government areas directly elect their own councils and sometimes mayors or other executive officials. However, the powers accorded to each level vary from state to state, with some counties being very weak and cities being very strong (or vice-versa), and with some having a combined county-municipality form of government³⁷. The allocation of specific functions is equally diverse, with some counties being in charge of public education, roads, and sewage, and in other places with such activities being shifted to cities.

3.2. LOCAL GOVERNMENT FINANCE

In the United States, local government funds are chiefly derived from local sources³⁸. These include taxes levied on personal and real property, sales, income, severance, and gifts and estates, as well as specific user fees³⁹.

The actual power of local governments — both municipalities and counties — to tax is often restricted by state and federal constitutional limitations. These include restrictions on the type of taxes that can be enacted, the rate at which they are imposed, and the uses for which they can be made⁴⁰. However, despite these restrictions, most commentators say the propensity of American courts to uphold taxing laws has resulted in giving local governments a relative free hand⁴¹.

³⁴ See *The Colonial Government: Foundations of American Government*, at <http://www.ushistory.org/gov/2a.asp> (visited July 1, 2015).

³⁵ See J. Martinez, *Nature and Scope...*

³⁶ E. McQuillin, *Nature and Kinds of Municipal Corporations*, McQuillin Mun. Corp. 2015, § 2:48 (Many of these names are similar across international audiences, and jurisdictions in the U.S. vary on what type of local government qualifies as each).

³⁷ See generally D. R. Mandelker, D. C. Netsch, P. W. Salsich, J. Welch Wegner, J. C. Griffith, *State and Local Government in a Federal System*, Dayton OH 2010.

³⁸ W. Hellerstein, K. J. Stark, J. A. Swain, J. M. Youngman, *State and Local Taxation: Cases and Materials 4–10*, New York NY 2009.

³⁹ See *ibidem* (discussing the diverse mixture of tax sources at the local and state level).

⁴⁰ See *ibidem*, pp. 11–13.

⁴¹ See S. W. Mazza, T. A. Kaye, *Restricting the Legislative Power to Tax in the United States*, Am. J. Comp. L. 2006, No. 54, p. 641.

Historically speaking, real property taxation has been a major source of local government revenue in the U.S.⁴² It is, for the most part, uniformly based on the value of the property and its improvements, rather than the actual size of the land at issue⁴³. Because of this, property taxes are often called *ad valorem* taxes. They are collected annually and, at least in theory, the property is also revalued from year-to-year, generally by the local government that benefits from the tax, through a variety of reassessment approaches⁴⁴.

3.3. SPECIAL TAXING DISTRICTS

A distinctive feature of American real property taxation is the use of special-purpose local government sub-entities known as “special taxing districts”, or just “special districts”⁴⁵. These entities serve specific functions such as the provision of public education, water distribution, fire safety, or sewer services. They charge assessments against owners of parcels of property within the district, but because the funds so generated provide a “special benefit” to those property owners, they are not legally considered a tax⁴⁶. Nevertheless, they are essentially offspring of the property tax; the assessments are generally a special line item on the owner’s annual property tax bill.

The funds generated by these districts are used to fund infrastructure projects and services within the district such as sewers, parking facilities, recreational areas, and drainage improvements, among others⁴⁷. Rather than being assessed on a reoccurring basis, special district assessments often only last as long as is needed to retire the debt for a specific project or set of projects. The method of assessment is usually more flexible and can be based on value, land size, benefited area, or some combination thereof⁴⁸. And importantly, they are often exempt from the legal limitations that states and the federal constitution place on property taxes more generally⁴⁹.

⁴² See G. W. Fisher, *History of Property Taxes in the United States*, EH.Net Encyclopedia, 2002, at <http://eh.net/encyclopedia/history-of-property-taxes-in-the-united-states/>; see also G. W. Fisher, *The Worst Tax? A History of the Property Tax in America*, Lawrence KS 1996.

⁴³ See W. Hellerstein, K. J. Stark, J. A. Swain, J. M. Youngman, *State and Local Taxation...*, pp. 919–933.

⁴⁴ See *ibidem*.

⁴⁵ See C. K. Odinet, *Super-Liens to the Rescue? A Case Against Special Districts in Real Estate Finance*, Wash. & Lee L. Rev. 2015, No. 72, pp. 707, 737–745.

⁴⁶ M. D. Geldfand, J. A. Mintz, P. Salsich, Jr., *State and Local Taxation and Finance*, Eagan MN 2007, p. 105 (“The characteristics that distinguish special assessments from taxes are the one-time nature of the assessments, their application only to specially benefited property, and the requirement that their level be correlated with the benefit received”).

⁴⁷ See C. K. Odinet, *Super-Liens to the Rescue?...*, p. 738.

⁴⁸ M. D. Geldfand, J. A. Mintz, P. Salsich, Jr., *State and Local Taxation...*, pp. 112–114.

⁴⁹ C. K. Odinet, *Super-Liens to the Rescue?...*, pp. 739–740.

Lastly, a special board or commission governs special taxing districts, of which the members are appointed by the local government's council or a chief executive, or even by direct election of the property owners within the district's boundaries⁵⁰. The board has the power to set the policies of the district, authorize specific infrastructure projects, direct the imposition of assessments according to law, and issue debt instruments – such as tax-exempt municipal bonds – to finance their initiatives⁵¹. Moreover, the special district's versatility and usefulness has certainly been recognized in the United States⁵². There are roughly as many special taxing districts as there are counties, towns, and cities across the United States combined⁵³.

4. PROPERTY TAXATION REFORM: PROBLEMS AND POSSIBILITIES FOR WARSAW

The Polish property tax system suffers from a number of structural weaknesses that render it a rather poor tool for local governments seeking to address the needs of the country's ever-growing economy, and specifically the urban planning and growth control goals of Warsaw and its neighboring municipalities. While property taxes are extremely important in the constellation of revenue sources accorded to Polish local governments, the strict and unbending limitations imposed on these governmental units with regard to fiscal policy-making are overly burdensome⁵⁴.

4.1. PROBLEM: LACK OF MUNICIPAL FLEXIBILITY AND FISCAL AUTONOMY

The chief problem with the Polish property tax system is that it offers no autonomy to the country's municipalities⁵⁵. The rates at which taxes are assessed are entirely dependent on the whims of the national government. Therefore, the minister of finance and the Parliament make general determinations about what

⁵⁰ K. A. Stahl, *Neighborhood Empowerment and the Future of the City*, U. Pa. L. Rev. 2013, No. 161, pp. 939, 941–946.

⁵¹ J. C. Griffith, *Special Tax Districts to Finance Residential Infrastructure*, Urb. Law 2007, No. 39, pp. 959, 979.

⁵² S. R. Miller, *Legal Neighborhoods*, Harv. Envtl. L. Rev. 2013, No. 37, pp. 105, 143–156.

⁵³ U.S. Census Bureau, *2012 Census of Governments: Organization Component Estimates tbl.2*, at <http://www.census.gov//govs/cog2012>.

⁵⁴ See P. Swianiewicz, *Local Government Organization...*, pp. 319–322.

⁵⁵ For a graphical depiction of total tax revenues in Poland by source, see *The Tax System of Poland*, at http://www.finance.mf.gov.pl/documents/766655/936176/20111026_tax_system_of_Poland.pdf (visited July 2, 2015).

is proper for a given jurisdiction even though they might have very little knowledge about the actual “needs-on-the-ground” in that particular municipality or the pressing concerns of its citizenry⁵⁶. This naturally produces a system whereby local governments in Poland cannot adapt and respond to changing circumstances and public demands because their major source of self-generated revenue is tied up in the hands of powers that are quite removed from the place where the needs are most felt⁵⁷.

Further, the lack of a direct correlation between local government decision-making and the level of property taxes undermines public accountability. The uniform process of assessing property taxes is also problematic. Rather than allowing for a system that measures the amount of the tax based on the value of the property, the mere size of the land determines the liability. Property in the middle of Old Town Warsaw and property in the middle of a rural field, as long as they are of equal size, are assessed identically⁵⁸. While value-based property taxation has its critics⁵⁹, a system that allows for variation or at least a mix of the two approaches would provide local governments with better options for customization based on place and need.

4.2. PROBLEM: LACK OF MUNICIPAL COOPERATION IN URBAN PLANNING

Another problem, related to the want of a flexible tool for property taxation, is raised in connection with the lack of coordination between Warsaw and its surrounding municipalities⁶⁰. Related to historical aversions to centralized planning, neighboring local governmental entities rarely work together on infrastructure projects. This is due, in part, to the fact that the tier of local government charged with wide-range planning – the regional governments – are excluded from the

⁵⁶ A. Kopańska, T. Levitas, *The Regulation and Development of the Subsovereign Debt Market in Poland: 1993–2002*, (in:) P. Swianiewicz (eds.), *Local Government Borrowing: Risks and Rewards*, Budapest 2004, p. 33 (“Municipalities, unlike counties and regions, have the right to impose “own taxes” on real estate, agricultural and forestry activities, small businesses (an octroi) and dogs. With the exception of the tax on dogs, however, the Ministry of Finance determines both the base and maximum rates of these taxes”).

⁵⁷ See *ibidem*, p. 34 (“[M]unicipalities have no true own taxes of any significance and their capacity to generate additional revenues is based primarily on the sale or rental of municipal property”).

⁵⁸ See *ibidem*, p. 319–320.

⁵⁹ See, e.g., D. Shanske, *Revitalizing Local Political Economy Through Modernizing the Property Tax*, *Tax L. Rev.* 2015, No. 68, p. 143.

⁶⁰ A. Kopańska, T. Levitas, *The Regulation and Development...*, pp. 32–33 (“[T]he establishment of cities with county rights has placed many rural citizens in jurisdictions that lack the infrastructure necessary to perform county functions. This has created a variety of transportation problems and has led to some disputes between local governments about how the costs of certain services should be paid for”).

function of providing for local roads, sewer, drainage, and related improvements. These services and public goods are the backbone of urban planning⁶¹, but are exclusively the province of municipalities. Since municipalities guard their individualism and autonomy so fiercely, meetings of local leaders often conclude with only pledges to meet yet again, with no real outcomes.

Related to the issue of property taxation and local government revenues, a coalition of 40 municipalities in the Warsaw metropolitan area recently banned together for the purpose of investing in infrastructure projects. However, it is notable that the funds for these endeavors are derived from European Union grants. Indeed, many of the notable infrastructure projects in and around Warsaw in recent years have been the result of EU funding⁶². But even with “free” money on the table, local Warsaw officials note that building the coalition has been difficult and time consuming as local leaders are weary of one another and often prefer to work in insolation. One can easily imagine that, were the various neighboring local governments made to come up with the money themselves for these cross-municipal infrastructure projects, such coalitions might rarely be formed.

4.3. POSSIBLE SOLUTION: PLANNING AND DEVELOPMENT THROUGH SPECIAL DISTRICTS

In light of these issues of coordinated urban planning and fiscal autonomy, the Warsaw metropolitan area, and perhaps Poland more broadly, could benefit from a limited adoption of the special taxing district system⁶³. These districts provide a way for coordination across large geographic areas to occur, without necessarily having to create a new general-purpose local government. Moreover, these districts are meant to fulfill a specific purpose, rather than address the broader needs of an entire community. And, importantly, they generate their own revenues through an assessment that is separate and apart from general property taxes.

The special taxing district financing device addresses a number of concerns that Poles care about. First, it delegates only a limited amount of authority to a centralized entity. The municipalities that would form the special district could agree in the enabling legislation that the district would only undertake certain urban projects or planning functions as agreed upon. This might include public

⁶¹ R. Zimmerman, *Making Infrastructure Competitive in an Urban World*, *Annals Am. Acad. Pol. & Soc. Sci.* 2009, p. 226.

⁶² *EU Funding Released for Warsaw Metro*, PMR, September 26, 2011; *EU Funding: Billions for Science*, *The Warsaw Voice*, December 5, 2007.

⁶³ Since Polish law does not seem to give recognition to the concept of the special taxing district, new legislation would likely be needed to authorize such a device. This would assumedly be accomplished at the Parliament level.

transportation systems and utility infrastructure projects that cross over the various municipal boundary lines⁶⁴.

The governing bodies of the various municipalities could select the governing board of the district, the locations of which would comprise the geographic area of the district itself. In this way, each municipality would have its own representative to advocate its interests. If properly selected and structured, it might be possible to somewhat insulate the special district's board from being overly influenced by the parochial politics that are so bound-up in popularly elected councils.

Lastly, the district would be able, with limitations, to generate its own revenue to finance its activities by charging assessments against the property within the district. The ability to tax and generate a steady stream of revenue is essential to local government borrowing, which has become the major method of financing capital improvements in Poland⁶⁵. By 2003 Polish local government debt reached 4.3 billion, up from essentially zero in the early 1990s⁶⁶. Further, by limiting the assessments to only those properties within the district, there would be a better correlation between the benefits accorded and the charges imposed, as well as a better connection between local fiscal decision-making and the needs of the locale. The method of assessment of the land could, like many special districts in the United States, be comprised of a mixture of different techniques that include value, size, and other economic or environmental factors as is somewhat done in Poland for the agricultural property tax.

5. CONCLUSION

Weak fiscal policies and a lack of coordinated urban and growth planning among the municipalities comprising the larger Warsaw metropolitan area are strongly connected. The historical prejudice against centralization that is superimposed over the fragmented nature of local government and its functions in Poland make effective planning and coordination very difficult. The U.S. special taxing district provides a tool whereby municipalities would need only to concede a very specific and temporally limited set of functions in order to achieve broader planning goals. Also, the district's ability to generate funds through property assessments provides a mechanism for these much needed infrastructure projects to be financed and made possible with everyone feeling like they have "skin in the game". While special taxing districts might show some promise for

⁶⁴ See J. C. Griffith, *Regional Governance Reconsidered*, J.L. & Pol. 2005, No. 21, p. 505 (for a discussion of regional infrastructure governance structures in Vancouver, Canada).

⁶⁵ A. Kopańska, T. Levitas, *The Regulation and Development...*, p. 29.

⁶⁶ *Ibidem*.

Warsaw's urban planning challenges and its ability to respond to them, they also have a number of drawbacks⁶⁷. Increased authority to local government entities can result in a greater disparity between geographic areas. While competition between municipalities or regions can be healthy and good for economic growth, it can also produce inequities and social harms such as levels of wealth, education, health, and quality of life. Similarly, despite best efforts, parochialism is difficult if not impossible to avoid, so some level of self-interest will inevitably be internalized into the special district board's decision-making. However, as discussed above, there are a number of positives to using this form of special-purpose local government device and, despite its negatives, the greater Warsaw metropolitan area may nonetheless find it a helpful tool. A special taxing district for urban planning and infrastructure could be created to provide a coordinated form of cross-municipal decision-making and a reliable device for financing much needed infrastructure and related projects.

FISCAL POLICY AND URBAN GROWTH CHALLENGES: U.S. PERSPECTIVES ON PROPERTY TAX REFORM IN WARSAW

Summary

In a meteoritic rise from the dark days of World War II and Soviet hegemony, Warsaw has experienced an economic renaissance in recent years, boasting one of the largest stock exchanges in Europe and one of the fastest growing economies on the continent. However, the city and its surrounding areas suffer from a serious lack of comprehensive urban growth strategies, with only 16% of the city being master planned despite increasing housing, transportation, and infrastructure needs. This absence, combined with a general public aversion to centralized decision-making and weak local government fiscal policies – particularly with regard to the laws governing the setting and administration of real property taxation – has caused and will likely continue to exacerbate Warsaw's urban growth problems. This Article explores and assesses these various challenges and their causes and recommends the adoption of the U.S. special taxing district model as one vehicle that could be used to facilitate a more effective structure for urban and growth planning in the Warsaw metropolitan area.

⁶⁷ See, e.g., R. Florida, *Rise of the Fragmented City*, The Atlantic, April 28, 2015; see also L. Reynolds, *Taxes, Fees, Assessments, and the "Get What You Pay For" Model of Local Government*, Fla. L. Rev. 2004, No. 56, p. 373; L. Reynolds, *Local Governments and Regional Governance*, Urb. Law.2007, No. 39, p. 483; L. Reynolds, *Intergovernmental Cooperation, Metropolitan Equity, and the New Regionalism*, Wash. L. Rev. 2003, No. 78, p. 93.

POLITYKA FISKALNA I WYZWANIA DLA ROZWOJU URBANIZACYJNEGO: REFORMA PODATKU OD NIERUCHOMOŚCI W WARSZAWIE Z PERSPEKTYWY AMERYKAŃSKIEJ

Streszczenie

Warszawa doświadczyła odrodzenia gospodarczego po latach sowieckiej hegemonii i tragicznych wydarzeniach II wojny światowej. Stolica Polski ma dziś jedną z największych giełd w Europie i jest jedną z najszybciej rozwijających się gospodarek na kontynencie. Jednak Warszawę i jej okolice dotyka poważny brak kompleksowej strategii rozwoju – tylko 16% obszaru metropolii jest objęte planem zagospodarowania przestrzennego pomimo rosnącego zapotrzebowania na mieszkania, transport i infrastrukturę. Te braki w połączeniu z ogólną niechęcią społeczeństwa do odgórnego sposobu podejmowania decyzji i słabej polityki podatkowej samorządów lokalnych, zwłaszcza w odniesieniu do opodatkowania nieruchomości, spowodowały i prawdopodobnie nadal będą tworzyć problemy rozwojowe miasta. W artykule autor poddaje analizie i dokonuje oceny różnych wyzwań dla Warszawy, zachęcając do rozważenia przyjęcia amerykańskiego modelu podatkowego dla samorządów terytorialnych w celu stworzenia lepszych warunków do rozwoju urbanistycznego aglomeracji warszawskiej.

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KEYWORDS

Warsaw, urban development; planning, special districts, local government, real estate, Study Space, economic development

SŁOWA KLUCZOWE

Warszawa, rozwój obszarów miejskich; planowanie, obszary specjalne, samorząd, rozwój gospodarczy

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**FABLES OF THE RECONSTRUCTION*:
HUMAN EMOTION AND BEHAVIORAL HEURISTICS
IN ENVIRONMENTAL ECONOMICS**

Quantitative risk management guides policy across many domains, from the regulation of systemically important financial institutions to natural disaster prevention, mitigation, and recovery. Much of the edifice of contemporary mathematical finance, from the capital asset pricing model to the Black-Scholes model of option pricing¹, Merton's distance-to-default model of credit risk², the original RiskMetrics specification of value-at-risk³, and the Gaussian copula⁴, is built on the Gaussian "normal" distribution⁵. These elegant models – absent elaborate modifications that ruin their spare, symmetrical form – are treacherously wrong in their reporting of the true nature of risk. Many of the predictive flaws in contemporary finance arise from reliance on the mathematically elegant but practically unrealistic construction of "beautifully Platonic models on a Gaussian base"⁶. Gaussian mathematics suggests that financial returns are smooth, sym-

*Hear R.E.M., *Fables of the Reconstruction*, 1985.

¹ See F. Black, M. S. Scholes, *The Pricing of Options and Corporate Liabilities*, *J. Pol. Econ.* 1973, No. 81, pp. 637–654; R. C. Merton, *The Theory of Rational Option Pricing*, *Bell J. Econ.* 1973, No. 4, pp. 141–183.

² See R. C. Merton, *On the Pricing of Corporate Debt: The Risk Structure of Interest Rates*, *J. Fin.* 1974, No. 29, pp. 449–470.

³ See J. Mina, J. Yi Xiao, *Return to RiskMetrics: The Evolution of a Standard*, New York 2001; J. Berkowitz, J. O'Brien, *How Accurate Are Value-at-Risk Models at Commercial Banks?*, *J. Fin.* 2002, No. 57, pp. 1093–1111.

⁴ See R. B. Nelsen, *An Introduction to Copulas*, New York 1999; D. X. Liu, *On Default Correlation: A Copula Function Approach*, *J. Fixed Income* March 2000, pp. 43–54.

⁵ See generally B. B. Mandelbrot, R. L. Hudson, *The (Mis)Behavior of Markets: A Fractal View of Risk, Ruin, and Reward*, New York 2004.

⁶ N. N. Taleb, *The Black Swan: The Impact of the Highly Improbable*, New York 2007, p. 279.

metrical, and predictable. In reality, returns are skewed⁷ and exhibit heavier than normal tails⁸.

Despite their shortcomings, Gaussian models continue to wield considerable influence throughout all domains of risk management. A wide range of policy judgments continue to rest on the assumption that risks and returns follow the visually supple and analytically pliable curves of the Gaussian distribution. Indeed, the metaphysical arc of mathematical finance exhibits the seductive symmetry of “beauty supreme – a beauty cold and austere, like that of sculpture, without any appeal to any part of our weaker nature, without the gorgeous trappings of painting or music, yet sublimely pure, and capable of a stern perfection such as only the greatest art can show”⁹. The attraction in law, finance, and economics to formal elegance reflects a love affair with the Gaussian mathematics that dominates the culture of contemporary business and science¹⁰.

Multiple financial crises have shaken confidence in these formal economic models. Mathematical finance often finds that it “can no longer understand [itself] because the theories (...) of [its] former age no longer work and the theories of the new age are not yet known”¹¹. Recovery from these crises offers exactly one path forward: to “start afresh as if [we] were newly come into a new world”¹². The traditional economic preference for order must give way to pragmatic exigencies. When at last we grasp the uncomfortable truth that Gaussian models of risk and return belong to “a system of childish illusions”, our affair with the

⁷ See, e.g., J. Y. Campbell, A. W. Lo, A. C. MacKinlay, *The Econometrics of Financial Markets*, Princeton 1997, pp. 17, 81, 172, 498; F. M. Aparicio, J. Estrada, *Empirical Distributions of Stock Returns: European Securities Markets, 1990–95*, Eur. J. Fin. 2001, No. 7, pp. 1–21; G. Bekaert, C. Erb, C. R. Harvey, T. Viskanta, *Distributional Characteristics of Emerging Market Returns and Asset Allocation*, J. Portfolio Mgmt. 1998, pp. 102–116; P. Chunhachinda, K. Dandepani, S. Hamid, A. J. Prakash, *Portfolio Selection and Skewness: Evidence from International Stock Markets*, J. Banking & Fin. 1997, No. 21, pp. 143–167; A. Peiró, *Skewness in Financial Returns*, J. Banking & Fin. 1999, pp. 847–862.

⁸ See, e.g., J. B. Gray, D. W. French, *Empirical Comparisons of Distributional Models for Stock Index Returns*, J. Bus. Fin. & Accounting 1990, No. 39, pp. 451–459; S. J. Kon, *Models of Stock Returns – A Comparison*, J. Fin. 1984, No. 39, pp. 147–165; H. M. Markowitz, N. Usmen, *The Likelihood of Various Stock Market Return Distributions*, Part 1: *Principles of Inference*, J. Risk & Uncertainty 1996, No. 13, pp. 207–219; H. M. Markowitz, N. Usmen, *The Likelihood of Various Stock Market Return Distributions*, Part 2: *Empirical Results*, J. Risk & Uncertainty 1996, No. 13, pp. 221–247; T. C. Mills, *Modelling Skewness and Kurtosis in the London Stock Exchange FT-SE Index Return Distributions*, Statistician 1995, No. 44, pp. 323–332.

⁹ B. Russell, *The Study of Mathematics*, (in:) *Mysticism and Logic, and Other Essays*, Totowa 1988, pp. 58, 60; J. Chen, *Truth and Beauty: A Legal Translation*, U. Toledo L. Rev. 2010, No. 41, pp. 265.

¹⁰ See N. N. Taleb, *The Black Swan...*, p. 279.

¹¹ W. Percy, *The Delta Factor*, (in:) *The Message in the Bottle: How Queer Man Is, How Queer Language Is, and What One Has to Do with the Other*, New York 1986, pp. 3–45.

¹² *Ibidem*, p. 7.

seductive symmetry of traditional risk modeling shall pass “like first love (...) into memory”¹³.

The making of environmental law and policy is likewise a species of risk management, one where the vectors of physical uncertainty and emotional reaction differ from those of finance in degree more than in kind¹⁴. To extend the contributions of physics to financial evaluations of abnormal markets¹⁵, complete understanding of human economic behavior demands knowledge of neuroscience, evolutionary biology, and epidemiology. Among branches of economics, environmental economics provides an especially rich source of insights into the impact of emotion, cognitive bias, and behavioral heuristics on risk assessment and management.

In environmental economics, as in other domains, risk is experienced and understood in emotional terms¹⁶. And the primary forces that appeal to emotion take verbal, visual, and narrative form: “much of the human thinking that results in action is not quantitative, but instead takes the form of *storytelling* and *justification*”¹⁷. When making financial decisions, investors “weigh a story, which has no quantitative dimension, against the observed quantity of financial wealth that they have available for consumption”¹⁸. Environmental economics reflects many of the same dynamics. I now evaluate the behavioral element of environmental economics as a fable. A powerful fable operates as “the opposite of a stage magician”: rather than crafting “illusion that has the appearance of truth”, a fable “give[s] you truth in the pleasant disguise of illusion”¹⁹.

For purposes of contrasting environmental economics with its purely financial counterpart, I begin with a quick examination of modern portfolio theory²⁰, one of the foundational components of mathematical finance²¹. The most rigid forms of risk management make “no attempt to explain [the] underlying structure

¹³ D. Berlinski, *A Tour of the Calculus*, New York 1995, p. 239.

¹⁴ See, e.g., C. R. Sunstein, R. Zeckhauser, *Overreaction to Fearsome Risks*, *Envtl. & Resource Econ.* 2011, No. 48, pp. 435–449.

¹⁵ See generally S. Sinha, A. Chatterjee, A. Chkraborti, B. K. Chakrabarti, *Econophysics: An Introduction*, Weinheim 2011.

¹⁶ See, e.g., G. F. Loewenstein, *Emotions in Economic Theory and Economic Behavior*, *Am. Econ. Rev.* 2000, No. 65, pp. 426–432; G. Loewenstein, E. U. Weber, C. K. Hsee, N. Welch, *Risk as Feelings*, *Psych. Bull.* 2001, No. 127, pp. 267–286.

¹⁷ R. J. Shiller, *Irrational Exuberance*, 3rd ed., Princeton 2015, p. 168 (emphases in original).

¹⁸ *Ibidem*, p. 168.

¹⁹ T. Williams, *The Glass Menagerie*, New York 1999.

²⁰ See generally, e.g., E. J. Elton, M. J. Gruber, S. J. Brown, W. N. Goetzmann, *Modern Portfolio Theory and Investment Analysis*, 9th ed., Hoboken 2014; E. J. Elton, M. J. Gruber, *Modern Portfolio Theory, 1950 to Date*, *J. Banking & Fin.* 1997, No. 21, pp. 1743–1759; H. M. Markowitz, *Portfolio Selection*, *J. Fin.* 1952, No. 7, pp. 87–91.

²¹ For an extended application of modern portfolio theory to disaster law, see J. Chen, *Modern Disaster Theory: Evaluating Disaster Law as a Portfolio of Legal Rules*, *Emory Int'l L.J.* 2011, No. 25, p. 1121–1143.

[of] price changes”²². Modern portfolio theory goes no further than “simply” to “give probabilities” for “[v]arious outcomes”²³. At its weakest, modern portfolio theory tautologically restates the capital asset pricing model²⁴, insofar as *any* mean-variance efficient portfolio is mathematically equivalent to the expected return predicted by the capital asset pricing model (CAPM)²⁵:

$$E(R_t) = R_f + \beta_p [E(R_p) - R_f].$$

This objection, that modern portfolio theory tautologically restates the CAPM, is called Roll’s critique. The proponent of this view, Richard Roll, is better known for his second claim. The second half of Roll’s critique asserts that the true market portfolio is unobservable, inasmuch as it fails to address all components of net worth²⁶. The capital asset pricing model neglects assets that cannot be easily liquidated and marked-to-market on a publicly regulated exchange. The CAPM therefore omits every alternative source of wealth, from real estate to jewelry and other personal effects. In the financial context, Roll speculated that a mixture of “bonds, human capital, and real estate in reasonable proportions” with “all-equity proxies” might better reflect the efficiency of the market, but conceded that this hypothesis could not be tested, “for the simple reason that the true market portfolio has an unknown composition”²⁷. These omissions force observers to test hypotheses about the CAPM on the publicly traded fraction of an investor’s over-

²² See D. W. Hubbard, *The Failure of Risk Management*, Hoboken 2009, p. 67 (distinguishing the simple assignment of probabilities in modern portfolio theory from more comprehensive structural analyses of risk in probabilistic risk assessment).

²³ *Ibidem*, p. 67.

²⁴ See R. Roll, *A Critique of the Asset Pricing Theory’s Tests – Part I: On Past and Potential Testability of the Theory*, J. Fin. Econ. 1977, No. 4, pp. 136; see also E. F. Fama, J. D. MacBeth, *Risk, Return, and Equilibrium: Empirical Tests*, J. Pol. Econ. 1973, No. 81, pp. 610.

²⁵ See generally, e.g., F. Black, *Capital Market Equilibrium with Restricted Borrowing*, J. Bus. 1972, No. 45, pp. 444–455; E. F. Fama, K. R. French, *The Capital Asset Pricing Model: Theory and Evidence*, J. Econ. Persp. 2004, pp. 25–46; J. Lintner, *Security Prices, Risk and Maximal Gains from Diversification*, J. Fin. 1965, No. 20, pp. 587–615; J. Lintner, *The Valuation of Risk Assets and the Selection of Risky Investments in Stock Portfolios and Capital Budgets*, Rev. Econ. & Stats. 1965, No. 73, pp. 13–37; J. Mossin, *Equilibrium in a Capital Asset Market*, Econometrica 1966, No. 34, pp. 768–783; W. F. Sharpe, *Capital Asset Prices: A Theory of Market Equilibrium Under Conditions of Risk*, J. Fin. 1964, No. 19, pp. 425–442; J. L. Treynor, *Toward a Theory of Market Value of Risky Assets*, (in:) R. A. Korajczyk (eds.), *Asset Pricing and Portfolio Performance: Models, Strategy and Performance Metrics*, London 1999, pp. 15–22.

²⁶ Compare R. Roll, *A Critique of the Asset Pricing Theory’s Tests...*, p. 138 (stating that tests of asset pricing theory assume that “the market portfolio must be identifiable”) with *ibidem*, p. 146 (noting the concession made by M. E. Blume, I. Friend, *A New Look at the Capital Asset Pricing Model*, J. Fin. 1973, No. 28, pp. 22–23, that the CAPM “cannot explain the observed returns of all financial assets”, but “may be (...) adequate (...) for a subset (...) such as common stocks on the NYSE”).

²⁷ R. Roll, *A Critique of the Asset Pricing Theory’s Tests...*, p. 155.

all portfolio. “Tests of the CAPM are extremely sensitive to which market proxy is used” to assess the efficiency with which the market reacts to new information, “even though returns on most market proxies (...) are highly correlated”²⁸. The failure of any asset pricing model to demonstrate market efficiency could arise *either* from the *ex ante* inefficiency of the true market portfolio or from the inefficiency of the chosen market proxy²⁹.

Beyond identifying methodological limitations on the ability to verify or falsify claims made by the capital asset pricing model, Roll’s critique has deeper implications for the persuasive power of economic theory. An approach to mathematical finance that narrowly addresses the market in publicly traded assets will struggle with emotions and experiences beyond that tightly bounded framework. For instance, a growing body of economic and psychological research connects subjective well-being with discretionary purchases of experiences rather than material possessions³⁰. A purported theory of everything in mathematical finance cannot afford to omit consequential assets, even if they are illiquid or difficult to price.

Intriguingly, environmental economics levels an analogous criticism at the use of conventional econometrics as a baseline for evaluating environmental policy³¹. Conventional measures of social welfare such as gross domestic product (GDP), it is alleged, give little or no weight to ecosystem services³². In place of GDP, or least alongside it, ecological economists have devised a wide variety of measures intended to capture elements of human and ecological welfare that carry no weight in standard national income and product accounts³³. These measures include the genuine progress indicator³⁴ and the human development

²⁸ S. M. Focardi, F. J. Fabozzi, *The Mathematics of Financial Modeling and Investment Management*, Hoboken 2004, p. 521.

²⁹ *Ibidem*.

³⁰ See, e.g., T. J. Carter, T. Gilovich, *The Relative Relativity of Material and Experiential Purchases*, *J. Personality & Soc. Psych.* 2010, No. 98, pp. 146–159; R. G. Howell, P. Pchelin, R. Iyer, *The Preference for Experiences over Possessions: Measurement and Construct Validation of the Experiential Buying tendency Scale*, *J. Positive Psych.* 2012, No. 7, pp. 57–71; M. Millar, R. Thomas, *Discretionary Activity and Happiness: The Role of Materialism*, *J. Research in Personality* 2009, No. 43, pp. 699–702.

³¹ See, e.g., M. Max-Neef, *Economic Growth and Quality of Life: A Threshold Hypothesis*, *Ecol. Econ.* 1995, No. 15, pp. 115–118.

³² See, e.g., S. Zhao, H. Hong, L. Zhang, *Linking the Concept of Ecological Footprint and Valuation of Ecosystem Services: A Case Study of Economic Growth and Natural Carrying Capacity*, *Int’l J. Sustainable Dev. & World Ecol.* 2008, No. 15, pp. 448–456.

³³ See, e.g., I. Kubiszewski, R. Costanza, C. Franco, P. Lawn, J. Talberth, T. Jackson, C. Aylmer, *Beyond GDP: Measuring and Achieving Global Genuine Progress*, *Ecol. Econ.* 2013, No. 93, pp. 57–68.

³⁴ See, e.g., P. A. Lawn, *A Theoretical Foundation to Support the Index of Sustainable Economic Welfare (ISEW), Genuine Progress Indicator (GPI), and Other Related Indexes*, *Ecol. Econ.* 2003, No. 44, pp. 105–118.

index³⁵. The adoption of gross national happiness by the Himalayan kingdom of Bhutan connects the quest for proper economic measurement with human emotion, a link that environmental economics seeks to complete³⁶.

Roll's second critique issues a straightforward, twofold challenge to quantitative risk management. First, we must count everything, for wealth and risk depend on the full portfolio. Second, we must remember that there are different ways of accounting, and different actors will resort to some of these methods, even if the government or some abstract ledger treats only one system of accounting as "correct".

The realm of environmental protection and conservation, where "beauty and mystery (...) seized us at the beginning" and continues to inspire "the human intellect that masters [it] all"³⁷, serves as an apt reminder that neither finance nor any other branch of economics can be severed from aesthetic judgment and human emotion³⁸. Homebuyers "do not just see a house"; they "see a handsome house, an ugly house, or a pretentious house"³⁹. The recognition that even the briefest introduction to a subject – mere exposure – alters emotional reactions to novel stimuli⁴⁰ opens the door to complete economic consideration of the so-called "affect heuristic"⁴¹. Instantaneous, automatic "feelings associated with [such] stimulus words [as] *treasure* or *hate*"⁴² motivate entire branches of busi-

³⁵ See, e.g., F. Noorbaksh, *A Modified Human Development Index*, World Dev. 1998, No. 26, pp. 517–528; A. D. Sagar, A. Najam, *The Human Development Index: A Critical Review*, Ecol. Econ. 1998, No. 25, pp. 249–264.

³⁶ See S. Preisner, *Gross National Happiness: Bhutan's Vision of Development and Its Challenges*, (in:) P. Nath Mukherji, C. Sengupta (eds.), *Indigeneity and Universality in Social Science: A South Asian Response*, New Dehli 2004, pp. 212–232.

³⁷ E. O. Wilson, *Consilience: The Unity of Knowledge*, New York 1998, p. 237.

³⁸ See, e.g., J. Wei Zhang, R. T. Howell, R. Iyer, *Engagement with Natural Beauty Moderates the Positive Relation Between Connectedness with Nature and Psychological Well-Being*, J. Env'tl. Psych. 2014, No. 38, pp. 55–63.

³⁹ R. B. Zajonc, *Feeling and Thinking: Preferences Need No Inferences*, Am. Psychologist 1980, No. 35, pp. 154; M. Statman, K. L. Fisher, D. Anginer, *Affect in a Behavioral Asset-Pricing Model*, Fin. Analysts J. 2008, No. 64, pp. 20–29.

⁴⁰ See R. B. Zajonc, *Mere Exposure: A Gateway to the Subliminal*, Current Directions in Psych. Sci. 2001, No. 10, pp. 224–228.

⁴¹ See generally, e.g., M. L. Finucane, A. Alhakami, P. Slovic, S. M. Johnson, *The Affect Heuristic in Judgments of Risks and Benefits*, J. Behav. Decision Making 2000, No. 13, pp. 1–17; P. Slovic, E. Peters, M. L. Finucane, D. G. MacGregor, *Affect, Risk, and Decision Making*, Health Psych. 2005, No. 24, pp. S35–S40; M. Statman, K. L. Fisher, D. Anginer, *Affect in a Behavioral Asset-Pricing Model...*, pp. 20–29; R. B. Zajonc, *Feeling and Thinking...*, pp. 151–175.

⁴² See P. Slovic, M. Finucane, E. Peters, D. G. Macgregor, *The Affect Heuristic*, (in:) T. Gilovich, D. Griffin, D. Kahneman (eds.), *Heuristics and Biases: The Psychology of Intuitive Judgment*, Cambridge 2002, pp. 397–420.

ness and economics associated with advertising, marketing, and publicity⁴³. We should likewise expect the affect heuristic to affect evaluations of risk.

This is the sense in which Roll's second critique holds the key to a behaviorally sensitive understanding of economics. Emotions drive the price of the assets that are putatively invisible to conventional pricing models. Art⁴⁴, collectibles⁴⁵, anything beautiful⁴⁶. Ye gods, real estate⁴⁷. No less than prices for wine⁴⁸, stock market prices reflect investor sentiment as well as rational factors⁴⁹. What does come at a price is relaxing the supposition, embedded in "standard financial theory", that "affect plays no role in the pricing of financial assets"⁵⁰. Human emotion and behavior do affect financial markets and portfolios, and the corresponding recognition that "affect plays a role in pricing models of financial assets" gives rise to the development of "a behavioral asset-pricing model"⁵¹.

Many of the behavioral quirks that hound financial markets have been observed in environmental contexts. Scientific receptivity to the role of behavioral psychology does differ. In contrast with the ambivalent reception of behavioral economics in financial circles, the impact of emotion and innate heuristics on environmental decision-making has never been doubted. During the formative stages of modern behavioral economics, agricultural economists leapfrogged the rest of the "axiomatically minded" profession in acknowledging both "risk and risk aversion" and in connecting "behavior to need by a simple rule called the safety-first principle"⁵². In other words, agricultural economics was one of the first branches of economics to embrace Roy's safety-first criterion, a financial optimization rule that minimizes the probability that an investor would realize actual

⁴³ See, e.g., B. Shiv, A. Fedorikhin, *Heart and Mind in Conflict: The Interplay of Affect and Cognition in Consumer Decision Making*, J. Consumer Research 1999, No. 26, pp. 278–292.

⁴⁴ See, e.g., G. David, K. Oosterlinck, A. Szafarz, *Art Market Inefficiency*, Econ. Letters 2013, No. 121, pp. 23–25; P. Erdos, M. Ormos, *Random Walk Theory and the Weak-Form Efficiency of the US Art Auction Prices*, J. Banking & Fin. 2010, No. 34, pp. 1062–1076.

⁴⁵ See, e.g., E. Dimson, C. Spaenjers, *Ex Post: The Investment Performance of Collectible Stamps*, J. Fin. Econ. 2011, No. 110, pp. 443–458.

⁴⁶ See, e.g., L. Renneboog, C. Spaenjers, *Buying Beauty: On Prices and Returns in the Art Market*, Mgmt. Sci. 2013, No. 110, pp. 36–53.

⁴⁷ See E. L. Glaeser, *A Nation Of Gamblers: Real Estate Speculation And American History*, NBER Working Paper No. 18825, 2013, at <http://www.nber.org/papers/w18825>.

⁴⁸ See O. Ashenfelter, *How Auctions Work for Wine and Art*, J. Econ. Perspectives 1989, No. 3, pp. 23–26.

⁴⁹ See M. Baker, J. Wurgler, *Investor Sentiment in the Stock Market*, J. Econ. Perspectives 2007, No. 21, pp. 129–151.

⁵⁰ M. Statman, K. L. Fisher, D. Anginer, *Affect in a Behavioral Asset-Pricing Model...*, p. 20.

⁵¹ *Ibidem*.

⁵² L. L. Lopes, *Between Hope and Fear: The Psychology of Risk*, Advances Experimental Soc. Psych. 1987, No. 20, pp. 255–295; see also, e.g., Q. Shahabuddin, D. Butterfield, *The Impact of Risk on Agricultural Production Decisions: Tests of a Safety-First Model in Bangladesh*, Bangladesh Dev. Stud. 1986, No. 14, pp. 13–37.

returns below some minimally acceptable baseline⁵³. Recognizing the behavioral lessons of environmental economics may help finance transcend the perceived rigor and the admittedly romantic allure of the efficient markets hypothesis.

Vigilance against downside risk animates the most temperamentally (if not politically) conservative principle in environmental law and safety regulation. As a counterweight to conventional cost-benefit analysis, the precautionary principle discourages risk-taking that may hurt the public at large, or an especially vulnerable segment of it⁵⁴. The need to accumulate and safeguard wealth for immediate, safety- or survival-oriented consumption is likelier to consume a deeper portion of a poor family's total wealth⁵⁵. This sensitivity to unforeseen, even unforeseeable, risk and to wealth effects finds a welcome home in the normative toolkit of environmental economics.

On the other hand, the risk of excessive social consumption in disregard for environmental disruption and other long-term consequences does appear to reach its apex during periods of nominal economic growth. Environmental “hazards that are viewed as familiar, commonplace, everyday risks are often underestimated”, especially by local residents who rely (mistakenly) on the “perceived collective judgment” of others around them who have seemingly concluded that their community is “safe enough”⁵⁶. Too often, public responses to environmental risk falls under the sway of the gambler's fallacy⁵⁷ and “overinvest[s] in reconstruc-

⁵³ See A. D. Roy, *Safety First and the Holding of Assets*, *Econometrica* 1952, No. 20, pp. 431–449.

⁵⁴ See, e.g., U.N. Conference on Environment and Development, Rio de Janeiro, June 3–14, 1992, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF. 151/26, Vol. 1, annex 1, principle 15, August 12, 1992 (“Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”); J. Applegate, *The Precautionary Preference: An American Perspective on the Precautionary Principle*, *Hum. & Ecol. Risk Assessment* 2000, No. 6, p. 413. For efforts to reconcile the precautionary principle with cost-benefit analysis, see D. H. Cole, *Reconciling Cost-Benefit Analysis with the Precautionary Principle*, March 5, 2012, at <https://www.law.upenn.edu/blogs/regblog/2012/03/reconciling-cost-benefit-analysis-with-the-precautionary-principle.html>; D. A. Kysar, *It Might Have Been: Risk, Precaution and Opportunity Costs*, *J. Land Use & Envtl. L.* 2006, No. 22.

⁵⁵ Compare J. Haug, T. Hens, P. Woehrmann, *Risk Aversion in the Large and in the Small*, *Econ. Letters* 2013, pp. 310–313 with M. S. Kimball, *Precautionary Saving in the Small and in the Large*, *Econometrica* 1990, No. 58, p. 53–73.

⁵⁶ L. Grow Sun, *Smart Growth in Dumb Places: Sustainability, Disaster, and the Future of the American City*, *BYU L. Rev.* 2011, pp. 2192–2193; see also *ibidem*, p. 2193 (“Individuals who live in cities vulnerable to natural disasters may adopt the attitude that every place is risky in some way and (...) view that vulnerability as just one of the many risks of modern life”); cf. J. Pidot, *Deconstructing Disaster*, *BYU L. Rev.* 2013, pp. 213 (observing that the public may fall into a dangerous state of complacency about environmental risks after “a long period of calm”, “as though (...) natural hazards no longer exist”).

⁵⁷ See generally T. McPherson, *Moorean Arguments and Moral Revisionism*, *J. Ethics & Soc. Phil.* 2009, No. 3, pp. 2, 20; S. P. Stich, R. E. Nisbett, *Justification and the Psychology of Human Reasoning*, *4Phil. Sci.* 1988, No. 47, pp. 192–193.

tion in the wake of disaster based on a mistaken assumption that a period of repose and relative safety will follow”⁵⁸. At the same time, many individuals ignore ecosystem services and other positive environmental externalities – for example, “flourishing forests, healthy wetlands, thriving honeybee populations, and a stable climate” – until the loss of such “societal benefits” becomes “the face of (...) disaster”⁵⁹.

These mistakes in environmental judgment arise from what behavioral economists call the availability heuristic⁶⁰. The salience of data, rather than a scientifically sober account of its significance, ultimately drives decision-making⁶¹. The interconnected nature of human society quickly compounds the power of narratives whose plausibility and vividness exceed their validity into “availability cascades” that overwhelm proper, critical evaluation⁶². Availability cascades have created an entire “disaster mythology” in which catastrophic events prompt looting, violence, and general lawlessness⁶³. Availability cascades bedevil other domains of public health and environmental policy, such as acceptance of the safety of vaccines⁶⁴ and of the science demonstrating the anthropogenic nature of climate change⁶⁵.

Informational cascades are even more devastating when they validate ideas that the audience is already predisposed to favor. Behavioral economics calls this problem “confirmation bias”⁶⁶. As if these problems were not demoralizing enough, increased levels of literacy, numeracy, and scientific sophistication do not change minds or hearts about pressing issues of risk management. Instead, they merely

⁵⁸ J. Pidot, *Deconstructing Disaster...*, p. 138.

⁵⁹ L. Grow Sun, B. Daniels, *Mirrored Externalities*, Notre Dame L. Rev. 2014, No. 90, pp. 135, 161–162.

⁶⁰ See generally, e.g., H. Fennema, P. Wakker, *Original and Cumulative Prospect Theory: A Discussion of Empirical Differences*, J. Behav. Decision Making 1997, No. 10, p. 53.

⁶¹ See C. Jolls, C. R. Sunstein, R. H. Thaler, *A Behavioral Approach to Law and Economics*, Stan. L. Rev. 1998, No. 50, pp. 1471, 1477–1478.

⁶² See generally M. K. Brunnermeier, *Herding and Informational Cascades*, (in:) *Asset Pricing Under Asymmetrical Information: Bubbles, Crashes, Technical Analysis, and Herding*, Oxford 2001, pp. 147–164; T. Kuran, C. R. Sunstein, *Availability Cascades and Risk Regulation*, Stan. L. Rev. 1999, No. 51, pp. 683–768.

⁶³ See L. Grow Sun, *Disaster Mythology and Availability Cascades*, Duke Envtl. L. & Pol’y F. 2012, No. 23, pp. 73, 77–81; L. Grow Sun, *Disaster Mythology and the Law*, Cornell L. Rev. 2011, No. 96, pp. 1131, 1150–1152.

⁶⁴ See, e.g., J. Bonhoeffer, J. U. Heininger, *Adverse Events Following Immunization: Perception and Evidence*, Current Opin. in Infectious Diseases 2007, No. 20, pp. 237–246; M. B. Pepys, *Science and Serendipity*, Clin. Med. 2007, No. 7, pp. 562–578.

⁶⁵ See, e.g., A. M. McCright, R. E. Dunlap, *Challenging Global Warming as a Social Problem: An Analysis of the Conservative Movement’s Counter-Claims*, Soc. Probs. 2000, No. 47, pp. 499–522.

⁶⁶ See generally R. S. Nickerson, *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, Rev. Gen. Psych. 1998, No. 2, pp. 175–220.

entrench all parties even more deeply in their predispositions and biases⁶⁷. Cultural cognition theory⁶⁸, though by no means immune to criticism⁶⁹, suggests that the public will turn its attention to deep threats such as climate change only when legal and political actors learn how to communicate in ways that resonate with deeply held societal values⁷⁰.

Other cognitive biases also hamper judgment in environmental and financial settings. The endowment effect, a bedrock element of humans' innate heuristics for evaluating risk⁷¹, leads private parties and governments to overvalue pre-existing wealth and to take economically unwarranted account of sunk costs⁷². Consider, for example, the choice between *ex ante* investments in disaster preparedness and *ex post* expenditures on disaster relief. By one estimate, each dollar in disaster preparedness is worth roughly \$15 in mitigated future damage⁷³. Even though an ounce of prevention is almost literally worth a pound of cure, individu-

⁶⁷ See D. M. Kahan, E. Peters, M. Wittlin, P. Slovic, L. Larrimore Ouellette, D. Braman, G. Mandel, *The Polarizing Impact of Science Literacy and Numeracy on Perceived Climate Change Risks*, *Nature Climate Change* 2012, No. 2, pp. 732–735.

⁶⁸ See generally M. Douglas, A. B. Wildavsky, *Risk and Culture: An Essay on the Selection of Technical and Environmental Dangers*, Berkeley 1982 (propounding a cultural theory of risk); P. Slovic, *The Perception of Risk*, New York 2000 (propounding a “psychometric paradigm” for risk management through public policy).

⁶⁹ See L. Sjöberg, *World Views, Political Attitudes, and Risk Perception*, 9 *Risk: Health, Safety & Env't* 1998, No. 9, pp. 137–152 (arguing that cultural cognition theory accounts for only a portion of the diversity in attitudes toward risk).

⁷⁰ See R. M. Verchick, *Culture, Cognition, and Climate*, U. Ill. L. Rev. 2015 (forthcoming); cf. L. Grow Sun, *Disaggregating Disasters*, UCLA L. Rev. 2013, No. 60, pp. 884, 887 (criticizing the framing of natural and technological disasters within the narrative of war and national security, as though those disasters involved an anthropomorphic “enemy” to be demonized and defeated).

⁷¹ See generally, e.g., Z. Carmon, D. Ariely, *Focusing on the Forgone: How Value Can Appear So Different to Buyers and Sellers*, *J. Consumer Research* 2000, No. 27, p. 360; H. J. Hovenkamp, *Legal Policy and the Endowment Effect*, *J. Leg. Stud.* 1991, No. 20, pp. 225–247; D. Kahneman, J. L. Knetsch, R. H. Thaler, *Experimental Tests of the Endowment Effect and the Coase Theorem*, *J. Pol. Econ.* 1990, No. 98, pp. 1325–1348; J. L. Knetsch, *The Endowment Effect and Evidence of Nonreversible Indifference Curves*, *Am. Econ. Rev.* 1989, No. 79, pp. 1277–1284; N. Novemsky, D. Kahneman, *The Boundaries of Loss Aversion*, *J. Marketing Research* 2005, No. 42, p. 119.

⁷² See W. Kip Viscusi, *The Hold-Up Problem: Why It Is Urgent to Rethink the Economics of Disaster Insurance Protection*, (in:) E. Michel-Kerjan, P. Slovic (eds.), *The Irrational Economist: Making Decisions in a Dangerous World*, New York 2006, pp. 142, 145.

⁷³ See A. Healy, N. Malhotra, *Myopic Voters and Natural Disaster Policy*, *Am. Pol. Sci. Rev.* 2009, No. 103, pp. 387, 396 (estimating “the total benefit of a dollar of preparedness spending” as “all future reductions in damage”, while discounting “those benefits (...) for the fact that resources invested today in other ways could have yielded their own return and that preparedness investments will depreciate”); cf. M. Ishaq Nadiri, I. Prucha, *Estimation of Depreciation Rate of Physical and R&D Capital in the U.S. Total Manufacturing Sector*, *Econ. Inquiry* 1996, No. 34, p. 43 (estimating that physical capital in American manufacturing depreciates 5.9% per year). Combining Nadiri and Prucha's 5.9% depreciation rate with their own estimate of a 4% annual interest rate, Healy and Malhotra “estimate the [net present value] of \$1 of disaster preparedness to be about \$15”.

als and governments systematically underinvest in disaster preparedness *ex ante* and overinvest in disaster relief *ex post*⁷⁴.

At worst, the affect heuristic encourages economic agents to evaluate the magnitude of risk and expected loss according to raw likes and dislikes⁷⁵. In more conventional financial settings, after all, the addition or removal of “dot-com” from a company name resulted in abnormally positive returns, depending on whether the name change took place before or after the technology bust of the early 2000s⁷⁶. In cruder terms, human decision-making is thrall to the laws of sympathetic magic – the emotional “laws” dictating that contact with disgusting objects constitutes permanent contamination (food touching a cockroach is repulsive) and that visual similarity constitutes qualitative equivalence (food resembling a cockroach is also repulsive)⁷⁷. Along every spatial, temporal, and behavioral dimension, the political economy of disaster assistance dictates perverse outcomes⁷⁸, which we may ruefully but truthfully describe as “accidents waiting to happen”⁷⁹, or “catastrophic responses to catastrophic risks”⁸⁰.

This narrative bridging finance with environmental economics evokes the fable of the ant and the grasshopper. Both versions of this morally ambiguous fable inform the connection between these branches of economics. Aesop’s more traditional version of the tale⁸¹ suggests that we should treat behavioral departures from strict, technocratic rationality as the moral equivalent of the grasshopper’s behavior, singing throughout the summer rather than gathering food. A parallel source of ancient wisdom counsels, “Go to the ant, O sluggard; consider her ways, and be wise. Without having any chief, officer or ruler, she prepares her food in

⁷⁴ See B. Depoorter, *Horizontal Political Externalities: The Supply and Demand of Disaster Management*, Duke L.J. 2006, No. 56, pp. 101, 103; H. Kunreuther, *Mitigating Disaster Losses Through Insurance*, J. Risk & Uncertainty 1996, No. 12, p. 171 .

⁷⁵ See J. Pidot, *Deconstructing Disaster...*, p. 242.

⁷⁶ Compare M. J. Cooper, O. Dimitrov, P. Raghavendra Rau, *A Rose.com by Any Other Name*, J. Fin. 2001, No. 56, pp. 2371–2388 (finding positive value in the adoption of a dot-com name during the technology boom) with M. J. Cooper, A. Khorana, I. Osobov, A. Patel, P. Raghavendra Rau, *Managerial Actions in Response to a Market Downturn: Valuation Effects in the Dot.com Decline*, J. Corp. Fin. 2005, No. 11, pp. 319–335 (finding positive value in the removal of dot-com from corporate names after the technology crash).

⁷⁷ See P. Rozin, L. Millman, C. Nemeroff, *Operation of the Laws of Sympathetic Magic in Disgust and Other Domains*, J. Personality & Soc. Psych. 1986, No. 50, pp. 703–712.

⁷⁸ See C. Cohen, E. Werker, *The Political Economy of “Natural” Disasters*, J. Conflict Resolution 2008, No. 52, p. 795.

⁷⁹ J.-P. Benoît, J. Dubra, *On the Problem of Prevention*, Int’l Econ. Rev. 2013, No. 54, p. 787.

⁸⁰ R. A. Epstein, *Catastrophic Responses to Catastrophic Risks*, J. Risk & Uncertainty 1996, No. 12, p. 287. See generally J. M. Chen, *Correlation, Coverage, and Catastrophe: The Contours of Financial Preparedness for Disaster*, Fordham Envtl. L. Rev. 2014, No. 26, pp. 79–85.

⁸¹ See, e.g., B. Snead, *Aesop’s Fables*, New York 2003, pp. 65–66.

summer, and gathers her sustenance in harvest”⁸². Approaching the fable of the ant and the grasshopper as a didactic allegory that the kingdom of nature might teach human society suggests that failures in disaster law, public health, and climate change policy demonstrate human disregard of the world whose “unfathomable complexity [and] sublime beauty” gave rise to the “human thirst for new ideas” in the first place⁸³.

But there is a different interpretation of this fable, one that counsels a more cautious, circumspect respect for the power that behavioral heuristics and cognitive biases exert over naked rationality. The French version of the fable by Jean de La Fontaine, *La Cigale et la Fourmi*⁸⁴, is celebrated for its moral ambiguity and its veiled critique of the fabulist’s own financial imprudence⁸⁵. La Fontaine cast the fable’s insects as parties to a failed lending transaction. Said the hungry cicada (never a grasshopper in *la version française*): “On insect’s honor, I’ll repay you / Well before fall. With interest, too!”⁸⁶ *Mais non*: “Our ant – no willing lender she! Least of her faults!”⁸⁷. When the ant at last tells her starving neighbor to dance through the winter, it is far from clear which insect has the moral upper foot. And morality is perhaps the most deeply emotional, least mechanistically “rational” projection of the human mind at work⁸⁸.

Among the branches of economics, environmental economics may harbor the richest trove of departures from strict rationality. The valuation of environmental benefits, from individual specimens to entire populations and ecosystem services, is beset by disagreements over methodology and validity. Environmental decision-making rarely offers the numerical clarity of financial problems. For instance, Mark Sagoff defends legal intervention to save endangered species on

⁸² Proverbs 6:6-8 (Revised Standard Version); see also Proverbs 30:24-25 (“Four things on earth are small, but they are exceedingly wise: the ants are a people not strong, yet they provide their food in the summer (...).”).

⁸³ J. Chen, *Webs of Life: Biodiversity Conservation as a Species of Information Policy*, Iowa L. Rev. 2004, No. 89, pp. 495–608, 603 (quoting D. Takacs, *The Idea of Biodiversity: Philosophies of Paradise*, Baltimore 1996, p. 255).

⁸⁴ The original French version of *La Cigale et la Fourmi*, alongside a serviceable if pedantically literal English translation, appears in J. de La Fontaine, *Selected Fables / Fables Choiesies: A Dual Language Book*, Mineola 1997.

⁸⁵ See A. Calder, *The Fables of La Fontaine: Wisdom Brought Down to Earth*, Geneva 2001, pp. 18–24.

⁸⁶ *The Complete Fables of Jean de La Fontaine*, Urbana-Champaign 2007.

⁸⁷ *Ibidem*. In the original French, these are the pivotal lines: “Je vous paierai, lui dit-elle, / Avant l’août, foi d’animal, / Intérêt et principal”. / La fourmi n’est pas prêteuse: / C’est là son moindre défaut”. J. de La Fontaine, *Selected Fables...*, p. 2. In Appelbaum’s translation, “I’ll pay you (...) / before harvest time, on my word as an animal / both interest and principal.” / The ant wasn’t the lending kind; / if she had any fault, it wasn’t that one”. *Ibidem*, p. 3.

⁸⁸ See, e.g., J. Graham, B. A. Nosek, J. Haidt, R. Iyer, S. Koleva, P. H. Ditto, *Mapping the Moral Domain*, J. Personality & Soc. Psych. 2011, No. 101, pp. 366–385; S. P. Koleva, J. Graham, R. Iyer, P. H. Ditto, J. Haidt, *Tracing the Threads: How Five Moral Concerns (Especially Purity) Help Explain Culture War Attitudes*, J. Research in Personality 2012, No. 46, pp. 184–194.

strictly “[m]oral, aesthetic, and spiritual” grounds, finding “an instrumental or economic rationale” to lie “beyond reach”⁸⁹. But it demands almost deliberate disregard of economic reality to insist on valuing polar bears, for instance, strictly on the basis of their value for sport hunting and subsistence. Treating *Ursa maritimus* as so much Arctic bushmeat sets the value of Canada’s bear population at \$600,000, far below the estimated \$6 billion in indirect and passive uses, including bequest and existence value⁹⁰. The polar bear’s greatest value to the United States may be its role in providing a basis for dispatching the Endangered Species Act on problems of climate change that the United States Congress has persistently ignored⁹¹.

The incorporation of behavioral psychology into environmental economics is, if nothing else, the story of an intellectual discipline that has come to embrace the richness of analytical tools transcending austere but excessively rigid mathematical models. The “long reaches of the peaks of song”, whether delivered by La Fontaine’s cicada or a human master of music as mathematics made flesh, rebuff the formic formalist of the French fable⁹². If indeed the ant symbolizes the entomological equivalent of poet Edwin Markham’s “[s]lave of the wheel of labor”, a nuanced approach to ecological as well as financial economics may rightfully ask, “what to [her] / Are Plato and the swing of Pleiades?”⁹³. Understanding the impact of investor behavior on the performance of an individual portfolio or perhaps even the financial marketplace as a whole indeed begins with the “rift of dawn, the reddening of the rose”⁹⁴.

⁸⁹ M. Sagoff, *Muddle or Muddle Through? Takings Jurisprudence Meets the Endangered Species Act*, Wm. & Mary L. Rev. 1997, No. 38, pp. 825, 844; J. Chen, *Webs of Life...*, pp. 602–608.

⁹⁰ See ÉcoResources Consultants, *Evidence of the Socio-Economic Importance of Polar Bears for Canada*, 2011, at http://www.registrelp.gc.ca/document/default_e.cfm?documentID=2307. See generally J. B. Loomis, D. S. White, *Economic Benefits of Rare and Endangered Species: A Summary and Meta-Analysis*, Ecol. Econ. 1996, No. 18, pp. 197–206.

⁹¹ See generally J. M. Chen, *Αρκτοβροχ: Protecting Biodiversity Against the Effects of Climate Change Through the Endangered Species Act*, Wash. U. J.L. & Pol’y 2015, No. 47, pp. 11–27.

⁹² See E. Markham, *The Man with a Hoe*, (in:) *The Man with a Hoe and Other Poems*, New York 1898, pp. 15–18.

⁹³ See *ibidem*, p. 16. J. de La Fontaine referred to both insects in his fable, consistent with the rules of the French language, by the feminine gender.

⁹⁴ *Ibidem*, p. 16.

**FABLES OF THE RECONSTRUCTION:
HUMAN EMOTION AND BEHAVIORAL HEURISTICS
IN ENVIRONMENTAL ECONOMICS**

Summary

Environmental economics provides an especially rich source of insights into the impact of emotion, cognitive bias, and behavioral heuristics on risk assessment and management. In contrast with the ambivalent reception of behavioral psychology within mathematical finance, the impact of emotion and innate heuristics on environmental decision-making has never been doubted. From the affect heuristic to the endowment effect and disaster psychology, environmental choices harbor the richest trove of economic departures from strict rationality.

**OPOWIEŚĆ O REKONSTRUKCJI: LUDZKIE EMOCJE
I HEURYSTYKA BEHAWIORALNA
W EKONOMII ŚRODOWISKOWEJ**

Streszczenie

Polityka środowiskowa jest szczególnie ważnym źródłem poznania wpływu emocji, błędu poznawczego i heurystyki behawioralnej na ocenę ryzyka i zarządzania ryzykiem. W przeciwieństwie do ambiwalentnej percepcji psychologii behawioralnej w finansach matematycznych wpływ emocji i wrodzonej heurystyki na podejmowanie decyzji środowiskowych nie został nigdy podany w wątpliwość. Wybory dotyczące kwestii środowiskowych są przykładem i źródłem licznych odstępstw od całkowitej racjonalności.

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SOCIAL FUNCTION AND VALUE CAPTURE: DO THEY OR SHOULD THEY HAVE A ROLE TO PLAY IN POLISH LAND DEVELOPMENT REGULATION

1. INTRODUCTION: THE CURIOUS CASE OF WARSAW

A U.S. visitor in Warsaw can feel alarmingly at home. Unlike many other cities in Eastern Europe – Budapest, Prague and Krakow, for example – Warsaw’s urban fabric is uneasily familiar. The capital city – not unlike U.S. mega-regions like Atlanta or Dallas, for example – evidences the same disconcerting pattern of urban sprawl, aided by automobile dependence and a host of other, well-known and mostly negative consequences for the physical and built environment¹. Even the beautifully reconstructed historic center, lovely as it is, recalls some of the most frequently voiced concerns about U.S. urban redevelopments in cities like New York – with its South Street Seaport – or of Los Angeles’s old downtown – creating havens of relative privilege and neighborhoods that are nice to look at but do not much resemble vibrant urban districts that embrace a true cross-section of the city’s urban residents, activities and characteristics².

What is it about Warsaw³. Again like many U.S. cities, and particularly the “Sunbelt” cities of the south and southwest that saw such rapid and often uncon-

¹ See generally, e.g., A. Duany, E. Plater-Zyberk, J. Speck, *Suburban Nation: the Rise of Sprawl and the Decline of the American Dream*, New York 2010.

² See, e.g., L. Adamic, A. Sekula, *Facing the Music: Documenting Walt Disney Concert Hall and the Redevelopment of Downtown Los Angeles*, Los Angeles 2015 (on Los Angeles); J. M. Lindgren, *Preserving South Street Seaport: The Dream and Reality of a New York Urban Renewal District*, New York 2014 (on New York City).

³ In this we recall Julian Juergensmeyer’s similar query about Atlanta. See *Foreword: an Introduction to Urban Sprawl*, 17 Ga. St. U. L. Rev. 2001, No. 17, p. 923.

trolled growth after the Second World War⁴, Warsaw's land development since the collapse of the Soviet Union indicate that it was the product of a comparable period of economic expansion in which social and environmental concerns were often subordinated to the interests of capital accumulation⁵. Although this is not an original story, it is nonetheless one for concern.

Following this introductory Part I, in Part II, two of the three authors here, both U.S. law professors, seek to identify some conceptual and practical legal tools for a more orderly and balanced land use development in the Warsaw metropolitan region, one that promotes not just economic and industrial growth but one that also serves medium- and longer-term social and environmental interests as well. Part III, written by the third author – a Polish law professor, will evaluate the prospects for, as well as the challenges and impediments to, implementing these legal tools in the Polish context. Finally, in Part IV we offer some concluding observations.

2. LEGAL TOOLS FOR WARSAW'S LAND USE FUTURE?

2.1. SOCIAL FUNCTION OF PROPERTY

In 1911, the French jurist León Duguit gave a series of six lectures in Buenos Aires, Argentina, in which he outlined recent evolutions in his legal philosophy⁶. In the last of those lectures he articulated his view of the social function of property⁷. What has come to be known as the social function doctrine has been enormously influential – not only in Duguit's native France and in Argentina, where he gave the lectures, but across most of the civil law world⁸.

By contrast, one of the first principles of property law learned by most U.S. law students is the idea that the greatest right possessed by a holder to title of property is that he or she has the *right to exclude*. This idea is central to a view of property that vests the owner with the power to use and control the property as he or she wishes, subject only to external limits on that use. The external limits,

⁴ See generally, e.g., K. T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States*, New York 1985.

⁵ See, e.g., J. Goldman, *Warsaw; Reconstruction as Propaganda*, (in:) L. J. Vale, T. J. Campanella (eds.), *The Resilient City; How Modern Cities Recover from Disaster*, New York 2005, pp. 135–158.

⁶ S. R. Foster, D. Bonilla, *The Social Function of Property: A Comparative Perspective*, Fordham L.R. 201, No. 80, p. 1003.

⁷ L. Duguit, *Las transformaciones del Derecho Público y Privado*, Buenos Aires 1975.

⁸ See, e.g., M. Garcia-Villegas, *Comparative Sociology of Law: Legal Fields, Legal Scholarships, and Social Sciences in Europe and the United States*, Law & Soc. Inquiry 2006, No. 31, p. 343.

enforced by the formal legal system, are created in order to respect the corresponding property use of others. Thus, for example, I may use my land as I wish but if, say, I build a water reservoir on my land and the reservoir bursts, causing damage to my neighbor's land, I am responsible for the extent of the damage⁹.

Duguit's idea of property's social function turned this highly individualistic notion on its head. In brief, Duguit argued that property was not something that, in the prevailing liberal tradition, entitled the title-holder to do whatever he wanted with his property so long as he did not infringe on the property rights of others. On the contrary, by virtue of the fact that human beings are by nature social creatures who live together in societies, Duguit, said, property by definition was subject to *internal* limits. That is, Duguit believed that property had to respect not just the immediate needs of its owner but also those of other members of society. First and foremost, as a result, property could not be allowed to be held and remain unproductive; property had to produce value¹⁰. This was true, Duguit believed, once again, because property exists not just to enrich the owner but the entire society. Unproductive property hurts us all, he would say, because it inhibits the ability of society to develop as fully as one would wish. To use his idea in a somewhat anachronistic way, this is to argue, for instance, in the language of law and economics, that property ownership necessitated using the property in the most economically efficient manner possible because this would, by extension, create the greatest social utility.

Importantly, however, Duguit was, beyond the central claim about the internal limits to ownership that characterized property's social function, less than clear about what behaviors by property owners would satisfy their social obligations. That is, he did not argue, for example, that the social function meant that a privately held forest reserve always remain a forest because, say, what we today call greenspace contributes to the productive use of a clean environment. Conversely, he did not argue that, for example, rented property had to remain such forever, even when a city had a housing deficit. On the contrary, the land had merely to be "productive". Thus, Duguit's theory did not per se prevent urban renewal, even when it may end up displacing some persons¹¹. What Duguit's theoretical framework did do was provide an intellectual legal frame that balanced the individual rights of use and exploitation against the collective need for mutually beneficial uses.

At this point, two observations deserve making. First, Duguit's writing very much demonstrates that he was acutely conscious of the need to respond to the world's relatively recent industrial transformation and then growing urbaniza-

⁹ As famously explored in the English case of *Rylands v. Fletcher*, (1865-66) L.R. 1 Ex. 265; [1865-66] All E.R. Rep. 1; (1866) 4 Hurl. & C. 263 (Ex Chamber), affirmed by *Rylands v Fletcher*, (1868) L.R. 3 H.L. 330 (HL).

¹⁰ S. R. Foster, D. Bonilla, *The Social Function of Property...*, p. 1007.

¹¹ *Ibidem*, pp. 1007-1009.

tion¹². His theory of property's social function gave voice to a recognition that individualistic property holding notions did not well serve dense and intensive land use. Given that we are now a majority urban planet, with the global population expected to be over two-thirds urban by 2030¹³, his concerns are thus even more relevant in 2015 than they were a century ago. Second, Duguit's notion of property's social function was neutral with respect to the type of productive use to which property should be put.

As indicated above, Duguit's idea has had a lot of traction since he first elaborated it. Property's social function is an idea that, for example, now has constitutional protection in a number of countries¹⁴. Moreover, in many places, the content of the productive use has been defined, either by legislation or by judicial decision or by a combination of the two. In Colombia, the constitution provides not only that property must observe its social function but also that the inherent limits on property include an ecological function¹⁵. Elaborating that conceptual extension, the Colombian Constitutional Court has, for example, restricted the rights of owners with private property within the boundaries of declared national parks to dispose of and use their property as they see fit, citing the larger public interest¹⁶. It is fair to say that in many if not most instances, that the modern interpretation of property's social function uses its view of internal limits to restrain and limit uses in service of collective goals beyond merely assuring that property is "productive"¹⁷.

Curiously, however, the notion of property's social function appears to have had little influence in post-Soviet Poland¹⁸. This is surprising for at least three reasons. First, one of the features of economic development in Soviet-influenced Eastern Europe was the heavy toll it took on the environment and the lives of the people who lived there¹⁹. In Poland, one of the more industrialized countries under Soviet influence, the social-environmental consequences of the Soviet period were especially serious and required intervention to cor-

¹² See, e.g., L. Duguit, *Traité de Droit Constitutionnel*, Vol. 3: *La Théorie Générale de l'État*, Paris 1930, pp. 658–674 (on necessary changes in property law in the modern world).

¹³ UNFPA [United Nations Population Fund], *State of World Population 2007: Unleashing the Potential of Urban Growth*, New York 2007, pp. 6–8.

¹⁴ S. R. Foster, D. Bonilla, *The Social Function of Property...*, p. 1008.

¹⁵ H. Alviar García, C. Villegas del Castillo, *La Función Social de la Propiedad en las Constituciones Colombianas*, Bogotá 2012, pp. 63–77.

¹⁶ Sentencia [Decision] C-189 of 2006, at <http://www.corteconstitucional.gov.co/relatoria/2006/C-189-06.htm>.

¹⁷ See, e.g. *supra*, pp. 135–167.

¹⁸ Lecture by Dr. D. Sześciło, Faculty of Law and Administration, *University of Warsaw, Influence of 'Participatory Funds' on Redevelopment of Warsaw*, University of Warsaw, June 18, 2015.

¹⁹ See, e.g., D. J. Peterson, *Troubled Lands: the Legacy of Soviet Environmental Destruction*, Boulder, Colorado 1993.

rect them²⁰. Second, the explosive economic growth that has characterized the post-Soviet period in Poland, and above all in Warsaw²¹, call out for guiding principles to help balance and restrain that growth's undesirable effects, such as sprawl. Third, Duguit's notion of property's social function was in fact a direct response to socialist ideology. Remember that Duguit delivered his famous lectures early in the second decade of the 20th century; the 1917 Bolshevik Revolution was six years away. Debates about socialism were the intellectual electrical current of the era²²; they could not be avoided by a serious legal theorist. Duguit's theory was thus in part an effort to articulate an intellectually coherent legal response to socialism. His was an attempt, within a capitalist, free-market context, to recognize collective needs, so as to damper some of capitalism's harsher social effects²³.

For all of the above reasons, one would have thought social function theory would be attractive to Poland. Like Soviet occupation or not, collectivist notions made their way into the political and legal consciousness²⁴. Social function theory provides ideas that respect collective needs but also with a legal theory designed to work within a free-market system that respects individual rights. Furthermore, as indicated above, a contemporary articulation of social function theory would provide a coherent legal theory both to address negative social and environmental consequences of the Soviet period and also help control the post-Soviet growth.

Consider, for instance, a famous Warsaw land use example. In front of the Stalinist Palace of Culture in central Warsaw sit several large parcels – today devoted exclusively to parking. Among those concerned about land use, the parcels constitute a particular waste of space and an opportunity for densification in the city center (not to mention being a real eyesore). They cry out for a – in Duguitian terms – more productive use. Social function theory would in this instance provide a legal theory to push for a denser, more broadly beneficial use of that space. Similarly, social function theory could help Warsaw's population control sprawl. It would provide a legal theoretical framework to evaluate the costs and benefits of sprawl that embraces not only economic concerns but also social and political ones. This would be true for discussion about transportation infrastructure as well since social function theory would provide a forum and impose a legal requirement to consider the consequences of unbridled car dependence and seek

²⁰ See, e.g., M. Nowicki, *Environment in Poland: Issues and Solutions*, Dordrecht 1993, pp. 15–30.

²¹ G. Gorzelak, M. Smetkowski, *Warsaw as a metropolis – successes and missed opportunities*, *Regional Science Policy and Practice* 2012, Vol. 4, No. 1.

²² See, e.g. R. Pipes, *Russia Under the Old Regime*, New York 1974, pp. 261–275.

²³ S. R. Foster, D. Bonilla, *The Social Function of Property...*, p. 1009. See generally K. Marx, *Capital*, Vols. 1–3, New York 1992.

²⁴ See, e.g. B. Porter-Szücs, *Poland in the Modern World: Beyond Martyrdom*, Oxford 2014, pp. 328–340.

alternatives that would benefit the entire population and not merely cater to the convenience of single drivers.

2.2. LAND VALUE CAPTURE

Another approach to land development regulation that is found in many countries but which seems at best underutilized in Poland is the concept of land value capture: “Value capture refers to the recovery by the public of the land value increments (unearned income...) generated by the actions other than the landowner’s direct investments (...). Although all such increments are essentially unearned income, value capture policies focus primarily on the increment generated by public investments and administrative actions, such as granting permission for the development of specific land uses and densities. The objective is to draw on publicly generated land value increments to enable local administrations to improve the performance of land use management and to fund urban infrastructure and service provisions. The notion is that benefits provided by governments to private landowners should be shared fairly among all residents”²⁵.

The concept is broad and applied to many different ways that land use control authorities require new development to bear the cost – partially or completely, although usually the former- of the infrastructure needs created by the new development. The idea is by no means new. For example, requirements that land owners contribute to the cost of public improvements that benefit their land can be found in the Roman Empire, and in Portugal, Spain, France, England and Mexico as early as the 1500s and 1600s²⁶. In modern Spain, Catalonia in particular, land value capture is used to fund the provision of affordable housing²⁷. In Latin America, where land value recapture has seen the most widespread adoption, a wide range of traditional and social infrastructure is financed by recapture of the increased value received by land accorded development permission²⁸.

²⁵ M. Smolka, *Implementing Value Capture in Latin America: Policies and Tools for Urban Development*, Cambridge, Massachusetts 2013. “In Spain, municipalities capture part of the value increase in urban extension areas by requiring landowners to cede between 5 and 15 percent of the serviced building plots to the municipality. In addition, landowners must provide the land needed for infrastructure, pay the related costs for service provision, and pay the overhead costs and a profit margin”. *Ibidem*, p. 14.

²⁶ *Ibidem*.

²⁷ J. C. Juergensmeyer, *Developer Funding of Affordable and Work Force Housing Through Impact Fees and Land Value Recapture: A comparison of American and Spanish Approaches*, *Revista de Derecho Urbanístico y Medio Ambiente* 2015, No. 297, p. 131; N. Calavita, J. Clusa, S. Mur, C. Wiener, *Spain’s Constitutional Mandates: The Right to Housing, Land Value Recapture, and Inclusionary Housing*, Chapter 7, (in:) N. Calavita, A. Mallach, *Inclusionary Housing in International Perspective: Affordable Housing, Social Inclusion and Land Value Recapture*, Milwaukee 2010.

²⁸ On the Latin American example, see, e.g. M. Smolka, D. Amborski, *Value Capture for Urban Development: An Inter-American Comparison*, Lincoln Land Institute working paper,

One land value capture study focused on Latin America identifies three categories of the voluntary and mandatory implementation of the concept: 1) “property taxation and betterment contributions;” 2) exactions and other direct negotiations for charges for building rights or for the transfer of development rights;” and 3) “large-scale approaches such as development of public land through privatization or acquisition, land readjustment, and public auctions of bonds for purchasing building rights”²⁹.

While most studies of the application of land value capture techniques have centered on Latin America, Western Europe, and, to a lesser degree, the United States, a recent conference and case studies have focused on Sub Saharan Africa. Ethiopia, Kenya and Zimbabwe have been objects of studies and great interest is being expressed in South Africa³⁰.

In the United States and Canada the use of land value capture normally occurs without the use of the term and accomplished rather differently and in ways that may be easier for Polish cities to adopt. The U.S.-based organization, the Lincoln Institute of Land Policy, has long advocated the consideration of land value capture per the Latin American model. In a recent newsletter the Lincoln Institute reported: “The concept of value capture, which recognizes the increases in property value triggered by government action and public investments, has been in the news of late, not coincidentally right here in our backyard. The Massachusetts transportation secretary, Stephanie Pollack, floated the idea as a way of confronting cost overruns in the proposed Green Line **light rail extension** north of Boston. The state has established a **Value Capture Commission** to explore ways of engaging the private sector in the financing of critical transportation infrastructure. The City of Cambridge similarly suggested that private developers and landowners might **contribute** more directly to transit operations that are such a critical element in the success of such booming areas as Kendall Square: “Our research on value capture in the context of land-based financing tools goes back many years, and the idea has a prominent place in the promotion of **municipal fiscal health**. Martim Smolka, director of the Program on Latin America and the Caribbean, and author of the report **Implementing Value Capture in Latin America**, has been conducting research, courses, lectures, and workshops, most recently in São Paulo, where additional floor-area ratio (FAR) is auctioned in a stock market. Those discussions have centered on several common concerns in the implementation of value capture, such as whether charges to property owners are passed along to consumers in the form of higher prices, or doubts about the

2007, at http://www.lincolninst.edu/pubs/1279_Value-capture-for-Urban-Development. On land value capture in general, see, e.g., G. K. Ingram, Y.-H. Hon, *Value Capture and Land Policies*, Cambridge 2012.

²⁹ See M. Smolka, *Implementing Value Capture in Latin America...*

³⁰ At <http://www.africancentreforcities.net/land-value-capture-and-infrastructure-finance-in-sub-saharan-africa/>.

ability of local officials to determine the precise land value increment linked to government action”³¹.

Even though classic value capture may indeed be “catching on” the most important implementation of the concept in the United States had been developer-funding requirements tied to impact analysis based required dedications and impact fees³².

One of the key tenets of US land development regulation law since the inception of growth management programs has been submitting development proposals to an impact analysis— a concept no doubt borrowed from the Environmental Impact Statement process established by the National Environmental Policy Act of 1969. The impact analysis measures the effect of the proposed development on the need for infrastructure to service that new development. At first the infrastructure considered was so called “hard” infrastructure, for example, roads, parks, schools, and public buildings. Now, however, various items of environmental protection infrastructure and social infrastructure such as affordable housing and childcare facilities are included. Since the developer is required to pay for infrastructure out of his potential profit from the new development, the result is a capture of a portion of the increased value the developer receives as a result of obtaining development permission.

Conceptually, value capture programs such as impact fees are grounded in the idea of using windfalls³³ landowners receive from obtaining development permission to mitigate the wipeouts suffered by landowners negatively affected by new development or the denial of development permission or negative consequences suffered by society in general. There has been much emphasis in the U.S in recent years on programs designed to compensate landowners negatively affected by land use controls but virtually no attention has been paid to the question of capturing for the public any portion of the gains conferred on landowners by virtue of public improvements and government regulations. Those few who have considered the equity – or lack thereof – involved in granting windfalls but not compensating for wipeouts often cite the writings of Henry George’s classic work *Progress and Poverty* and the late 20th century publications of one of America’s best known land use control law scholars, Donald Hagman. In 1978 Professor Hagman and Dean Mischynski published, through the American Planning Association, a collection of essays titled *Windfalls for*

³¹ At *Lincoln House*; the blog of the Lincoln Institute of Land Policy, September 24, 2015, p. 2, at <http://www.lincolninst.edu/news-events/at-lincoln-house-blog>.

³² Although U.S. impact fees are seldom, if ever, identified as embodying a land value capture approach, it is interesting to note that a leading authority on Land Value Capture describes U.S. Impact fees as a land value capture approach. M. Smolka, *Implementing Value Capture in Latin America...*

³³ The U.S. concept of windfalls bears close resemblance to the British concept of “betterment”. See English Expert Committee on Compensation and Betterment (Uthwatt Committee), *Final Report. Cmd.*, No. 6386, 1942.

*Wipeouts: Land Value Capture and Compensation*³⁴. Professor Hagman was more concerned with using windfall recapture as a source of wipeout mitigation than he was with using value capture to fund public projects. He nonetheless noted that under such a program, the community is only asking for a return of a portion of the wealth it creates.

It also should be noted, as indicated earlier, that the popular U.S. concept of transferable development rights is and should be considered a type of value capture: “TDR programs separate the development potential of a parcel from the land itself, and create a market where that development potential can be sold”³⁵. Pursuant to such programs, Hagman’s goals are more closely realized since those who experience a windfall in value as a result of government regulation directly compensate individual landowners who have a “wipeout” of land value.

The synthesizing concept underlying a social function view of property and land value capture programs is the basic growth management tenet requiring development to pay for at least some of its infrastructural, environmental and social impacts. Nearby landowners and the tax-paying public are thereby protected from suffering wipeouts while new development reaps only windfalls. As noted above, the late Donald Hagman advocated capturing windfalls from developers whose land gained value as a result of government development permitting in order to compensate landowners whose land lost economic value in the process. While current land value capture programs do not usually contemplate the transfer of captured profits to individuals, except in connection with TDR programs, they implement the windfalls for wipeouts principle by relieving the tax-paying public from bearing the costs of providing new infrastructure or absorbing the cost by experiencing lower levels of service.

We suggest that Polish local governments – even if they are unwilling to adopt social function theories and traditional land value-capture programs- should at least require new development to search for legal and regulatory mechanisms that will take larger, collective property interests into account, such as requiring developers to provide or pay for the infrastructure needs they create through infrastructure funding programs analogous to U.S. impact fees and transferable development rights programs.

³⁴ D. Hagman, D. Misczynski, *Windfalls For Wipeouts: Land Value Capture and Compensation*, Chicago 1978. A summary of their principal points can be found at J. C. Juergensmeyer, T. Roberts, *Land Use Planning and Development Regulation Law*, 3rd ed., St Paul 2012, pp. 81–89.

³⁵ *Ibidem*.

3. OPPORTUNITIES, BARRIERS AND PERSPECTIVES FOR MORE SOCIALLY MINDED POLISH LAND USE LAW AND REGULATION

3.1. THE NOTION OF SOCIAL FUNCTION IN POLAND

In order to understand the current approach to social function of property in Poland, we need to refer to the past experiences. In the Communist era, the issue of property was one of the central elements of the constitutional regulation. The Constitution of People's Republic of Poland adopted in 1952 enshrined individual property right and formally guaranteed its protection³⁶. However, the protection of property of the state (called as "the property of the whole nation") was explicitly prioritized³⁷. State property was not only differentiated from private protection, but also provided with special protection. This naturally created imbalance where the state property was deemed superior to private property. What is more, the protection of the private property of land, buildings and other means of production was guaranteed to the extent envisaged in legislation³⁸. In practice, this meant that private property could have been limited or ceased at any time by ordinary laws.

Obviously, this model of relations between private and state property was not acceptable in the context of a newly democratic society. Therefore, the Constitution adopted in 1997 introduced a new approach to this issue that is generally compatible with international standards. First of all, private property is declared to be one of the pillars of the economic system of the Republic of Poland based on the doctrine of social market economy³⁹. Everyone has a right to property that is correlated with the obligation of the state authorities to protect peaceful enjoyment of possessions⁴⁰. Expropriation may be allowed solely for public purposes and for just compensation⁴¹. The right of ownership may only be limited by means of a statute and only to the extent that it does not violate the substance of such right⁴². This model of property rights is particularly similar to the one reflected in the Protocol No. 1 to the European Convention on Human Rights⁴³. Firstly, it enacts the general right to private property. Secondly, it specifies key rules regarding deprivation of property. Thirdly, it recognizes the conditions for imposing other limitations of property rights.

³⁶ Article 18 of the 1952 Constitution of the People's Republic of Poland, Official Journal 1976, No. 7, item 36.

³⁷ Article 12 of the 1952 Constitution of the People's Republic of Poland.

³⁸ Article 17 of the 1952 Constitution of the People's Republic of Poland.

³⁹ Article 20 of the 1997 Constitution of the Republic of Poland.

⁴⁰ Article 21.1 of the 1997 Constitution of the Republic of Poland.

⁴¹ Article 21.2 of the 1997 Constitution of the Republic of Poland.

⁴² Article 64.3 of the 1997 Constitution of the Republic of Poland.

⁴³ *Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms*, open for signature on 20 March, 1952.

The Constitutional Tribunal underlined that under the new Constitution the state property does not enjoy special protection and return to the system based on the domination of state property is excluded⁴⁴. On the other hand, the constitutional order does not provide for total supremacy of private property rights. Limitations to private property rights are allowed and deprivation of the right to ownership is also possible in order to protect or realize public interest. What is more, the Constitutional Tribunal explicitly referred to the concept of social function of private property. The Tribunal observed that: “(...) contemporary legal doctrine rejects the idea that the right to private property, especially land and buildings property, is designed to protect solely the egoistic interest of the owner. No one today undermines the social aspect of ownership. The consequence of this recognition is to accept that ownership is not absolute, but may be subject to restrictions. Under Polish law this idea found expression in the very definition of property rights. In accordance with Article 140 of the Civil Code, all rights of the owner are limited by laws, rules of social coexistence and socio-economic destiny of the law. (...) Constitutional legal basis for restrictions on the right of ownership is Article 64.3 of the Constitution. In many judgments (...) the Tribunal took the view that limitations to the private property rights are acceptable if they do not constitute a violation of the essence of property rights, and their implementation is justified by the need to protect or realize other constitutional values”⁴⁵.

In the light of Polish constitutional jurisprudence, then, the right to private property is not absolute and might be correlated with limitations and obligations based on public interest needs. The social function of private property is therefore accepted in practice if not in name as one of the components of the Polish constitutional conception of property rights. This is reflected in the legislation defining the scope of the right to ownership. The question nonetheless arises as to why it is so difficult to ensure the practical application of the idea of social function of property in Poland.

Our paper does not offer comprehensive explanation to this dilemma, but it sheds light on some specific obstacles for dissemination of this concept. We focus primarily on barriers created in the legislation. It should be noted though that significant problems result from political, social and ideological attitude towards property rights. The era of forced collectivism and undermining individual rights and freedoms triggered counter-reaction based on supremacy of private property, absolutization of individual ownership rights and ignoring any potential obligations of the owners towards the larger society. This type of reaction was exacerbated by the extremely low levels of trust in state and public institutions following the end of Communism, what undermines social and political support for any limitations to the property rights. As a result, the doctrine of “inviolable

⁴⁴ The judgment of the Constitutional Tribunal of 21 March, 2000, signature K 14/99.

⁴⁵ The judgment of the Constitutional Tribunal of 15 March, 2005, signature K 9/04.

and sacred”⁴⁶ private property is strongly represented today in Polish political and social discourse and these views subsequently find expression in public policies and legislation.

3.2. A MOVE TOWARDS VALUE CAPTURE IN POLISH LAND LAW? SOME PRELIMINARY STEPS

Despite general reluctance to a socially-oriented concept of property rights, in Polish legislation we can identify arrangements demonstrating some perception of non-individual repercussions of land use. Key aspects of the land property legal regime are regulated in the 2003 Law on Spatial Planning⁴⁷. This law requires public authorities to seek the balance between needs and rights of public persons and the public interest in the context of land use⁴⁸. Specific instruments relevant to rights and obligations of owners of private land are established by the provisions regulating the content and effects of local spatial plans adopted by communal councils. Local spatial plans may impose detailed restrictions to property rights, especially to the right to land development (construction) perceived as component of property. Those restrictions may concern, for instance, excluding construction rights or establishing specific conditions such as, for example, maximum surface, height, number of floors and other, similar requirements. However, introduction of any restrictions has to be compensated by the municipality by paying compensation or buyout of the relevant property⁴⁹.

In case of improving legal conditions of land use (e.g. ceasing previous restrictions to land development) as a result of adoption of a new local spatial plan, the municipality may require the owner to pay one-off fee. This fee is calculated as a percentage of the increase of market value of property resulting from the new plan. However, it needs to be underlined that this fee might be imposed only when the owner sells the relevant property. This mechanism, called a “planning rent”⁵⁰ cannot be perceived as a form of impact fee in the sense described in Part II above, as it is not directly linked with increasing demand for public infrastructure and it is not imposed in conjunction with specific land development project. Also, the municipal revenues from planning rent do not have to be allocated to development of public infrastructure in the area where the fee was imposed.

Another mechanism, more compatible with the concept of impact fee, is the “adjacent fee” regulated by 1997 Law on Property Management⁵¹. An adjacent

⁴⁶ As declared by the *1789 Declaration of Human and Civic Rights*.

⁴⁷ Law of 27 March 2013 on Spatial Planning, Official Journal 2013, No. 80, item 717.

⁴⁸ See, e.g., Article 6.2 of the 2003 Law on Spatial Planning

⁴⁹ Article 36 of the 2003 Law on Spatial Planning.

⁵⁰ E. Janeczko, *Renta planistyczna na tle art. 36 ustawy o zagospodarowaniu przestrzennym*, Rejent 2001, p. 40.

⁵¹ Law of 21 August 1997 on Property Management, Official Journal 1997, No. 115, item 741.

fee is imposed according to the principles established by the Municipal Council if the property has been connected to the new “technical infrastructure”, meaning roads and other facilities such as water supply, sewage, heating, electricity, gas and telecommunications transmission networks built from public funds. The adjacent fee might be imposed when the infrastructure is ready to be connected to the relevant property. However, the term “technical infrastructure” does not cover infrastructure necessary for provision of human services, such as, for instance, building schools.

Thus, the adjacent fee has some features of an impact fee, such as a direct connection with public infrastructure supporting neighboring land use. However, it represents a different model in major aspects. First of all, it is not linked to the land development projects initiated by a private owner. Secondly, it is imposed after implementation of public infrastructure development projects. As a result, the Polish adjacent fee cannot be seen as an instrument for involving private owners into development of public infrastructure that is demanded in a consequence of private land development projects. What is more, as the report of the Supreme Audit Office shows, the municipalities are inefficient in terms of imposing and collecting both planning and adjacent fees⁵².

In conclusion, it should be underlined that the Polish law does not provide for any mechanism explicitly requiring private property owners to participate in the costs of fulfilling infrastructural needs generated by the private land development projects. Planning fees and adjacent fees are only weak versions of a land value capture device and do not guarantee that developers are co-responsible for sustainable development of the areas affected by their projects. On the other hand, constitutional order and position of the Constitutional Tribunal does not exclude introduction of mechanisms similar to impact fees or of a notion seeking to protect shared interests, such as Duguit’s notion of the social function of property doctrine. The major obstacles remains to be the lack of political will and support for such arrangements.

4. CONCLUSION: TOWARDS A MORE SOCIALLY INCLUSIVE FUTURE FOR POLISH LAND AND PROPERTY LAW

What, then, are the prospects for a more publicly or a more socially minded attitude towards private property in Poland? As the above discussion suggests, at least in the case of Warsaw, the possibility for a more balanced property and land use regime, that is one that balances private and public interests, appears to

⁵² Najwyższa Izba Kontroli, *Ustalenie i egzekwowanie przez gminy województwa warmińsko-mazurskiego opłaty adiacenckiej oraz opłaty planistycznej*, Warsaw 2013.

have been compromised by the Communist experience. That is, paradoxically, the collectivist habits of Communism were tossed aside in post-Communist Poland – resulting – again in the case of Warsaw specifically – in an aggressive, highly privatized model of land use regulation that has resulted in repeating some of the worst, sprawl-like tendencies of many U.S. cities⁵³. For our part, we would urge Polish property and land use lawyers, scholars and jurists to rethink this model.

Social function theory and land value recapture devices – the two examples we have considered here – provide two obvious vehicles to begin to do that. It is our hope that the Polish legal sector can play a role going ahead in trying to shape a less highly individualistic property and land use regime, in the interest of denser, more controlled growth, a form of growth more likely to promote the interest of more than the few.

SOCIAL FUNCTION AND VALUE CAPTURE: DO THEY OR SHOULD THEY HAVE A ROLE TO PLAY IN POLISH LAND DEVELOPMENT REGULATION

Summary

This article presents a discussion between two U.S. and a Polish author about devices to promote public interests through private land development and regulation. The two U.S. authors document the fact that in many South American and European countries the concepts of social function of property and value capture play a central role in the government regulation of land development – particularly in urban areas. The social function theory of ownership, first popularized by the French jurist Leon Duguit in the early part of the 20th century, recognizes private ownership as subject to social obligations and the need for mutually beneficial use. Value capture is implemented by requiring landowners whose land values are increased through development permission granted by government regulatory entities to share some of that increased value with the public by funding public infrastructure and paying for developments such as affordable housing. In the U.S., neither term is in common usage although mechanisms such as impact fees and other development charges that require developer funding of infrastructure arguably reflect the influence of comparable concepts. The U.S. authors then posed the question to their Polish collaborator of whether social function theories and value capture are currently being implemented in Poland. The Polish author explains that the current approach to social function theories in Poland is greatly influenced by Poland's experiences under communism, during which state property received special protection as compared to private property. After the fall of communism, this distinction

⁵³ See *supra* notes 3–5 and accompanying text.

was removed and private property received considerable protection as a pillar of the new economic system. However, he points out that this does not undermine the social aspect of ownership and that private ownership is not absolute and may be subjected to restrictions. In regard to the U.S. approach to value capture through impact fees, the Polish author explains that the Polish "adjacent fee" bears slight similarity to impact fees, but it does not require private landowners to participate in funding the infrastructure needs created by their development. He concludes by observing that while Polish law does not preclude adoption of measures similar to impact fees, at present there is neither political will nor popular support for such arrangements.

ROLA FUNKCJI SPOŁECZNEJ I *VALUE CAPTURE*⁵⁴ W POLSKIM PRAWIE ZAGOSPODAROWANIA PRZESTRZENNEGO

Streszczenie

Niniejszy artykuł prezentuje poglądy na temat wspierania interesu publicznego przez regulacje dotyczące prywatnych podmiotów w kontekście zagospodarowania przestrzennego. Amerykańscy współautorzy artykułu zaznaczyli, że w wielu południowoamerykańskich i europejskich krajach koncepcje społecznej funkcji własności oraz „*value capture*” odgrywają główną rolę w rządowych regulacjach zagospodarowania przestrzennego. W USA żadne z tych pojęć nie jest powszechnie używane, lecz koncepcja „*value capture*” jest implementowana przez opłaty zwane „*impact fees*”, które zobowiązują dewelopera do finansowania infrastruktury. Autorzy amerykańscy stawiają pytanie, czy wspomniane wyżej teorie są obecnie realizowane w Polsce. Polski autor wyjaśnia, że obecne podejście do teorii funkcji społecznej jest uwarunkowane doświadczeniami Polski z czasów komunizmu, kiedy własność państwowa była szczególnie chroniona w stosunku do własności prywatnej. Po upadku komunizmu ten podział zanikł, a własność prywatna otrzymała znaczną ochronę jako filar nowego systemu gospodarczego. Mimo tej teoretycznej akceptacji funkcji społecznej doktryna „nienaruszalności” Prawa własności silnie wpływa na politykę i ustawodawstwo. Polski autor zauważa, że nie ma obecnie dość woli politycznej w Polsce do wprowadzenia tzw. *impact fees*.

⁵⁴ Land Value Capture to metoda finansowania czy współfinansowania nowych inwestycji publicznych w infrastrukturę przez podmioty prywatne (właściciele nieruchomości), których nieruchomości zyskały na wartości dzięki wcześniej poczynionym inwestycjom publicznym, np. budowie dróg czy linii kolejowych.

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KEYWORDS

social function of property, land value capture, infrastructure funding, land development regulations, Polish property law, property ownership concepts

SŁOWA KLUCZOWE

społeczna funkcja własności, land value capture, finansowanie infrastruktury, regulacje rozwoju przestrzennego, polskie prawo własności, modele własności

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WARSAW REBUILT: INCORPORATING AFFORDABLE HOUSING BY DESIGN

1. INTRODUCTION

There is little credible argument against the need for affordable housing throughout the world. In many countries, the poor struggle to find structurally sound housing that is safe, affordable and in a desirable location. Those countries that seek to build affordable housing struggle with forced integration of existing neighborhoods, struggle against preexisting social structures that are not supportive of the poor, and struggle against established cultural traditions that resist the changes that are required to expand affordable housing. However, when a society has the opportunity to build a new city, will affordable housing be incorporated in the design? Will the redesign of this new city create the same wealth segregation, economic structures, and preexisting conditions that ultimately lead to the need for affordable housing, or will this new city be designed to incorporate affordable housing as an integral part? This Article offers a short examination of Warsaw, Poland, a city utterly destroyed by the Germans in World War II and later occupied by the Soviet Union. Warsaw, after the fall of the Soviet Union, is quickly rebuilding and has the opportunity to design the city to incorporate affordable housing as a central and permanent part of the city and to create a mixed-income society where all residents have a place. Part II of this Article provides an overview of the global need for affordable housing. Part III provides a brief summary of a portion of Warsaw's history that precipitated its destruction. Part IV discusses Warsaw's current redevelopment. Part V offers a framework for Warsaw to rebuild its city by integrating affordable housing into the city's redevelopment.

2. GLOBAL NEED FOR AFFORDABLE HOUSING

Cities in underdeveloped and developed countries alike, struggle with providing affordable housing for their poor and low to moderate-income residents¹. A recent research report by the consulting firm, McKinsey & Company, estimates that 330 million households in urban areas around the world live in either substandard housing or spend more on their housing than the household can afford². In the developing world, McKinsey estimates that approximately 200 million households live in slums. In more developed economies such as the United States, the European Union, Japan, and Australia, more than 60 million households are housing burdened. Within the next decade, over 1.6 billion people will reside in “crowded, inadequate, and unsafe housing or will be financially stretched”³. Addressing this need requires significant financial investment – estimated to be approximately \$16 trillion⁴. McKinsey recognizes that “new approaches are needed” and these new approaches must reflect “a housing ladder that includes affordable housing but accommodates citizens of all income groups and their changing needs”⁵. Warsaw, Poland, like most cities, needs affordable housing for its low and moderate-income residents. Unlike most cities, Warsaw has the opportunity to incorporate affordable housing into the city’s redesign. The next section will discuss a tragic part of Warsaw’s history that precipitated Warsaw’s need to rebuild the city.

¹ Affordable housing should “accommodate a range of sizes, tenure options (purchase vs. rental), and affordability thresholds that take into account households of different sizes and incomes in the area. In many parts of the world, ‘affordability’ is defined as housing costs that consume no more than 30 to 40 percent of household income; we use 30 percent for our estimates”. J. Woetzel, S. Ram, J. Mischke, N. Garemo, S. Sankhe, *McKinsey & Co., A Blueprint for Addressing the Global Affordable Housing Challenge: Exec. Summary*, 2014. Affordable housing reflects “[a] basic socially acceptable standard housing unit” that “is defined by a particular community’s view of what is required for decent living[.]” but “should also include minimum standards for basic amenities (running water, a toilet) as well as access to essential social services such as schools and health clinics” and “should also place workers no more than an hour’s commute from centers of employment”. *Ibidem*. The McKinsey report focuses on the “affordability gap for households earning 80 percent of the area median income or less”. *Ibidem*.

² *Ibidem* (material can be found on the page titled *In Brief: A Blueprint for Addressing the Global Affordable Housing Challenge*).

³ “Based on current trends in urban migration and income growth, we estimate that by 2025, about 440 million urban households around the world – at least 1.6 billion people – would occupy crowded, inadequate, and unsafe housing or will be financially stretched”. *Ibidem*.

⁴ “To replace today’s substandard housing and build additional units needed by 2025 would require an investment of \$9 trillion to \$11 trillion for construction; with land, the total cost could be \$16 trillion. Of this, \$1 trillion to \$3 trillion may have to come from public funding”. *Ibidem*.

⁵ *Ibidem*.

3. HISTORY OF WARSAW'S DESTRUCTION

In 1939, Germany, then under control of the Nazis, invaded Poland as part of World War II's commencement⁶. In response, a few days later, France and Great Britain declared war on Germany⁷. On September 6, 1939, Germany ordered the Polish army to retreat, and within days, the German army reached Warsaw⁸. Despite prior alliances with Poland, the Soviet Union joined German forces in occupying Poland⁹. In October 1939, Germany and the Soviet Union divided Poland into two regions to begin the occupation. These occupying forces, particularly Germany, began a systematic destruction of the Polish political structure and population. The German occupying force segregated the population by forcing the Jewish population to live in ghettos such as Piotrków Trybunalski and Łódź, among others in Warsaw¹⁰. Offenses, as determined by the German occupying force, were punishable by death, imprisonment or interment at a concentration camp (such as Stutthof, which was the first concentration camp that began operating in 1939, Majdanek in 1941, and one of the most notorious, Auschwitz-Birkenau in 1940)¹¹.

Residents of Warsaw began to fight back in a rebellion referred to as the "Warsaw Uprising". While the Uprising was a relatively short campaign – it lasted approximately two months – it reflected the residents' willingness to defend their homes. However, the German response was brutal. In October 1944, SS Chief H. Himmler was quoted as stating: "The city must completely disappear from the surface of the earth and serve only as a transport station for the Wehrmacht. No stone can remain standing. Every building must be razed to its foundation"¹². In

⁶ Literature from the Museum of the Warsaw Uprising, *The Beginning of the War*, Warsaw 2015 (on file with author); see also G. L. Weinberg, *A World at Arms: A Global History of World War II*, 2nd ed., New York 2005 (providing an overview of World War II and its history).

⁷ See Museum of the Warsaw Uprising, *The Beginning...*

⁸ *Ibidem*; see also G. L. Weinberg, *A World at Arms...*, pp. 106–109 (explaining the Germans' plans to move west).

⁹ *Ibidem* ("On September 17, 1939, the Soviet Union joins Germany, [v]iolating former agreements with Poland[.] 'If there is no government in Poland anymore, there is no non-aggression pact either.' – Polish Ambassador Waclaw Grzybowski is told in Moscow").

¹⁰ *Ibidem* ("On the areas occupied by the Germans, Jews are particularly persecuted. The Germans force them to live in ghettos: the first was created in October 1939 in Piotrków Trybunalski, the next in Łódź in 1940, and yet another in October 1940 in Warsaw. Starting in December 1941, the Germans murder Jews in extermination camps in Chełmno, Sobibór, Bełżec, Treblinka, and Auschwitz-Birkenau").

¹¹ *Ibidem* ("For the smallest offenses one can be punished with death, imprisonment or interment in a concentration camp. The first camp – Stutthof – is established as early as 1939, to be followed by Auschwitz-Birkenau (1940), Majdanek (1941), Płaszów (1944) and others").

¹² Ł. Bernatowicz, *Reprivatization of Warsaw Properties*, Presentation at Study Space VIII: Warsaw, June 16, 2015 (discussing SS Chief H. Himmler, October 17, 1944, SS officers' conference) (PDF on file with author).

response to the Uprising, Hitler reportedly stated: “Warsaw has to be pacified, that is, razed to the ground”. Pictures of the city’s utter destruction bear witness to how the Germans obliterated Warsaw in retribution for the Uprising. One sanctuary, now named the Church of the Uprising, was a church that also served as a hospital during the Uprising, although the hospital was located in the church’s crypt. During the German siege of Warsaw, the church was bombed, killing approximately one thousand people. For a few months, the hospital continued to operate until the Germans seized the building. The Germans executed the entire medical staff and blew up the building with approximately five hundred people still inside the structure¹³.

Germany continued its destruction of the city for some time, although it ultimately lost the war and left the city in ruins.

4. WARSAW REBUILDING

After the war, the Soviet Union claimed Poland as part of the Soviet Union and governed it until the fall of the Soviet Union in approximately 1989. During that time, the Soviet Union began the arduous task of rebuilding the city. However, the extensive destruction of the city made reconstruction legally challenging. With streets, buildings, alleys, trees, and other markers obliterated, the city was faced with the question of how to determine boundaries denoting individual parcels and coordinate with a parcel’s owner to redevelop the property. Beyond that, when so many of the city’s residents left to escape the violence, were forcibly removed, or exterminated in concentration camps, who remains to claim ownership of land to rebuild it? If the private owner does not reclaim the land and rebuild it, redevelopment of privately owned parcels of land either falls to Warsaw or the Soviet Union to rebuild it or to leave large portions of the city in ruins. Without each private owner’s consent, neither Warsaw nor its governing body, the Soviet Union, could redevelop the destroyed city. To address the risk of leaving the city undeveloped, in October 1945, the Soviet Union, through the city of Warsaw, passed the Warsaw Decree¹⁴. The Warsaw Decree declared that the ownership of all real estate in Warsaw, including privately owned property, would be transferred to the municipality of Warsaw¹⁵. This law purportedly was designed to facilitate the reconstruction of the city, particularly the removal of the

¹³ According to the memorial located outside of the church, “after the war, it turned out to be impossible to exhume the remains of all the victims. Therefore, the ruined crypt was totally covered with a new marble floor, with the remains entombed underneath”.

¹⁴ Ł. Bernatowicz, *Reprivatization of Warsaw...*

¹⁵ *Ibidem*.

extensive rubble remaining from the bombing response to the Uprising, and to repurpose the damaged properties for productive use.

The Warsaw Decree allowed former owners and their legal successors to submit a claim for ownership of the property, but only within six months from the date the municipality of Warsaw assumed ownership of the property via the Decree¹⁶. Obviously, with the majority of the population vacated from the city at that time¹⁷, the right of reclamation was illusory. Even for those residents who returned to Warsaw and submitted a claim for ownership, the municipality routinely declined the claim – of the approximately 17,000 applications submitted, an estimated 98% were denied¹⁸.

Warsaw began to rebuild through use of this legal maneuvering. Most notably, the Soviet Union initiated the reconstruction of Warsaw's ancient city center, which is known as Old Town¹⁹. The city's redevelopment has been a successful effort to repopulate the city from the losses sustained during the war. In 1938, the city's population was 1.3 million residents. By the end of the war, the city's population plummeted to only 380,000 people. However, the city's current population is estimated at 1.7 million residents²⁰, surpassing the city's prewar population. With this surge in population, Warsaw, like most major cities, needs to house its residents and do so in an affordable manner.

5. INCORPORATING AFFORDABLE HOUSING IN WARSAW'S REDESIGN

With this need for affordable housing and the city's rebirth, Warsaw has an opportunity rare for metropolitan cities – the opportunity to intentionally develop the city with affordable housing integrated into its design. As mentioned earlier, Warsaw, like other developed municipalities, needs to provide affordable housing

¹⁶ *Ibidem*.

¹⁷ In 1938, the population of Warsaw was 1,300,000, but by the end of the war in 1945, the population plummeted to only 380,000. H. Izdebski, *Planning v. Metropolitan Planning*, Presentation at Study Space VIII: Warsaw, June 17, 2015.

¹⁸ Since the collapse of the Soviet Union, the new government of Warsaw allows previous owners and their legal successors, *who previously submitted an application in 1945*, to apply for return of the property or compensation for the taking. However, if no application was submitted in 1945, there is no current legal mechanism for reclaiming the property. Clearly, for those families who were forcibly removed from Warsaw, stayed away because of the violence experienced there, or who were killed, the requirement that the legal owner, or a legal successor, had to submit a claim within six months was knowingly unrealistic. Ł. Bernatowicz, *Reprivatization of Warsaw...*

¹⁹ The reconstructed Old Town is now a World Heritage Site.

²⁰ See The World Factbook, *Europe, Poland*, CIA, at https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_pl.pdf.

for its citizens. However, to provide affordable housing, Warsaw must determine how to pay for the housing and also determine where to build it.

Before addressing how to pay for the housing, it is important to set forth a broad understanding of the major costs involved in creating and providing affordable housing. There are five major cost areas that contribute to the expense of providing affordable housing. First, is the cost of acquiring the land on which to building the affordable housing. Second, is the cost of constructing the affordable housing. Third, is the cost of renting or selling the affordable housing after it is built. Fourth are the costs of operating and managing the affordable housing after it is built and rented or sold. Fifth and last, are the transactional costs associated with the acquisition, construction, renting, and operation of the affordable housing development. To address the cost of creating and providing affordable housing, governments and developers must find a way to increase the resources available to pay these costs or find a way to reduce these costs to a level where current resources are sufficient to pay them.

An article in the Harvard Business Review by the authors of the recent report by McKinsey & Company suggested addressing the need for affordable housing in cities such as Warsaw by addressing four “levers” to manage the aforementioned costs²¹. The first lever seeks to address acquisition cost barriers by pushing governments and developers to acquire land at the “right cost”, discussed below in more detail²². The second ‘lever’ seeks to address the cost of construction by “adopting more efficient construction processes”²³. The third ‘lever’ seeks to address the costs of operating and managing the affordable housing by “reducing operations and management costs”²⁴. The fourth and final ‘lever’ looks to address the costs of selling or renting the property and the associated transactional costs of affordable housing development by “improving access to financing for home buyers and builders”²⁵. The authors conclude that these levers can aggregate cost savings between 20% to 50% for low and moderate-income households earning between 50% to 80% of the area median income²⁶.

Of the listed ‘levers’, the most significant is the researchers’ first lever to acquire land at the “right cost”. As most current and former real estate developers, such as myself, can attest, the right cost of land is dependent on a number of factors, including the location of the land, the permitted uses of the land, the size and condition of the land, and the developer’s intended use. For example,

²¹ J. Woetzel, S. Ram, J. Mischke, N. Garemo, S. Sankhe., *The World’s Housing Crisis Doesn’t Need a Revolutionary Solution*, Harv. Bus. Rev., December 25, 2015, at <https://hbr.org/2014/12/the-worlds-housing-crisis-doesnt-need-a-revolutionary-solution>.

²² *Ibidem*.

²³ *Ibidem*.

²⁴ *Ibidem*.

²⁵ *Ibidem*.

²⁶ *Ibidem*.

if the property has environmental hazards, the acceptable cost of the land must be reduced to account for abating those hazards. If the property is located in a gentrifying area or in the path of oncoming gentrification, the developer is more likely to pay a premium to account for the anticipated increase in property value. If the property is not zoned for the developer's intended use at the time of acquisition, the developer might discount the seller's requested sales price to account for the developer's risk of being denied a zoning change. In the study, the authors note a number of mechanisms that could be useful for Warsaw in addressing this lever, including transit-oriented development, releasing public land, ensuring clear titles, and improving land-use rules²⁷.

Warsaw has a rare opportunity for a city – the opportunity to build a major metropolitan urban area as a planned city. As part of its rebuilding, Warsaw should follow the first mechanism and continue developing a robust public transportation system. Public transportation reduces emissions, is often a timesaving means of commuting in metropolitan areas, and unclogs crowded highways. Incorporating space for multiple modes of public transportation and building housing development around public transportation nodes will allow lower income residents to avoid the expense of owning a car and, thus, make living in Warsaw more affordable for that population.

Warsaw also can utilize the next mechanism of releasing public land by redeveloping the land acquired by the city as a result of the Warsaw Decree. Much of the land in Warsaw that is undeveloped likely belongs to the city. The city, if it will not return the land to its original legal owners, might consider developing the land for lower income residents or for the descendants of prior landowners. The mechanism of ensuring clear titles can be addressed similarly by establishing an efficient and fair process for investigating prior claims on the land and eliminating any administrative backlog that might exist in responding to the claims. The report's suggestion to use the final mechanism, improving land-use rules, raises challenges, however. The authors propose increasing density by changing zoning rules to "lower the amount of land used per housing unit, usually by adjusting the permitted floor-area ratio"²⁸.

While this would increase the supply of housing, and thus, by economic-theory reasoning, decrease the overall price of those houses, such an increased supply of housing in an urban area can create too much density. A city's infrastructure must be allowed to gradually adjust to increasing density to avoid overcrowding schools, roads, public transit and social services. In addition, Warsaw must be careful not to concentrate too much affordable housing in a single location. American public housing showcased the consequences of creating pockets of poverty, which included increased crime, increased demands on city services, and

²⁷ J. Woetzel, S. Ram, J. Mischke, N. Garemo, S. Sankhe, *McKinsey & Co., A Blueprint for Addressing...*, pp. 8–9.

²⁸ *Ibidem*, p. 9.

decreased economic mobility for those residents. If Warsaw is able to manage these issues, Warsaw should be able to use the first lever to address its need for affordable housing.

The second lever the report recommends is to adopt more efficient construction processes. Among many options provided, the report suggests ‘de-specifying’ building requirements to standardize building tasks²⁹. Generally, when a residential building is constructed, the developer hires an architect to draft a set of drawing specifications showing the contractor how to construct the building. The specifications will display the mechanical, electrical, and structural details needed for construction. Each building can be designed and built for unique usage and space needs, as well as to reflect each architect’s design preferences. Such a design and construction process is inefficient when compared to a more routinized design and construction method. To visualize the difference, contemplate the efficiency in designing and building a special order car for each buyer as opposed to a manufacturer’s efficiency in designing and building a small number of cars for multiple buyers. The report, in essence, argues that if the housing industry designed and constructed housing with less specificity, housing costs would decrease similar to how the factory assembly line allowed early Ford cars to be mass produced at a much more affordable cost.

While the idea is intriguing, there are a few challenges. First, most residential housing is primarily constructed onsite, instead of in a factory. If the housing industry, and more importantly, home buyers, were willing to build and buy more manufactured housing, such a move would ‘de-specify’ housing construction and allow for more assembly-line production of housing units in a factory-like setting. It is questionable whether homebuyers, who are long accustomed to customizing their homes, would accept uniform homes for reduced costs. Further, it is easier to pre-manufacture components of single-family buildings than it is for multi-family buildings. De-specifying multi-family buildings requires additional precautions. For example, cities prone to natural disasters must construct buildings that can withstand nature’s most powerful forces and such structures are neither inexpensive to build nor easily mass-produced. Notwithstanding these challenges, consolidation amongst the housing industry – including closer collaboration amongst designers, construction companies, and sales companies – could produce cost savings.

The third ‘lever’ of reducing operations and management costs includes, along with other proposed mechanisms, improved energy efficiency and reduced maintenance costs³⁰. Many major cities in developed countries currently have programs to promote energy-efficiency, so this cost reduction mechanism may not hold as much promise. However, reducing maintenance costs in multi-family properties is a viable means of keeping affordable housing safe and affordable,

²⁹ *Ibidem*, p. 11.

³⁰ *Ibidem*, p. 12.

though it often is at odds with increasing building density. Chicago's Public Housing Authority experienced similar challenges with many of its high-rise public housing developments³¹.

Of note, the Cabrini-Green public housing development demonstrated the challenges of keeping maintenance costs low in a high-rise, high-density development. Cabrini-Green, like public housing developments in many American urban cities, had a number of high-rise developments similar to those high-density developments promoted by the report. However, not only did Cabrini-Green suffer many of the social challenges noted in this Article that often result from high-density developments, Cabrini-Green also suffered disrepair from high-maintenance costs. High-rise developments have very high elevator maintenance costs and the sheer number of residents in a high-rise development causes significant wear and tear on the common areas of the development. While high-density developments will spread the land acquisition costs across more units making those individual residential units more affordable, high-density, high-rise developments will often have higher maintenance costs reducing some, if not most, of the cost savings.

The fourth and final 'lever' of reducing the associated transactional costs of creating and selling or renting affordable housing development by lowering borrowing costs for buyers and sellers, is a lever that many policy makers and government agencies have tried to tackle in the United States. Through public and private efforts, such as closing cost and down payment assistance, soft second mortgages, and equity sharing mortgages, affordable housing production increased. However, Warsaw should proceed carefully with government intervention in the housing market to ensure that there is public support for such expenditures, dedicated public revenue to protect these public investments from political changes, and in-depth, first-time homebuyer training programs available (if not required).

6. CONCLUSION

Warsaw's history in World War II including the Soviet Union's occupation is wrought with tragedy. Through this tragedy, the city seeks to rebuild. This Article encourages the city to rebuild in a manner that allows all of its citizens to remain a part of the city. To accomplish this, Warsaw must incorporate affordable housing into its redesign. This housing should be integrated into the city to enable citizens of all incomes the opportunity to have a safe and affordable place to reside. The housing should be integrated into the city's housing stock so that it is indistinguishable from market-rate housing to avoid much of the stigma that is

³¹ Public housing in the United States is often called "social housing" in European countries.

associated with affordable housing. It should be, as stated in the McKinsey report, near public transportation nodes and built in a manner that advantages unit production over profit. Warsaw has shown its resilience in rebuilding after such tragic destruction, and it has the capacity and resources to regain its vibrancy and accessibility for all of its citizens.

WARSAW REBUILT: INCORPORATING AFFORDABLE HOUSING BY DESIGN

Summary

There is little credible argument against the need for affordable housing throughout the world. In many countries, the poor struggle to find structurally sound housing that is safe, affordable and in a desirable location. Those countries that seek to build affordable housing struggle with forced integration of existing neighborhoods, struggle against preexisting social structures that are not supportive of the poor, and struggle against established cultural traditions that resist the changes that are required to expand affordable housing. However, when a society has the opportunity to build a new city, will affordable housing be incorporated in the design? Will the redesign of this new city create the same wealth segregation, economic structures, and preexisting conditions that ultimately lead to the need for affordable housing, or will this new city be designed to incorporate affordable housing as an integral part? This Article offers a short examination of Warsaw, Poland, a city utterly destroyed by the Germans in World War II and later occupied by the Soviet Union. Warsaw, after the fall of the Soviet Union, is quickly rebuilding and has the opportunity to design the city to incorporate affordable housing as a central and permanent part of the city and to create a mixed-income society where all residents have a place.

WARSZAWA ODBUDOWANA: ZAPEWNIENIE DOSTĘPNEGO FINANSOWO MIESZKALNICTWA PRZEZ PROJEKTOWANIE PRZESTRZENI PUBLICZNEJ

Streszczenie

Brak jest wiarygodnych argumentów przeciwko potrzebie inwestowania w tanie budownictwo socjalne na świecie. W wielu krajach ludność uboższa boryka się ze znalezieniem bezpiecznego mieszkania w przyzwoitej cenie w dobrej lokalizacji. Państwa,

które chcą inwestować w budownictwo socjalne, walczą z narzuconą integracją funkcjonujących już osiedli, borykają się z zastałą strukturą społeczną, która jest zamknięta dla ludzi ubogich, i w końcu zmagają się też z utrwalonymi tradycjami kulturowymi, które powstrzymują zmiany konieczne dla rozwoju budownictwa socjalnego. Jednakże, kiedy społeczeństwo ma możliwość zbudowania nowego miasta od podstaw, czy uwzględni w projekcie mieszkania socjalne? Czy projekt nowego miasta wytworzy taki sam podział dóbr, takie same struktury ekonomiczne oraz dotychczasowe warunki, prowadząc do zapotrzebowania na budownictwo socjalne, czy może owo miasto będzie zakładało w swoim projekcie budownictwo socjalne? Niniejszy artykuł posługuje się przykładem Warszawy, miasta zniszczonego przez Niemców w czasie drugiej wojny światowej, a potem okupowanego przez ZSRR. Warszawa po upadku Związku Radzieckiego szybko została przebudowana, a władze miały możliwość stworzenia miasta, którego częścią jest budownictwo socjalne, jako centralną i stałą część miasta, co stworzyło społeczeństwo o zróżnicowanych dochodach, gdzie każdy ma dla siebie miejsce.

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KEYWORDS

affordable housing, real estate development, construction, Warsaw Decree, public housing, social housing

SŁOWA KLUCZOWE

tanie budownictwo, rozwój rynku nieruchomości, konstrukcja, Dekret Bieruta, mieszkania socjalne

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PHOENIX WITHIN A PHOENIX: GOOGLE CAMPUS WARSAW AND THE FASCINATING, INTENTIONAL REBIRTH OF WARSAW'S PRAGA DISTRICT

1. INTRODUCTION

Warsaw is a city which embodies rebirth. This phoenix city's population has proven extremely resilient to change. Nazi Germany attacked Warsaw in 1939 and occupied the city for the duration of the Second World War. After the Warsaw Uprising, the Polish Home Army's incredibly courageous but ultimately unsuccessful 1944 effort to liberate the city, Nazi military commander Heinrich Himmler ordered the city to be pummeled¹. The result – the blitzkrieg intensified and Warsaw was razed; at the end of World War II, 85% of the city's buildings had been demolished². Today, nowhere is the rebirth of the city more evident than in Warsaw's spectacular Old Town, a historic district which has rightly earned a spot on the UNESCO World Heritage List³. After German forces took down nearly every building in Old Town in 1944, the historic district was painstakingly rebuilt post-war using bricks preserved from wartime destruction and using pre-war sketches to emulate the original beauty of Old Town's architecture⁴.

While Himmler's forces were razing Warsaw's Old Town in 1944, Soviet troops looked on from the other side of the Vistula, the river that splits the city⁵. Winston Churchill noticed the passiveness of the Soviets, commenting to an aide, "It is certainly very curious that at the moment the Underground Army

¹ A. Curry, *Revolt... and Betrayal*, World War II 2012, p. 43.

² P. Bennett, *Rising From Its Brutal Past, Warsaw Transforms Itself*, World War II 2008, p. 22.

³ *Ibidem*.

⁴ *Historic Centre of Warsaw*, UNESCO World Heritage Convention, at <http://whc.unesco.org/en/list/30>. Stanislaw Lorentz, a university professor, is credited with smuggling two truckloads of documentation about Warsaw's historic structures out of the city during Nazi occupation. The documentation was hidden in the stone coffins of dead monks at Piotrków Monastery and retrieved after the war ended. A. M. Tung, *Preserving the World's Great Cities: The Destruction and Renewal of the Historic Metropolis*, New York 2001, p. 81.

⁵ See A. Curry, *Revolt...*, p. 42.

has revolted, the Russians should have halted that offensive against Warsaw and withdrawn some distance”⁶. As it turned out, the Soviets were allowing the Nazis to do their dirty work for them, beating the Poles into submission and perfectly setting up the subsequent Soviet takeover of Poland in January 1945⁷, which lasted until 1989⁸. Interestingly, the 1944 Soviet occupation of the eastern bank of the Vistula had an unintended, positive effect on the area – this was the only area in Warsaw in which numerous pre-war buildings were preserved from Nazi destruction. Whereas the historic district of Old Town required almost complete rebuilding after the war, the Praga district on the eastern bank still boasts many pre-World War II buildings.

Filmmaker Roman Polanski chose Warsaw’s Praga district in 2001 as the site for filming “The Pianist”, his award-winning movie about Jewish pianist Władysław Szpilman’s survival in the Warsaw Jewish ghetto during World War II⁹. Much of the filming took place on Zabkowska Street, where the oldest building dates back to 1880¹⁰. Polanski certainly chose Praga because of the old buildings, but he also chose Praga because the district had a rundown, ghetto feel¹¹. In fact, Praga has historically been known as the district with Warsaw’s highest concentration of poverty, social deprivation, working poor, and municipal renters¹².

In recent years, however, the Praga district of Warsaw has been experiencing a rebirth of its own. This phoenix district, lying within the eastern central part of a larger phoenix city, is experiencing a period of rapid growth and revitalization. Five years ago Praga was thought of as a “dumping ground for stolen cars in a crime-ridden district”¹³, but the area’s low rental prices and large, historic spaces have started attracting creative types – web designers, artists, musicians and others. In June 2014, Praga landed a windfall when internet giant Google announced

⁶ A. Curry, *Revolt...*, p. 45 (quoting British Prime Minister Winston Churchill, 1944).

⁷ *Ibidem*, p. 47.

⁸ E. Badertscher, *Poland, Our World: Poland*, Toledo, Ohio 2011.

⁹ See P. Green, *Polanski Film about Holocaust and Suffering in Poland*, N.Y. Times, September 6, 2001, at <http://www.nytimes.com/2001/09/06/movies/arts-abroad-polanski-film-about-holocaust-and-suffering-in-poland.html>.

¹⁰ T. Saltzman, *The Crumbling Beauty of Warsaw’s Praga District*, The Globe and Mail, November 21, 2010, at <http://www.theglobeandmail.com/life/travel/destinations/the-crumbling-beauty-of-warsaws-praga-district/article571562/>.

¹¹ See A. O. Scott, *Surviving the Warsaw Ghetto against Steep Odds*, N.Y. Times, December 27, 2002, at <http://www.nytimes.com/2002/12/27/movies/27PIAN.html?pagewanted=all>.

¹² *Report of European Spatial Planning Observation Network (ESPON), Best Metropolises: Best Development Conditions in European Metropolises – Paris, Berlin and Warsaw*, 2013, p. 91, at http://www.espon.eu/export/sites/default/Documents/Projects/TargetedAnalyses/BESTMETROPOLISES/BestMetropolises_FR_Scientific_Report.pdf.

¹³ V. Gera, *Decaying Factories Transformed into Culture Center in Warsaw*, San Diego Union-Trib., June 3, 2015, available at <http://www.sandiegouniontribune.com/news/2015/jun/03/decaying-factories-transformed-into-culture/>.

plans to build a center for technology startup companies in the district¹⁴. Ironically, the new site of Google Campus Warsaw is on Żąbkowska Street¹⁵, the same spot filmmaker Roman Polanski selected in 2001 to represent wartime poverty and oppression¹⁶. The effects of Google opening Campus Warsaw are likely to be profound for the district of Praga.

2. THE RENAISSANCE OF PRAGA

Praga proper is actually two districts – Praga Południe (Praga South) and Praga Północ (Praga North). These two districts of Praga are among the seven districts which make up the central zone of Warsaw¹⁷. The Vistula River divides the city on a north-south axis. While real estate prices in Warsaw are the highest in Poland¹⁸, prices are generally far lower on the right bank.

The city of Warsaw is now flourishing, having enjoyed 25 years of economic growth, albeit in fits and starts, following the end of Soviet dominance¹⁹. Poland, traditionally a hub of East-West trade, now also benefits from its relatively new membership in the European Union²⁰. Developers and investors have begun to take notice of Warsaw, and in particular the lower-priced opportunities on the right bank of the Vistula River. Praga, situated on the right bank, is experiencing renaissance as it slowly sheds its reputation as Warsaw's underbelly and becomes a cultural and entertainment center as well as a hip, lower-cost alternative for convenient city housing²¹.

The rebirth of Praga began organically, spawned from political change. When Soviet rule of Poland ended in 1989, dramatic changes occurred in Poland's hous-

¹⁴ *Google to Open Innovation Campus in Poland*, The Star Online, June 5, 2014, at http://www.thestar.my/Tech/Tech-News?2014/06/05/Google-to-open-innovation-Campus-in_Poland/.

¹⁵ *Contact Information for Campus Warsaw*, at <https://www.campus.co/warsaw/en/contact>.

¹⁶ Polanski shot some scenes on side streets off Żąbkowska. M. Gross, *In Warsaw, a Once-Lawless Area Starts its Way Up*, N.Y. Times, October 22, 2006.

¹⁷ *Report of European Spatial Planning Observation Network (ESPON), Best Metropolises...*

¹⁸ G. Gorzelak, M. Smetkowski, *Warsaw as a Metropolis – Successes and Missed Opportunities*, Regional Sci. Pol'y & Practice 2012, pp. 35–36.

¹⁹ See V. Gera, *Decaying Factories Transformed...*

²⁰ See C. Lammers, *Warsaw, a City Reborn*, New Zealand Herald, October 4, 2015, at http://www.nzherald.co.nz/hamilton-news/lifestyle/news/article.cfm?c_id=1503360&objectid=11095831; R. Sikorski, *10 Years of Poland in EU: Opportunity Seized*, Ministry of Foreign Affairs, Republic of Poland, at http://www.mfa.gov.pl/en/news/10_years_of_poland_in_eu_opportunity_seized ([“D]uring these ten years of EU membership [2004–2014], Poland’s GDP skyrocketed, increasing by 48.7%. Even in 2008–2013, during the depth of the global financial crisis, [Poland’s] economy grew by 20% – by far the best result in the EU”).

²¹ C. Lammers, *Warsaw...*

ing market. The first changes were decentralization and privatization²². Decentralization of government authority in Poland necessarily shifted responsibility to local authorities to provide public housing²³. Privatization enabled some apartment tenants to acquire private ownership of their dwellings²⁴. During the 1990s, private developers gained increased influence in housing trends, affected by market demand²⁵.

At first, developers were not enticed by Praga's historic buildings. At the turn of the millennium, many of the pre-World War II buildings in Praga had been left vacant and untended, allowed to fall into serious disrepair and in danger of condemnation and demolition²⁶. In stepped Janusz Sujecki of the Warsaw Cultural Patrons Group (ZOKDW) and Jarosław Zieliński of the City-History Pro Futuro Organization²⁷, who devised a plan for renovation and preservation, particularly for the Ząbkowska Street area in Praga²⁸. Local authorities approved the plan, and numerous renovation projects were begun, enabled in part by European Union funding²⁹. At the same time, Praga was experiencing an influx of artists, musicians, students and restaurateurs, attracted by the area's low rents and spacious, historic buildings, turning Praga into "one of new Europe's creative capitals"³⁰.

One of the first real estate developments signaling Praga's possible rebirth occurred in 2003. Entrepreneur Wojciech Trzciński transformed a 1916 marmalade factory into a modern venue – Fabryka Trzciny³¹. The new development now includes a restaurant, bar, meeting rooms, theater and gallery. Another factory was repurposed in 2005, when the Fabryka Wódek Koneser, at the time a func-

²² M. Cremaschi, F. Eckhardt, *Changing Places: Urbanity, Citizenship & Ideology in the New European Neighbourhoods*, Amsterdam 2011.

²³ *Ibidem*.

²⁴ *Ibidem*, pp. 177–178.

²⁵ *Ibidem*, p. 179.

²⁶ A. Wysocka, *The other Side*, The Warsaw Voice Online, April 20, 2005, at <http://www.warsawvoice.pl/WVpage/pages/article.php/8257/article>.

²⁷ *Ibidem*; see also A. Kocinska, *Settling with History: Group Moves to Protect Warsaw's Historic Buildings*, Warsaw Bus. J., February 25, 2002.

²⁸ A. Wysocka, *The other Side*...

²⁹ *Ibidem*. "Warsaw is a major beneficiary from the new cycle of European Commission funding for the period 2014–2020. Poland is the largest recipient of money, at over €90 billion, and this envelope will include big investments in sustainable transport". G. Clark, T. Moonen, *The Density Dividend: Solutions for Growing and Shrinking Cities, Appendix Case Study: Warsaw*, Urb. Land Inst., p. 15, at <http://europe.uli.org/wp-content/uploads/sites/3/ULI-Documents/The-Density-Dividend-Warsaw-case-study-FINAL.pdf>.

³⁰ H. Heuler, *Warsaw's Wild Side*, The Guardian, August 27, 2008, at <http://www.theguardian.com/travel/2008/aug/27/warsaw.poland>.

³¹ C. Quirk, *A Warsaw 'Hood Reinvents Itself*, L.A. Times, November 5, 2006.

tioning vodka factory³², began also housing the Wytwórnia Theatre³³. A third multi-use development on the right bank is the SoHo Factory, the brainstorm of entrepreneur Rafał Bauer who took inspiration from New York's SoHo and Meatpacking Districts³⁴. Bauer first became interested in developing Praga in 1997 but did not consider the area ripe for investment until breaking ground in 2010³⁵. Even in 2010, Bauer was taking a chance, as many Varsovians still considered the area the "wrong" side of the river, dangerous and crime-ridden³⁶. Bauer took a dilapidated ammunition factory dating back to the early part of the twentieth century and transformed it into an enticing space which now includes housing, office space, shops, restaurants and museums³⁷.

A recent improvement that is undoubtedly leading to increased interest and a heightened sense of renewal in Praga is the opening of a new subway line. Until recently, there was only a north-south metro line in Warsaw, but on March 8, 2015, a new east-west line was opened³⁸. The new four-mile subway line, which runs under the Vistula River, links the Praga District to Warsaw's city center and western districts³⁹. Numerous new projects have been announced in anticipation of and in response to the construction of the new metro line⁴⁰. The former Pollena cosmetics factory is being transformed into 900 apartments in Praga. Another apartment complex, Port Praski, is in development next to Poland's new National Stadium in Praga⁴¹.

³² The vodka factory has since been closed, but a Polish vodka museum is currently under construction on the site. Koneser Praga Center, <http://koneser.eu/en/museum/>. The old factory is currently under renovation to house retail space, office space, and apartments. It also houses Google's new Campus Warsaw. *Polish Vodka Museum at Koneser*, Koneser Praga Center, at <http://koneser.eu/en/news/polish-vodka-museum-at-koneser/>.

³³ C. Quirk, *A Warsaw 'Hood...*

³⁴ V. Gera, *Decaying Factories Transformed...*

³⁵ *Ibidem*.

³⁶ See *Ibidem*.

³⁷ SoHo Factory, at <http://www.sohofactory.pl/en>. Some parts of the SoHo Factory development were still under construction at the time of writing of this article.

³⁸ *Crowds Take First Ride on Warsaw's New Subway Line*, San Diego Union-Trib., March 8, 2015, at <http://www.sandiegouniontribune.com/news/2015/mar/08/crowds-take-first-ride-on-warsaws-new-subway-line/>. Interestingly, one of the reasons that the \$1.1 billion metro line opened more than a year later than expected was that construction crews encountered unexploded World War II explosives as they dug under the Vistula River.

³⁹ *Ibidem*.

⁴⁰ W. Rylukowski, *The Praga Spring*, Warsaw Bus. J., August 22, 2015.

⁴¹ *Ibidem*. Commenting on the positive effect of the metro line's construction, one investment executive, Bogumił Rutkowski, vice president of PPI Investments, recently explained that 75% of the apartments at his company's new development in Praga were sold two months before the completion of the line. The National Stadium was opened in Praga in January 2012 in anticipation of Warsaw hosting the Euro 2012 Championships. *Poland's New National Soccer Stadium Opens with a Bang*, CNN, January 30, 2012, at <http://edition.cnn.com/2012/01/30/sport/football/>

3. THE FORMAT OF CHANGE

New renovations in Praga, among them the Koneser and the SoHo Factory, are being built as mixed-use and transit-oriented developments. Although an appetite for large single-family dwellings with private yards remains engrained in many societies⁴², since the 1990s mixed-use developments have gained much global appeal, especially to younger generations⁴³. The advantages of living in a mixed-use development are myriad – variety in housing, reduced or altogether eliminated commute times, environmental savings, ease of pedestrian traffic, reduction in certain inner-city crime rates because of increased foot traffic, and convenience to shopping, entertainment and the arts⁴⁴. Praga now has “the potential to become a genuinely mixed-use centre of housing, offices, media, culture and trade”⁴⁵. The inherent challenge for Warsaw’s government is to pull off effective revitalization while simultaneously preserving the history of Praga, without displacing the area’s significant low-income population⁴⁶.

The appeal of Praga’s riverside location is not just aesthetic; the new, mixed-use developments’ location on the river creates an additional, different kind of appeal for residents living east of the Vistula River. Traditionally, Varsovians have endured long commutes to work because of the distances between suburban residential areas and the city center⁴⁷, and the problem of lengthy commutes has been exacerbated for residents living east of the Vistula. There are a finite number of bridges, and the bridges are notorious for rush-hour traffic jams⁴⁸. Mixed-use developments which would enable residents to both live and work in Praga, east of the Vistula, hold much appeal for city planners interested in reducing traffic on the Vistula bridges as well as for Varsovians interested in avoiding long commutes. It is estimated that somewhere between 300,000 and 500,000 persons commute to Warsaw for work each day and 80% of Varsovians’ jobs require

football-euro-2012-poland/; *Stadion Narodowy w Warszawie, The Stadium Guide*, at <http://www.stadiumguide.com/stadionnarodowy/>.

⁴² D. Elliott, *A Better Way to Zone: Ten Principles to Create More Livable Cities*, Washington D.C. 2008, p. 147.

⁴³ See G. Clark, T. Moonen, *The Density Dividend...*; Telephone Interview with Chuck Konas, Executive Vice President, Head of Construction & Property Services, Post Properties, Inc., November 21, 2015.

⁴⁴ Telephone Interview with Chuck Konas. . .

⁴⁵ G. Clark, T. Moonen, *The Density Dividend...*, p. 20.

⁴⁶ See A. Zdrodowski, *Praga: Revitalise, But Be Wise*, *Poland Today*, June 17, 2015, at <http://poland-today.pl/magazine/all-issues/poland-today-magazine-10/praga-revitalise-but-be-wise>.

⁴⁷ G. Clark, T. Moonen, *The Density Dividend...*, p. 10.

⁴⁸ Lecture from M. Grochowski, Lecturer at the Dep’t. of Geography and Regional Stud., U. Warsaw, *Changes in Demography of Warsaw*, June 19, 2015; see also J. Kronenberg, T. Bergie, *Challenges of Sustainable Development in Poland*, Wroclaw 2010, pp. 279–280.

commuting to the inner city⁴⁹. Some experts have perceived a pressing need for construction of three or four additional river crossings⁵⁰, but rather than building more bridges over the Vistula, some city planners are now interested in moving jobs to the eastern shore. Meetings about the planned urban renewal of Praga generate much interest among those Varsovians interested in reducing traffic congestion and preserving the historic district; a recent meeting was “so full that the door could not be opened or shut”⁵¹.

4. GOOGLE CAMPUS WARSAW AND THE ANTICIPATED, POSITIVE EFFECTS OF THE ENTREPRENEURIAL CYCLE ON THE PRAGA DISTRICT

When Google announced on June 4, 2014, that it would soon begin development of Campus Warsaw in Praga, it was touted as evidence of “Poland’s New Golden Age”⁵². Google now has opened entrepreneurial hubs – or campuses – in London, Madrid, Seoul, Tel Aviv and – most recently – Warsaw⁵³. These campuses are physical locations of the internet giant’s “Google for Entrepreneurs” effort. The goal of Google’s campuses is lofty – providing space and help for tech entrepreneurs to “learn, connect, and build companies that will change the world”⁵⁴. When announcing the opening of Campus Warsaw, Google’s CEO explained that the Google campus model of helping startup companies is a natural fit for Google because the internet giant itself began in a garage in 1998⁵⁵.

Google’s stated interest in running its worldwide campuses is long-term⁵⁶. Google is seeking to build up tech communities, leading the way for innovation

⁴⁹ Lecture from M. Grochowski, Lecturer at the Dep’t. of Geography...

⁵⁰ See G. Gorzelak, M. Smetkowski, *Warsaw as a Metropolis...*, p. 43.

⁵¹ *Ibidem*.

⁵² See, e.g., C. Nimani, *Warsaw Opens Hub for Startups from Europe*, Startup World, December 1, 2014, at <http://digjitale.com/2014/12/warsaw-opens-hub-for-startups-from-europe/>.

⁵³ Google for Entrepreneurs, Campuses, at <https://www.googleforentrepreneurs.com/campuses/>. Campus Warsaw opened its doors on November 19, 2015. *Google Kickstarts Campus Warsaw*, Radio Poland, November 20, 2015, at <http://www.thenews.pl/1/12/Artykul/229642,Google-kickstarts-Campus-Warsaw>.

⁵⁴ G. McKeel, *Partnerships Manager, Google for Entrepreneurs, Address at Open Reaktor meeting*, Warsaw, October 15, 2014, video available at <https://vimeo.com/110725271>.

⁵⁵ “Google started as a start-up in a garage, so supporting start-ups is part of our DNA”. *Google to Open Warsaw Start-up Campus*, Polskie Radio, June 5, 2014 (quoting Google CEO Eric Schmidt). Google founders Larry Page and Sergey Brin set up their first shop in a garage in Menlo Park, California, in September 1998. *Google, Our History in Depth*, at <https://www.google.com/about/company/history/>.

⁵⁶ G. McKeel, *Partnerships Manager...*

and increased competition. At each of its campuses, Google seeks to assist in building local startup tech enterprises, with the eventual goal of helping them go global, but Google does not earn revenue from these startup ventures. Google's theory behind its investment is that, when an ecosystem is performing well, all players in the market will benefit. Or put another way, a rising tide lifts all boats⁵⁷.

Google's campuses are intended to serve the technology startup community as business incubators rather than accelerators⁵⁸. Accelerators generally require an entrepreneur to give up a portion of business ownership in exchange for needed resources and other help. Google announced it was "not coming [to Warsaw] to compete with the local ecosystem", but rather it would pair startup entrepreneurs with partners already accomplishing this same work⁵⁹. At its campuses, Google provides entrepreneurs with event space, co-working space, educational space, and space to pair with accelerators or mentors⁶⁰. Thus, at Campus Warsaw, tech entrepreneurs can get one-on-one help, attend group training sessions, and connect with mentors as well as sources of venture capital⁶¹.

When determining the location of its Google Campuses, the internet giant looks for three things – a flourishing entrepreneurial community, an opportunity for local entrepreneurs to benefit from Google's global network, and current, local Google employees who would be able to assist startups⁶². Google determined that Warsaw was comprised of a dense entrepreneurial community. Google also determined that many entrepreneurs in the area could greatly benefit from Google's global resources. Finally, the internet giant recognized that local mentors, current "Googlers", were available and eager to help startups⁶³. Praga, now perceived as an area of rebirth, is poised to become a hub of tech entrepreneurial ventures.

A specific, identifiable business cycle occurs commonly in the tech entrepreneurial world. Although many tech entrepreneurs are less than successful, those who are very successful often want to invest in others' ideas after retirement from their own ventures. In other words, a cycle commonly develops in which a tech innovator introduces a new idea, builds and grows a business – perhaps globally, retires or divests from the business when it has become mature enough that others can manage its operations, and then becomes a mentor and investor in other

⁵⁷ G. McKeel used this idiom in her address at Open Reaktor, *ibidem*. The idiom was first attributed to President John F. Kennedy in 1960. President John F. Kennedy, *Address at Mun. Auditorium*, Canton, Ohio, Sep. 27, 1960, transcript available at <http://www.presidency.ucsb.edu/ws/?pid=74231>.

⁵⁸ G. McKeel, *Partnerships Manager...*

⁵⁹ *Ibidem*.

⁶⁰ *Ibidem*.

⁶¹ Google for Entrepreneurs, Campus Warsaw, *News Releases*, at <http://googlepolska.blogspot.com/2015/10/zapisy-do-campus-warsaw-otwarte.html>.

⁶² G. McKeel, *Partnerships Manager...*

⁶³ *Ibidem*.

tech startups⁶⁴. This cycle creates jobs and resultant positive spillover into a local economy. Google foresees this cycle taking effect in Warsaw⁶⁵, and in particular in Praga, foreseen as the center of a burgeoning tech ecosystem.

This entrepreneurial cycle seems to be developing at Google's first campus, opened in London in 2012, and Google hopes to duplicate Campus London's record of success at its newest campus – Campus Warsaw, which has just opened at the Koneser Center in Praga. Campus London's startups created 576 jobs and raised 34 million Great British Pounds (GBP) in venture capital in 2013⁶⁶; in 2014, startups at Campus London created 1200 jobs and raised 41 million pounds in capital⁶⁷. Campus Warsaw opened its doors in November 2015 in a repurposed nineteenth-century vodka distillery. The old factory is now a mixed use development that will eventually house, along with Campus Warsaw, office space, retail space including art galleries and restaurants, loft apartments, and the Museum of Polish Vodka⁶⁸. The Koneser is quickly becoming a hive of creative and entrepreneurial activity.

5. PROMISE AND DANGER INHERENT IN THE REVITALIZATION PROCESS

Praga now has an opportunity for rebirth of both its physical buildings and its local economy. The rebirth of Praga has very recently begun the process of gentrification, “upgrading urban neighbourhoods, previously neglected and declining areas which are modernised and revitalised so that former working-class areas are

⁶⁴ See, e.g., *Rafał Plutecki is Head of Campus Warsaw*, ITKey Media, August 26, 2015, at <https://itkey.media/rafal-plutecki-is-head-of-google-campus-warsaw/> (Rafał Plutecki was fascinated with the internet when he was studying at the University of Delaware in 1993. He returned to Poland and started one of the country's first internet service providers, eventually selling it and becoming an angel investor for other tech startups); A. Conrad, *How Super Angel Chris Sacca Made Billions, Burned Bridges And Crafted The Best Seed Portfolio Ever*, Forbes, March 25, 2015, at <http://www.forbes.com/sites/alexkonrad/2015/03/25/how-venture-cowboy-chris-sacca-made-billions/> (Chris Sacca made several million in fees in a spectrum auction project, then invested in tech startups, gaining a net worth of 1.2 billion); see also S. Parker (eds.), *The Life Cycle of Entrepreneurial Ventures*, New York 2006.

⁶⁵ See G. McKeel, *Partnerships Manager...*

⁶⁶ *Ibidem*. At the time of writing this article, 34 million pounds is the equivalent of \$51,104,765 (USD).

⁶⁷ Google for Entrepreneurs, Campus London, *News Releases*, at <http://googlepolicyeurope.blogspot.com/2015/03/happy-3rd-birthday-campus-london.html>. At the time of writing this article, 41 million pounds is the equivalent of \$61,626,334 (USD).

⁶⁸ *Polish Vodka Museum at Koneser*, at <http://koneser.eu/en/news/polish-vodka-museum-at-koneser/>.

turned into middle or upper middle-class neighbourhoods”⁶⁹. The danger inherent in this process is that, when property values rise, resulting in inevitable, accompanied rise of property taxes and property rental rates, lower income residents may be displaced because of their inability to afford the increased costs⁷⁰.

The opening of Google Campus Warsaw, with its expectation to create jobs, is hopeful for Praga’s existing lower-income residents looking for employment or improved employment; however, tech jobs usually require creative talent or education. Campus Warsaw will attract a skilled labor pool that will benefit numerous tech startups⁷¹, but this labor pool is likely to be comprised of individuals drawn from outside of Praga to new job opportunities within Praga. An influx of highly educated job seekers would mean few new tech jobs will become available to current Praga residents, a factor which could exacerbate rather than mitigate displacement of current residents⁷². To ward off this effect, Warsaw’s local government should create incentives for Praga employers to hire current residents rather than displace them, assuring that new jobs created in the service and retail industries are available to current Praga residents. Additionally, local government should create job training programs and incentivize private companies to create job training programs, enabling local residents to acquire marketable skills.

Gentrification generally occurs in three stages: first, vacant buildings are occupied and rehabbed, causing no displacement⁷³. Next, the area catches on in earnest, and displacement begins⁷⁴. In the final stage of gentrification, widespread displacement occurs if authorities do not take steps to mitigate it⁷⁵. Many buildings in Praga are currently vacant⁷⁶, meaning development can now occur without immediate displacement of current residents, but authorities must recognize the potential negative effects of gentrification on current residents.

Warsaw City Hall is currently undertaking a huge revitalization project for Praga, costing about 1.4 billion zloty⁷⁷. Funds should be allocated not only for revitalization, but also for mitigation of residential displacement. Fortunately, the

⁶⁹ *Report of European Spatial Planning Observation Network (ESPON), Best Metropolises...*, p. 94 (internal citation omitted).

⁷⁰ *Ibidem*.

⁷¹ See S. Parker (eds.), *The Life Cycle...*, pp. 347–348.

⁷² See *Report of European Spatial Planning Observation Network (ESPON), Best Metropolises...*, p. 94.

⁷³ M. Kennedy, P. Leonard, *Dealing with Neighborhood Change: A Primer on Gentrification and Policy Choices*, Brookings Inst. Ctr. on Urban and Metro. Policy, at <http://www.brookings.edu/~media/research/files/reports/2001/4/metropolitanpolicy/gentrification.pdf>.

⁷⁴ *Ibidem*.

⁷⁵ *Ibidem*.

⁷⁶ During a June 2015 visit to Praga, the author observed firsthand many vacancies in Praga. See also V. Gera, *Decaying Factories Transformed...*

⁷⁷ A. Zdrodowski, *The “Right” Side of the River*, Poland Today, June 17, 2015, at <http://poland-today.pl/magazine/all-issues/poland-today-magazine-10/the-right-side-of-the-river>. At the time of writing this article, 1.4 billion zloty is the equivalent of \$347,213,972 (USD).

European Commission has earmarked significant euros for Poland's development during the period 2014-2020, more than for any other country in the European Union⁷⁸. Included in the European Commission's agenda are initiatives which can mitigate displacement - creating programs for individuals experiencing difficulties in the labor market, the unemployed, those at risk of poverty, women, startup enterprises, and for development of formal and non-formal job training⁷⁹.

To further protect against displacement of lower-income residents in Praga, Warsaw's housing policy should provide for development of residences – both owned and rented – for all income groups within the area⁸⁰. One innovative approach which has been applied in U.S. cities with positive results is the allocation of a certain percentage of homes specifically to lower income residents⁸¹. Another, more extreme example of government-mandated displacement prevention recently occurred in Berlin, a city where 85% of residents rent their housing⁸². Rents were spiraling out of control, rising by as much as 50% in five years, and many long-time residents were finding themselves unable to afford their housing⁸³. Under extreme pressure from citizen groups, the state legislature passed the Berlin Rent Referendum in November 2015, promising to provide 400,000 affordable homes, limiting rents to 30% of income through use of state subsidies, limiting yearly rent increases, and mandating tenant participation in city planning sessions⁸⁴. Certainly the Praga district is not experiencing a housing crisis like that of Berlin, but Warsaw city planners should learn from the social housing policy now demanded by city residents in their northern European neighbor; as Praga is revitalized, city planners should reserve affordable housing for its current residents and should welcome current residents' input.

⁷⁸ See G. Clark, T. Moonen, *The Density Dividend...*

⁷⁹ See, e.g., *More than €17 Billion of EU Regional Funds Allocated to Polish Regions for Innovation, SMEs and Green Growth*, European Commission, Press Release, February 13, 2015, at https://ec.europa.eu/commission/2014-2019/cretu/announcements/more-eu17-billion-eu-regional-funds-allocated-polish-regions-innovation-smes-and-green-growth_en.

⁸⁰ See *Report of European Spatial Planning Observation Network (ESPON), Best Metropolises...*, p. 230.

⁸¹ For example, the city of Atlanta has required new, urban, mixed-used developments to include a certain amount of "workforce housing" for residents who earn 60% or less of the area's median income. See Telephone Interview with Chuck Konas...; see also D. Levy, J. Comey, S. Padilla, *In the Face of Gentrification: Case Studies of Local Efforts to Mitigate Displacement*, Urban Inst., March 17, 2006, at <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/411294-In-the-Face-of-Gentrification.PDF>. The city of Berlin has also developed effective housing programs which Warsaw could emulate *Report of European Spatial Planning Observation Network (ESPON), Best Metropolises...*, pp. 230–231.

⁸² S. Braun, *Grassroots Push Law to Ease Berlin Housing Crisis*, Deutsche Welle, June 28, 2015, at <http://www.dw.com/en/grassroots-push-law-to-ease-berlin-housing-crisis/a-18520497>.

⁸³ *Ibidem*.

⁸⁴ S. Braun, *Berlin Social Housing Winning the Residential Race*, Saturday Paper, November 21, 2015, at <https://www.thesaturdaypaper.com.au/2015/11/21/berlin-social-housing-winning-the-residential-race/14480244002645>.

Planning meetings must be open, and urban planners should make genuine efforts to include current residents in their planning processes. It is essential to include all groups of stakeholders in discussions⁸⁵. Without current residents' representation, the very things that they have longed for, the things that signal an end to urban blight and make their neighborhoods more livable, may be the very things that start the process of their own displacement. For example, when neighborhoods finally get proper streetlights and adequate police patrol, things the current residents have likely wanted for years, these may be the very things that make the improved neighborhoods attractive to outsiders. Reduction of urban blight can lift the human spirit and reduce the risk of marginalization⁸⁶, but the process of urban revitalization must involve inclusive planning and consideration of all stakeholders' interests in order to reduce risk of displacement. Jobs created by small businesses and availability of public transportation should be a boon for current low-income residents, not just factors to attract new higher-income residents.

6. CONCLUSION

Nowhere in Poland is rebirth now more palpable than Praga. Reduction of urban blight and bringing new life to deteriorating, historic buildings are worthy goals for Praga. Historic factories which were recently in danger of demolition are now being repurposed as new, mixed-use, transit-oriented developments. Google Campus Warsaw is set to create new jobs and bring creative minds to Warsaw, a fascinating city which experienced rebirth through physical rebuilding of its historic district after World War II and is now in full bloom, having emerged from 44 years of Soviet dominance and since grown into a hub of technology and East-West trade. The transformation of Warsaw's Praga district from a crime-infested area on the wrong side of the river into a trendy cultural and creative center is an intriguing and positive change; however, as Praga enjoys revitalization of its buildings and growth of its economy, current residents should be considered and inclusive planning should be employed.

⁸⁵ *Report of European Spatial Planning Observation Network (ESPON), Best Metropolises...*, p. 230.

⁸⁶ Prof. John T. Marshall, Opening Address at *Katrina's Legacy*, Symposium at Ga. St. U., Atlanta, Ga., October 2, 2015; see also *Report of European Spatial Planning Observation Network (ESPON), Best Metropolises...*, p. 92.

PHOENIX WITHIN A PHOENIX: GOOGLE CAMPUS WARSAW AND THE FASCINATING, INTENTIONAL REBIRTH OF WARSAW'S PRAGA DISTRICT

Summary

The Praga district of Warsaw has been experiencing a rebirth. This phoenix district, lying within the eastern central part of Warsaw, is experiencing a period of rapid growth and revitalization. Five years ago Praga was thought of as crime-ridden and impoverished, but the area's low rents and large, historic spaces have started attracting creative types – web designers, artists, musicians and others. In June 2014, Praga landed a windfall when internet giant Google announced plans to build a center for technology startup companies in the district. The location of Google Campus Warsaw will undoubtedly have beneficial effects on employment and property values in the district, but authorities must be careful to assure current Praga residents are among those who enjoy the benefits.

FENIKS W MIEŚCIE FENIKS, CZYLI GOOGLE CAMPUS WARSAWA JAKO PRZYKŁAD ZAPLANOWANEJ REWITALIZACJI WARSZAWSKIEJ PRAGI

Streszczenie

Warszawska Praga to odradzająca się dzielnica położona we wschodniej części centrum Warszawy. Doświadcza ona gwałtownego rozwoju i jest rewitalizowana. Pięć lat temu Praga była kojarzona głównie z ludźmi o bardzo niskich dochodach i z wysokim wskaźnikiem przestępczości, ale niskie lokalne czynsze i spore, historyczne przestrzenie zaczęły przyciągać ludzi kreatywnych: twórców stron internetowych, artystów, muzyków i innych. W czerwcu 2014 roku na Pragę niczym manna z nieba spadła wiadomość o planach Google dotyczących budowy centrum technologicznego dla tzw. start-upów. Lokalizacja Google Campus Warszawa z pewnością pozytywnie przyczyni się do wzrostu zatrudnienia i cen nieruchomości w dzielnicy, ale lokalne władze muszą zwrócić uwagę na to, by obecni mieszkańcy Pragi również korzystali z tej inwestycji.

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KEYWORDS

Praga, mixed-use development, revitalization, gentrification, displacement, startup

SŁOWA KLUCZOWE

Praga, rozwój wielofunkcyjny, rewitalizacja, gentryfikacja, przemieszczanie się, startupy

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NATIONALISATION AND REPRIVATISATION IN WARSAW

Real estate has always been an inseparable component of the history of human kind, widely referenced in historical events from the ancient times, through the investiture dispute, and the Russian revolution. Never, however, has real estate been subject to such a structural, social and mental revolution as in the communist idea of nationalization. Never before has the ownership relations been ruined in such a scale, nor so many people and institutions deprived of their land, never has the state taken over so much property, as happened during the Revolution in Russia in 1917 (in some aspects the French Revolution only could be compared), and in Polish reality – in accordance with the nationalization acts, in particular the Warsaw Decree from 1945¹.

It happened of course before, that whole social or ethnic groups have been deprived of their property, however, it never happened in time of peace, in the majesty of the law implemented by the state against its own citizens. As a precursor of such actions we can possibly consider the Third Reich with its Nuremberg laws, proscribing Jews, and often seizing their property. How important the Warsaw Decree was, is shown by the fact that its consequences are visible even today, and the Polish state did not manage to deal with this legislative problem.

Reprivatisation on the other hand is a process that leads to restitution of property that has been overtaken by the state in the way of nationalization or expropriation, to its former owners or their legal successors.

A common way of identifying the reprivatisation procedure is to describe it as satisfaction received by individual entities in exchange for deprivation of an owner of the ownership right, which in most cases means compensation. Reprivatisation, in other words, is a procedure of retrieving ownership title, lost by the rightful owners, upon the basis of the legal acts implemented after the World War II, within years 1944–1962.

As a result of World War II, Poland found itself within the Soviet zone. The government formed under Soviet supervision, moved in early 1945 from the city

¹ Decree of 26 October 1945 r. regarding the ownership and usufruct of the real estate in Warsaw [hereinafter Decree of 26 October 1945 r.].

of Lublin to the destroyed capital of Poland. After the uprising against Germans in August – October 1944, the city laid in ruins, destroyed during the fighting, but mostly after its finish, blown and burned by special squads of German army. With particular passion they destroyed objects of high cultural and historical value – palaces, churches, monuments, libraries, etc. 11,000 buildings were completely ruined, and another 14,000² required reconstruction. In such circumstances the reconstruction of Warsaw as the capital of Poland was not certain. Relocation of the capital to other agglomeration (Łódź) was seriously considered.

Extraordinary steps needed to be undertaken. Thus, the Warsaw Decree was introduced, and entered into force on 21 November 1945 and referred to the whole area of Warsaw (14.146 ha at that time). Article 1 of the Warsaw Decree stipulated that all real estate located within Warsaw was transferred to the Warsaw Municipality³.

Irrespective of how we judge the acts of Polish authorities at that time, it seems, if Warsaw was to be reconstructed, special legal solutions were necessary. It should be noted however, that the provisions of the Warsaw Decree were violated by the same authorities which implemented this law, as far as the right of establishing the perpetual usufruct, or compensation for the nationalised property. Such behaviour of the authorities is in complete contradiction to the rules of a state of law, but the idea itself of regulating the reconstruction of the city should be considered positively. It was clearly understood that keeping private ownership of real estate in districts completely destroyed, and at the same time undertaking the reconstruction works only available by public means, required extraordinary solutions.

It should be noted, that as a result of entering into the Decree by force, we faced not only communalization of private equity, but also expropriation. Looking at these actions now after many decades, we can consider that it was a progressive expropriation. Comparing indeed the legal status of the expropriated equity at the beginning of this process to its status after 60 years, it appears that slightly harmless partial expropriation evolved to a total expropriation without any compensation.

As mentioned above, Article 1 of the Decree provided that “in order to allow the rationalized reconstruction of the capital and its further development, in accordance with the needs of the nation, in particular in order to allow quick disposal of the real estate and its proper use, all property within the area of Warsaw are transferred to the municipality at the date of entrance into force of the present Decree^{2,4}. As we can see, the main idea was to reconstruct and develop the city. Furthermore, all persons and legal entities, whose property has been subject to

² *Raport o stratach wojennych Warszawy, Urząd miasta stołecznego Warszawy, Archiwum Państwowe m.st. Warszawy, BOS I, signature 2480.*

³ Decree of 26 October 1945 r.

⁴ Decree of 26 October 1945 r.

the above mentioned communalisation, were entitled to submit within six months from the date when the land was taken over by the city, a motion establishing on their behalf the right of perpetual lease (from 1961 transferred into perpetual usufruct) on the subject real estate. Unfortunately, the communist authorities violated these rules from the very beginning. Almost all such motions were rejected, despite the fact that the Decree provided only one premise when refusal was possible – namely, when the description of use of the particular real estate, described in the local master plan was in contradiction to its current purpose. Such attitude of the authorities resulted from the aspiration to not only take away the ownership right from the previous owners, but also the possession of their properties.

From the practical point of view, the communalisation was executed in the following way. A real estate was subject to inspection by relevant authorities, and it was considered as overtaken by the city of Warsaw on the date of publishing of the protocol from such inspection in the official journal of City Management. After 1948, the remaining property was overtaken without any inspections, street by street, by the way of publishing in the official journal of the City Management. In order to avoid any doubts, the authorities finally published an announcement in which they declared, that all real estate that have not yet been overtaken are from this date considered property of the city of Warsaw. It should be noted, that in case of refusal of establishing the perpetual lease, the Warsaw Decree provided compensation; however, it was almost never granted to the expropriated owners.

Between 1948 and 1949, 17.000 decree claims were submitted and almost all were rejected⁵. Through the decades, previous owners and later their legal successors were denied the right to claim the return of their property as well as any compensation.

First in 1989, after the communist system collapsed in Poland, and democratic reforms were introduced, the change of law allowed legal steps to be taken to regain the lost ownership of property in Warsaw. Many efforts were undertaken to develop a comprehensive legal solution for the reprivatization issue, but none of them succeeded. Between 1989 and 2015, 19 reprivatization bills were introduced in the parliament and only one reached the desk of the President, however it was vetoed by him. Even today, there is no reprivatization law in force and after 25 years we are facing a legislative gap. The administration courts have taken over the competences of the state, and enabled a path through court that might lead to recovery of the former ownership title, or compensation.

First of all, it should be noted, that the Supreme Court decided that the reprivatization cases shall be reviewed by administration courts – Province Admin-

⁵ H. Ciepła, R. Sarbiński, A. Sobczyk-Sarbińska, *Roszczenia przysługujące byłym właścicielom tzw. gruntów warszawskich. Sposób ich dochodzenia w postępowaniu administracyjnym i sądowym*, Warsaw 2013, p. 97.

istration Court as the first instance, and the Main Administration Court as the second and final instance⁶.

What are the possible actions of a former owner, or its successors in 2015? The main and most important issue is whether the decree motion has been filed in due time, which was 6 months after the real estate was communalized. If that condition is met, there is a possibility to launch the court procedure in order to obtain the perpetual usufruct title to the land.

As mentioned above, almost all the decree motions were rejected at the time they were submitted. In such case, or in case if such motion has not been examined at all, the entitled person or entity can today demand:

- to have the unfavourable decision declared invalid, which results in reviewing the decree motion by the relevant authorities as if it was submitted today;
- filing a motion regarding inactivity of the authority if the decree motion was not examined at all.

The main rule is that the real estate should be returned in nature, therefore, the above described actions may result in establishing in favour of the former owner the right of perpetual usufruct on the subject real estate.

However, there might be some obstacles with this approach. One of them is a situation when irreversible legal consequences have occurred. The term of an irreversible legal consequence is important for the previous owners because only in the event of declaring a decree decision invalid may they request the establishment of perpetual usufruct. As the Main Administration Court declares, an irreversible legal consequence occurred if perpetual usufruct right on the real estate was established on behalf of a third party, or the property was sold and buyers are protected by principle of public credibility of land and mortgage registers.

As far as the relevant authorities are concerned, in case the national council of the city of Warsaw issued the decree decision, and the current owner of the land is the City of Warsaw, Local-government Appeal Boards should examine the case. And if the current owner is the State Treasury, the case should be examined by the Minister of Infrastructure and Development.

The President of the capital city of Warsaw is obliged to re-examine the decree motion filed at the end of the 40s of the last century, for establishment of the perpetual usufruct in favor of the former owners of the land. In case the decree motion was submitted but the decision was not issued, the competent authority to consider the case, both for the land owned by the City of Warsaw and the State Treasury, is the President of the Capital City of Warsaw. The inactivity of the authority may be appealed to – appropriately – local-government Appeal Boards or the Voivode of Mazovia.

⁶ Supreme Court judgement of February 7, 1995, signature III ARN83/94, OSNAPiUS 1995, No. 12, item 142.

In case of positive decision, in accordance to Article 7 par. 3 of the Decree – it is necessary to conclude an agreement regarding the perpetual usufruct⁷. If the President of the Capital City Warsaw evades execution of the agreement, the former owner is entitled to a civil claim stating that a given person is obliged to conclude an agreement under Article 64 of the Civil Code in connection with Article 1047 of the Code of Civil Procedure⁸. Obligation to the conclusion arises from that decision.

In accordance with the current line of jurisdiction after the declaration of the invalidity of a decree decision, the proceedings will be carried on the basis of Article 7 of the Decree⁹, and in case that negative decree decision was issued with the infringement on law the previous legal owners may claim compensation on the basis of provisions of the administration proceeding law, but only within the scope of its negative interest – *damnum emergens*, i.e. the actual damage, not *lucrum cessans*, i.e. lost profits. The burden of proving damage is with the person who claims compensation.

The party that suffered damage as a result of the Decree decision issued with a breach of Article 156 par. 1 of the Code of Administrative Procedure¹⁰ or the declaration of invalidity of a decision, had a right to apply in administrative proceedings for a compensation from the public authority that issued the subject decision. If the person was dissatisfied with the compensation awarded, or if it is not granted (which was the rule), it had the right to bring an action for damages before the common court of law.

The basis for bringing an action to the common court of law is the declaration of invalidity of decision under Article 156 par 1 of the Code of Administrative Procedure¹¹. It should be noted that the declaration of invalidity of the decision or issuance of the decision with infringement of law is only the fulfilment of the basic condition of liability provided for in Article 160 par. 1 of the Code of Administrative Procedure¹², but it does not determine the existence of the damage, its amount and the existence of causal link between the defective decision and the damage. The burden of proof lies with the party claiming compensation, as a general rule expressed in Article 6 of the Civil Code¹³.

Persons who did not submit decree motions in due time or at all are in the worst situation. They have currently no claims to the property, nor for compensation if they:

⁷ Decree of 26 October 1945 r.

⁸ Act of November 17 1964 – Code of Civil Procedure, as amended.

⁹ Decree of 26 October 1945 r.

¹⁰ Act of 14 June 1960 – Code of Administrative Procedure, as amended.

¹¹ *Ibidem*.

¹² *Ibidem*.

¹³ Act of 23 April 1964 – Civil Code, as amended.

- did not submit in due time the application for a perpetual lease or development rights (temporary ownership and perpetual usufruct right);
- did not apply for an allocation of rights under the applicable rules.

As we can see, although 70 years have passed since ownership of all land property located within Warsaw was transferred to the municipality of the Capital City of Warsaw, a part of former property owners or their legal successors can still claim to return property in nature or compensation.

Lack of reprivatization law results in uncertainty of the legal status of the real estate in Warsaw, confusion, incomprehension and mistrust of the citizens towards the authorities and the legal system. It also limits the possibility of the development of the city, and makes development of some of its areas completely impossible.

Complexities connected with recovery of land in Warsaw remain incomprehensible to the majority of the population, and raises legitimate fears and concerns. This situation also negatively affects the confidence of citizens of the state.

NATIONALISATION AND REPRIVATISATION IN WARSAW

Summary

Real estate has always been an inseparable component of the history of human kind, reflecting historical events in a very wide spectrum on many occasions referenced in historical events from the ancient times, through the investiture dispute, till the Russian revolution.

Nationalisation, is the process of transforming private assets into public assets by bringing them under the public ownership of a national government or state. Reprivatisation, on the other hand, is a process that leads to restitution of property that has been overtaken by the state in the way of nationalization or expropriation, to its former owners or their legal successors. The article describes the nationalization performed in Warsaw by communist authorities, and the later the reprivatization procedure.

NACJONALIZACJA I REPRYWATYZACJA W WARSZAWIE

Streszczenie

Nieruchomości były i są nieodłącznym elementem historii ludzkości, stanowiąc punkt odniesienia w historycznych wydarzeniach w bardzo szerokim spectrum, od czasów antycznych, poprzez okres sporu o inwestyturę, po rewolucję bolszewicką.

Nacjonalizacją jest przejęcie przez państwo, w drodze aktu prawnego, prywatnego mienia na własność państwa lub samorządu. Reprywatyzacją natomiast nazywa się proces polegający na zwrocie poprzednim właścicielom lub ich następcom prawnym mienia zabranego właścicielom przez państwo w drodze wywłaszczenia bądź nacjonalizacji. Niniejszy artykuł opisuje proces nacjonalizacji dokonany w Warszawie przez władze komunistyczne i późniejszy proces reprywatyzacji.

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KEYWORDS

nationalisation, communalisation, reprivatization, expropriation, Warsaw Decree

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nacjonalizacja, komunalizacja, reprywatyzacja, wywłaszczenie, Dekret Warszawski

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CITY PLANNING VERSUS METROPOLITAN PLANNING: HISTORICAL EXPERIENCE ON THE EXAMPLE OF WARSAW

Article 29 of the Constitution of the Republic of Poland, adopted in 1997, stipulates that “Warsaw is the capital of the Republic of Poland”. The wording differs from that of the previous constitutional provision concerning the same subject, i.e. Article 105 of the 1952 Constitution (originally, and up to 1989, Constitution of the People’s Republic of Poland), maintained in force by Article 77 of the 1992 “Small Constitution”: “Warsaw, *the city* of heroic traditions of the Polish Nation, is the capital of the (People’s) Republic of Poland”. Moreover, the 1952 Constitution was the first Polish Constitution indicating the capital of the state.

The present lack of the term “city” in the constitutional mention of Warsaw does not necessarily mean that the name “Warsaw” and the attribute of its “capitalhood” has to cease to be linked with a separate territorial unit qualified as the “city” in terms of the legislation in force. Moreover, legislation qualifying “the city” has been changing since 1990 (the year of restoration of local self-government in Poland after practicing the Soviet model of “unity of the state power”), as up to 1993 “city” (*miasto* in Polish, without linguistic distinction among “city”, “borough” and “town”) was simply an urban municipality (*gmina*). Since that time, it has been possible to give such status to a separate part of a municipality, but since 1998 there has been also a category, proper for bigger cities, of the “city enjoying rights of the district (*powiat*)”, that can be called in English “city-district”.

What is more, from among three subsequent particular laws enacted from 1990 and relating to the self-government of Warsaw on (with some small changes) the same territory, and under the same name of “the City of Warsaw”: 1990 (Warsaw as the specific union of seven “quarters-municipalities”), 1994 (Warsaw as the specific union of eleven particular municipalities, none of them surprisingly was legally qualified as urban), and 2002 (Warsaw as the city-district), only the present one qualifies Warsaw as the *city* in terms of the general Polish legal terminology. Warsaw, moreover, is the only Polish city subject to such specific legislation, as the other big cities are regular city-districts functioning on the basis of

general self-government legislation (in particular, of the 1990 Law on Municipal Self-Government)¹.

The City of Warsaw – one of few Polish cities with growing population – registered 1,724,404 inhabitants (933,197 women and 791,207 men) in 2013, living in the area of 517.24 sq. km. For comparison: the second was the City of Cracow – 758,992 inhabitants, and the third City of Lodz – 711,334 inhabitants. That means that it has almost the same population as, for instance, Budapest and Vienna in a relatively comparable area. Nevertheless, it has to be noted that in reality, the population of Warsaw, due to specificities of formal registration of inhabitants is quite bigger, and is about 2.2 million.

Before the World War II (in 1938) the City of Warsaw, enjoying then a particular status of quasi-voivodship², was populated by 1,295,000 people, however, in an area almost four times smaller. This is a measure of the change in the then very high density of the area caused by the War, even not so much because of the 1939 defense war and two subsequent insurrections (the 1943 in the Ghetto, the 1944 in the whole Warsaw), but particularly because of the organized destruction of the left bank part by the Nazis – and, on the other hand, a measure of the post-war sprawl as well.

As far as history is concerned, it could be instructive to add that up to 1916 the City of Warsaw had been more and more cramped within its borders unchanged much from those fixed for sanitary reasons in 1770, and formally recognized in 1791 (when its population, of 120,000 was among the biggest in Europe). In 1916, the area of the City was 32.7 sq. km (sixteen times smaller than now), and it was then extended to 114.8 sq. km by inclusion of non-urbanized suburbs – to achieve 134.7 sq. km in 1938. In 1951, as a result of adopting the “socialist city” model imported from the Soviet Union and appropriate for the centralized mode of political, administrative and economic governance, the City of Warsaw (equipped with the status of voivodship) was extended to 411.7 sq. km. Since that time, there has been four further extensions (1957, 1977, 1992, 2002), without, however, substantive significance. While in 1951 Warsaw was extended to an overwhelming part of its metropolitan area, since that time the *de facto* city has been going more and more beyond the borders of the city *de iure* – meaning that the permanent extension of an administrative unit is not an effective response to the phenomenon of the city growth.

¹ See my article: H. Izdebski, *Ustrój Warszawy a ustrój metropolii europejskich*, *Samorząd Terytorialny* 2015, No. 3, pp. 75–86. The present paper is also based on some parts of my book *Samorząd terytorialny. Podstawy ustroju i działalności*, 3rd ed., Warsaw 2014, in particular Chapter XVI, pp. 378 sqq.

² Voivodship is a term traditionally used for biggest units of territorial division of the Polish state as, therefore, an equivalent of region.

The problem of what is Warsaw *de iure* in terms of the Constitution – examined, moreover, several times by the Constitutional Tribunal with, it is indispensable to add, quite different answers – would be rather academic if there was not a very important question of administrative organization of Warsaw *de facto*, i.e. of the metropolitan area of Warsaw.

The problem is that, except for the period 1975–1998, after the World War II, there have been no formal organizational links of administrative entities on such area, and the Capital Voivodship of Warsaw, set up in 1975 within the political and administrative framework completely different from that present since 1989/1990, was from 1990 totally separated from the restored self-government organization, limited to the Capital City of Warsaw.

That means that, at present, Warsaw *de facto*, existing within the framework of the biggest Polish regional entity, i.e. the Voivodship of Mazovia (5.32 million people leaving on the territory of 35,558 sq. km, and organized in 314 municipalities – population and area are comparable with the whole Republic of Slovakia), and representing even more than a half of the region population, has no institutional expression.

This fact makes any real metropolitan planning difficult, if not impossible. It has to be kept in mind that Warsaw is the only big European capital having no supralocal administrative designation of its own; London (officially Greater London) was the other example of such a situation, but only in 1986–2000, as the experiment of abandoning Greater London administration proved not to be successful (even in spite of the fact that there always were specific institutions of metropolitan services, as fire protection or public transport – non-existent in Warsaw). Generally, European capital areas are given the status of the highest unit of territorial self-government (i.e. the region in a general sense – and rather the region of the level NUTS 2 in the EU classification), though the position of the capital city itself can be very different depending upon the local experience and tradition.

Moreover, it is not easy to say how big Warsaw is *de facto*, even if the answer is limited to such data that could be qualified as having any legal recognition.

In 2003-2014, there was a formal, though only virtual, planning area named Warsaw Metropolitan Area – OMW. It is noteworthy that the area was almost two times bigger than the area fixed for planning reasons in 1994. It was composed of 72 municipalities (including the City of Warsaw) on the area of 6,206 sq. km. There has been diverse data relating to its population. In 2012, according to the Main Statistics Office, the OMW had 3,061,814 inhabitants³. At present, the population is estimated at about 3.2 million (some more than previously leading Metropolitan Area of Upper Silesia with Katowice as the biggest city). The OMW was recognized within the Spatial Plan of the Voivodship of Mazovia, adopted by

³ *Obszar Metropolitalny Warszawy w 2012 r.*, GUS, Warsaw 2014.

the Voivodship Council on 7 July, 2014 – but without a separate metropolitan plan for the Area.

Since the 2014 amendment of the Law on Spatial Planning and Management, metropolitan areas have been replaced, also in adapting solutions of the EU law, by a wider formula of functional urban areas of the voivodship centres, without, however, their strict delimitation, and without any distinction of a particular plan for the given metropolitan area to be adopted by the voivodship council. The term “metropolitan areas” came back very recently to Polish legislation thanks to the Law of 9 October, 2015 on Metropolitan Unions⁴. It concerns, however, area of activity of a union to be individually established by the appropriate regulation of the Council of Ministers. For the time being, no union has been established, and there are no serious preparations for such an establishment; for that reason, it is not possible to size the Warsaw metropolitan area in terms of that Law.

According to preparatory materials serving to the 2014 amendment, the Functional Urban Area of Warsaw had to group 50 municipalities on 3,820 sq. km, with 2,787,000 inhabitants (according to the data of 2011)⁵. However, this is not the Spatial Planning Law, but another piece of legislation that has led to the delimitation of the Functional Area of Warsaw (WOF). As the Law of 11 July, 2014 on Principles of Implementation of Programs in the Field of the Cohesion Policy Financed within the 2014–2020 Perspective)⁶ introduced a new formula of ZIT (*Zintegrowane Inwestycje Terytorialne*, in English “ITI” – Integrated Territorial Investment) – as the new territorial instrument of the EU Cohesion Policy 2014–2020, it served as a legal basis of confirmation of acts made in order to set up such instruments. For Warsaw area, it was the Agreement of 40 municipalities of the WOF of 21 February, 2014 on Co-operation in the Field of ZIT, preceding even the general Partnership Agreement concluded by the Republic of Poland with the EU on 21 May, 2014⁷.

The area of the Warsaw ZIT has been recognized as that of the WOF – or rather virtual WOF (such term is, moreover, in use). Those 40 municipalities, including 26 cities, have together 2,932 sq. km, and about 2.7 million inhabitants (assuming that Warsaw has some less than 1.8 million ones).

However, it is important to remember that ZIT is not an instrument of spatial planning, as it serves to elaborate and carry out specific common activities of interested units of territorial self-government within the given area. Generally, the programmed activities have been agreed upon by quite different partners, and they do not cover the whole territorial field of the Agreement. The other thing

⁴ Journal of Laws of 2015, item 1890.

⁵ P. Śleszyński, *Delimitacja Miejskich Obszarów Funkcjonalnych stolic województw*, *Przegląd Geograficzny* 2013, Vol. 85, No. 2, p. 188.

⁶ Journal of Laws of 2014, item 1146.

⁷ *Strategia Zintegrowanych Inwestycji Terytorialnych dla Warszawskiego Obszaru Funkcjonalnego 2014–2020*, Warsaw 2014.

is that the Warsaw Metropolitan Area, bigger than that of ZIT and WOF, plays still, maybe by the force of inertia, a role in planning procedures, as in April 2015 the draft Strategy of Development of the OMW up to 2030 was subject to public debate as if there had been no legislative change in the meantime.

The important competence of the metropolitan union in terms of the 2015 Law is to elaborate and adopt a “framework study of conditions and directives of spatial management” for the metropolitan area, having a limited legal force (binding municipality authorities in their planning activities but without any force of the act of local law). As the Law does not work yet, and it is not possible to foresee whether and how it could work, in particular with respect to Warsaw, it brings only a general opportunity, and not tangible solutions.

All that means that, for the time being, there is practically no spatial planning at the level between the voivodship, and the municipality – and, therefore, no metropolitan planning at all.

The result of that is that each municipality (and municipalities play the key role in the Polish system of spatial planning), including the Capital City of Warsaw, adopts independently its own study of conditions and directives of the spatial management (a kind of general plan, mandatory for all municipalities, covering the whole municipality territory but with no force of the act of local law), and its own particular plans (for chosen areas within the municipality territory). Taking into account also general weaknesses of legislation relating to municipality planning as well, and a disorganized practice in that field⁸, it is not too difficult to explain the phenomenon of “spatial chaos” we note generally in Poland, but, because of an uncontrolled urban sprawl, in particular, in metropolitan areas.

That does not mean that there is no consciousness of the defectiveness of the present situation. On the contrary, there have been attempts at introducing (or rather, as it will be presented some further, reintroducing) instruments of metropolitan planning, in particular relating to the metropolitan area of Warsaw.

Generally, those attempts were connected with proposals of providing an institutional expression to Warsaw *de facto* – that is to say of setting up a metropolitan unit of Warsaw, equipped with respective metropolitan planning competences. There was, in fact, a series of legislative initiatives in that field, in particular, to enumerate only those draft laws that were presented to the Sejm:

- the 2000 draft law, presented by a group of deputies to the Sejm, on Warsaw Capital District (*Warszawski Okręg Stoleczny*), grouping 59 municipalities – withdrawn by its initiators;
- the 2001 law, elaborated within the framework of works on much more modest draft laws proposed by groups of deputies to the Sejm, passed by the

⁸ Those weaknesses are indicated and analyzed, in particular, in: H. Izdebski, I. Zachariasz, *Ustawa o planowaniu i zagospodarowaniu przestrzennym. Komentarz*, Warsaw 2013.

Parliament, but effectively vetoed by the President of the Republic – providing, besides changes in organization of the City of Warsaw, for establishment of Warsaw Urban Group (*Warszawski Zespół Miejski*), composed, besides the City of Warsaw, of seven districts;

– the 2013 draft law, presented by a group of deputies, on metropolitan district (*powiat metropolitalny*), that could be applied also to the metropolis of Warsaw (without chances of passing); the 2015 Law on Metropolitan Union is a version of that draft law, however, substantially changed (and “disarmed”).

At present, those who are conscious of the problem, and want to solve it, seem to prefer a solution represented to a certain extent by the last draft law, i.e. introduction in Poland of 10–12 specific metropolitan districts, representing level NUTS 3 (the voivodship is NUTS 2, and the present “ordinary” district – NUTS 4). Warsaw (for the time being, Warsaw *de facto*) would become, in such case, *de iure* one of metropolitan districts, possibly distinguishing itself by the complicated structure of the City of Warsaw.

The question why such attempts have not been successful does not seem to be too difficult to answer. On the one hand, Polish units of territorial self-government in general, and municipalities in particular, traditionally are not inclined to cooperate (except for specific stimuli in obtaining external extra financing, what is the case of ZIT), and the idea of multi-level governance – the principle of contemporary public governance – is still far from practical recognition. On the other hand, any self-government institution situated below the self-governed region, but above the present entities, i.e. municipalities and districts (the latter having, moreover, no competences in the field of spatial planning), endangers the region (voivodship), and its self-government, in the present political and legal position. Any metropolization should need a transfer of some regional competences to metropolitan government, in particular in the field of spatial planning.

However, it is more and more difficult to solve real metropolitan problems, in particular problems of spatial planning coordination, without establishing indispensable metropolitan institutions or, at least, instruments of municipal cooperation (which, however, may not be mandatory in the light of Article 172 of the Polish Constitution). The 2015 Law on Metropolitan Unions does not seem to be an effective means of solving metropolitan problems, especially particular problems of Warsaw.

What is more, the present situation could be qualified as exceptional while examined from the point of view of history of spatial planning in Warsaw.

It was just after the above-mentioned extension of Warsaw in 1916 that the Circle of Architects nearby the Association of Polish Technicians elaborated an introductory outline of the regulation plan of the extended city. It became a basis of official works and their results, the first being the 1920 “regulation plan” of the City, elaborated within the Mayor’s office. It was followed by plans of 1922–1923

and 1926, and served also as an important material in the 1930s. Then, applying the 1928 Building Law, two subsequent “building plans” were elaborated: of 1929 (in 1931, confirmed by the Minister of Public Works and, therefore, fully official, and formally valid until the 1960s), and of 1938. A working plan of the City of Warsaw and its surroundings was also produced⁹.

What is important, the plans of 1930s included the contents of the particular document, elaborated on the common initiative of modernist freelance architects: Jan Chmielewski and Szymon Syrkus, and of their colleagues employed by the City, and presented to the public, Polish and international, including the famous CIAM, in 1934. That was the study of “Functional Warsaw”, containing analyses and proposals of spatial development of the whole metropolitan area. The 1928 Building Law provided, moreover, for elaborating regional plans on the decision of the Minister of Interior, and, on the other hand, since 1867 there had been (and that up to 1952) a particular district of Warsaw, composed of municipalities surrounding the City. “Functional Warsaw” was very much appreciated among specialists of the time – but, what more, was, together with the plans of the 1930s the basis of spatial planning more than two decades after the World War II, though, it was in quite different conditions.

In “People’s Poland”, spatial planning, regulated by subsequent laws of 1946, 1961 and 1984, was regarded as a part of socio-economic planning, typical of “socialist economy” under (permanent, but not effective) construction. It had to rely upon principles different from those of the pre-war planning. In the first place, it relied on a double negation: first, of autonomy of territorial self-government (in particular, of municipalities), and of the private ownership. On the other hand, the neglect of the private ownership, peculiarly strong in the 1950s, opened the room for much easier application of plans – what had been one of the dreams of the modernist movement, and in particular of CIAM participants. The total abolishment of territorial self-government in 1950, when the Soviet administrative system was fully introduced, eliminated traditional institutional obstacles in the plan application.

The Law-Decree of 26 October, 1945 on Ownership and Use of Land at the Territory of the City of Warsaw, being the object of the other paper presented to this conference, transferred ownership of all the lands within the then City to the Municipality of Warsaw (what meant, finally in 1950, to the state). Private owners, on their demand, were authorized to get only the right of permanent usufruct and only when it was not contrary to the spatial plan in force (it was, moreover, the Plan of 1931), but the general policy was to refuse the demand (at present, such refusal is usually declared to be null and void). That legislation facilitated execution of the 1931 Plan and, more and more, new plans – making Warsaw become

⁹ See A. Jankiewicz, J. Porębska-Srebrna, *Tradycje urbanistyczne Warszawy*, (in:) W. Falkowski (eds.), *Straty Warszawy 1939–1945. Raport*, Warsaw 2005.

a “phoenix city”, though more and more within, up to 1956, “socialist realism” as a Soviet-type ideology of urbanism¹⁰.

Ideas of “Functional Warsaw” were, however, not abandoned after 1945 – neither in their contents, nor in searching for a legal basis of their implementation. The 1947 Law on Reconstruction of the Capital City of Warsaw (in force formally to 1964) provided elaboration (by the special Bureau of Reconstruction) and adoption (by the High Council of Warsaw Reconstruction, presided by the Prime Minister) of spatial plans for not only the City itself, but also of the Warsaw Urban Group. The area of the Group was that of the district of Warsaw together with the City of Warsaw, and a general vision of the development of the area was elaborated.

The 1951 substantive extension of the City and the respective abolishment of the district of Warsaw reduced to a great extent the interest in developing spatial planning of Great Warsaw as the Warsaw Urban Group. Nevertheless, because of the real development of Warsaw *de iure*, such planning was continued up to 1975. The last plan of the Group, dating from 1969, covered 3,146 sq. km, i.e. only some less than the present area of ZIT. The Capital Voivodship of Warsaw, established within the new administrative division of the state into 49 voivodships (introduced in 1975, and continued until 1998, from 1990 as the Voivodship of Warsaw) on a some bigger area (of 3,788 sq. km; population in 1998 – 2,420,000), took also the role of the Group. In particular, the then Bureau of Planning of Warsaw Development presented in 1978 the Prospective Spatial Plan of the Capital Voivodship of Warsaw, and only after doing that, the Prospective Spatial Plan of the City of Warsaw (1982) and Local General Plan of the City (1992).

The present lack of metropolitan institutions that could be competent in spatial planning of the metropolitan area of Warsaw and existence exclusively of local planning may be regarded, while taking into account the historical experience and the results in permitting to Warsaw to be named the “phoenix city”, an interval, as the need of metropolitan planning is even bigger than ever before. Therefore, it is possible to foresee, in spite of the present obstacles, a come back of such planning to be done within more and more indispensable metropolitan institutions, though “metropolitan union” provided for in the 2015 Law does not seem to be such institution at all.

¹⁰ See my book: H. Izdebski, *Ideologia i zagospodarowanie przestrzeni. Doktrynalne prawno-polityczne uwarunkowania urbanistyki i architektury*, Warsaw 2013.

CITY PLANNING VERSUS METROPOLITAN PLANNING: HISTORICAL EXPERIENCE ON THE EXAMPLE OF WARSAW

Summary

“Warsaw is the capital of the Republic of Poland” – these words of the Constitution of the Republic of Poland should also reflect the place of Warsaw as the capital in constitutional terms in the system of Polish public governance, and, within it, its place in the system of spatial planning. Generally, in particular in Europe, big capital cities in the sense of agglomerations or rather metropolises, independently of their internal organization (though they are not reduced rather to a simple municipality), have a supralocal status, frequently that of a region. That means that their areas (metropolitan areas) may be subject simultaneously to, at least, two formulas, different in different legal systems, of spatial planning: local (generally, at the level of municipality) and metropolitan.

Warsaw, in spite of rich traditions in this respect, is not, at present, equipped with instruments of metropolitan planning. The paper, reminiscing tradition of Warsaw metropolitan planning, presents respective legal solutions in force, and attempts taken to restore indispensable institutions of metropolitan planning.

PLANOWANIE MIEJSKIE A PLANOWANIE METROPOLITARNE: DOŚWIADCZENIA HISTORYCZNE NA PRZYKŁADZIE WARSZAWY

Streszczenie

„Stolicą Rzeczypospolitej Polskiej jest Warszawa” – te słowa zawarte w Konstytucji RP powinny również odzwierciedlać znaczenie Warszawy w polskim systemie ładu publicznego, w tym jej znaczenie w systemie planowania przestrzennego. Zasadniczo, szczególnie w Europie, duże stolicy w rozumieniu aglomeracji, czy też raczej metropolii, mają status ponad lokalny, najczęściej regionalny, niezależnie od ich wewnętrznej organizacji. Oznacza to, że takie obszary metropolitalne podlegają co najmniej dwóm reżimom planowania przestrzennego: lokalnemu (zasadniczo na poziomie gminy) oraz metropolitalnemu.

Mimo bogatych tradycji w tym zakresie Warszawa nie posiada obecnie instrumentów planowania metropolitalnego. Artykuł przedstawia tradycję warszawskiego planowania metropolitalnego, obowiązujące regulacje prawne oraz próby przywrócenia niezbędnych mechanizmów planowania metropolitalnego.

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KEYWORDS

spatial planning, metropolitan area, capital of the state, subregion

SŁOWA KLUCZOWE

planowanie przestrzenne, obszar metropolitalny, stolica państwa, podregion

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**THE “IGNORED CHALLENGE”, URBAN SPRAWL AND
ITS NEGATIVE IMPACTS IN POLAND: A COMPARISON
BETWEEN THE EU AND U.S.**

*Four out of five European citizens live in urban areas and their quality of
life is directly influenced by the state of the urban environment*

(Communication from the Commission to the Council and the European Par-
liament on Thematic Strategy on the Urban Environment {SEC(2006) 16} /*
COM/2005/0718 final */)

**1. INTRODUCTION. THE POLISH SITUATION
AND THE EU CONTEXT: SIMILARITIES WITH THE US.
WHAT IS URBAN SPRAWL?**

Today, it is possible to identify changing patterns in the European use of land. Europe is apparently in the middle of a “quiet revolution”, based on micro and macro socio-economic forces. The European Environment Agency has qualified this situation as “the ignored challenge”¹.

The amount of housing space per person has doubled in the last half century as a result of higher living standards, declining family size and the increasing tendency for Europeans to live alone. Higher housing densities as a result of more compact housing estates and more ‘high rise’ living might in principle be able to offset the effect on land use. But in the last decade alone, the extent of urban sprawl increased in Europe by three times the size of Luxembourg, following the well-known American patterns. According to different sources, the U.S. is losing 365 acres of open space every hour to developers’ bulldozers².

¹ European Environment Agency, *Urban Sprawl in Europe. The Ignored Challenge*, 2006, at http://www.eea.europa.eu/publications/eea_report_2006_10.

² M. Cooper, *Smart Growth, Issues for Debate in American Public Policy. Selections from the CQ Researcher*, Thousand Oaks 2006, 6th ed., p. 232. Available also at <http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2004052800>.

Therefore, the EU and the U.S. seem to face a similar problem. Exchanging data and approaches that support public policies to face market failures could be of mutual interest. On the other hand, it is important to avoid automatic transplantation due to the very different points of departure and the different realities (in legal and socio-economic aspects). However, Europe, the US and the rest of the world seem to be facing a common phenomenon and comparative approaches can help us to improve our cities in the future³.

Taking into account these general ideas, we can begin with the most basic question: what is urban sprawl?

It is no easy task to define such a phenomenon. A common definition seems to not exist⁴. Here, we are going to use the definition used by the European Environment Agency (EEA) in the aforementioned report. Urban sprawl is: “(...) commonly used to describe physically expanding urban areas. The European Environment Agency (EEA) has described sprawl as the physical pattern of low-density expansion of large urban areas, under market conditions, mainly into the surrounding agricultural areas. Sprawl is the leading edge of urban growth and implies little planning control of land subdivision. Development is patchy, scattered and strung out, with a tendency for discontinuity. It leap-frogs over areas, leaving agricultural enclaves. Sprawling cities are the opposite of compact cities – full of empty spaces that indicate inefficiencies in development and highlight the consequences of uncontrolled growth”.

Poland, which since acceding to the European Union in 2004 has become its fastest growing economy, has an extensive urban sprawl, according to the OECD⁵. Poland will be used as a case study to underline a common European pattern. It is by no means alone in the EU context. The whole area is in a similar situation, as shown below.

³ About the usefulness of comparative legal approaches, see for example N. Foster, *The Journal of Comparative Law: A New Scholarly Resource*, JCL 2006, No. 1, at <http://thejcl.com/pdfs/foster.pdf>.

See about urban sprawl as an international reality, *Et in suburbia ego?*, *The Economist*, May 5, 2007, at <http://www.economist.com/node/9070632> and *A Sub Urban World the Emerging World is Becoming Suburban. Its Leaders should Welcome that, but Avoid the West's Mistakes*, December 6, 2014, at <http://www.economist.com/news/leaders/21635486-emerging-world-becoming-suburban-its-leaders-should-welcome-avoid-wests>.

⁴ P. Christiansen, T. Loftsgarden, *Drivers behind urban sprawl in Europe*, 2011, p. 2, at <https://www.toi.no/getfile.php?mmfileid=17329>.

⁵ OECD, *Urban Policy Reviews: Poland*, 2011, at http://www.oecd-ilibrary.org/urban-rural-and-regional-development/oecd-urban-policy-reviews-poland-2011_9789264097834-en.

2. THE EUROPEAN ENVIRONMENTAL AGENCY AND EUROPEAN URBAN SPRAWL

The EEA has studied urban sprawl in Europe and has referred to this phenomenon, as mentioned before, as the "ignored challenge"⁶. The study begins by stating that "classically, urban sprawl is a U.S. phenomenon associated with the rapid low-density outward expansion of U.S. cities, stemming back to the early part of the 20th century" whilst in Europe "cities have traditionally been much more compact, developing a dense historical core shaped before the emergence of modern transport systems.

Compared to most American cities, their European counterparts still remain in many cases compact. However, European cities were more compact and less sprawled in the mid-1950s than they are today, and urban sprawl is now a common phenomenon throughout Europe" which is increasing and affecting the southern, eastern and central parts of Europe (page 5). The changing European reality is illustrated by the fact that for the past 20 years, there have been four times more new cars than new babies, and vehicle-kilometers traveled in urban areas by road are predicted to rise by 40% between 1995 and 2030 (page 40).

The report calls for a "new urbanism" which replaces "the dominant trends of urbanization (*laissez-faire*)" (page 38), with a better coordination of land use policies, as well as Structural and Cohesion Funds' investments between areas: rural areas, the regions and at the national level (page 41).

3. THE CAUSES OF URBAN SPRAWL: THE ROLE OF LAW

International literature identifies several different drivers for urban sprawl⁷. The EEA's report underlines many of them (pp. 17 sqq.).

Several of these drivers are promoted by some public policies. In the EU context, the building of new infrastructure such as roads and basic services, in part financed by the Structural Funds, has allowed 'out of town' housing developments to flourish. This pattern seems to repeat itself in some of the newest EU Member States, like Poland⁸. Other areas of the world have other specific

⁶ See the web page of the EEA: <http://www.eea.europa.eu/about-us>. There you can consult an interesting video about the European environment: <http://www.eea.europa.eu/themes/urban/multimedia/improving-the-environment-in-europes-cities/view>.

⁷ P. Christiansen, T. Loftsgarden, *Drivers behind urban sprawl...*

⁸ See R. Liddle, F. Lerais, *A Consultation Paper From the Bureau Of European Policy Advisers, Europe's Social Reality*, at http://ec.europa.eu/citizens_agenda/social_reality_stocktaking/docs/background_document_en.pdf.

drivers. In the American case, urban sprawl was fueled by federal policies in the 50's and 60's like the home-mortgage income-tax-deduction or the development of the Interstate Highway System at a time when the Cold War was at one of its peaks⁹.

However, our interest here is focused on what the report terms the “regulatory framework”. It includes weak land use planning, poor enforcement of existing plans and lack of horizontal and vertical coordination and collaboration. The Polish case confirms the role that institutional framework and land use regulations have in the promotion of urban sprawl. The major part of Polish municipalities (*gmina*) has not approved urban plans. On the other hand, the metropolitan reality is faced by neither specific institutions nor metropolitan urban planning¹⁰. It seems that deregulation has been the reaction after the fall of the communist regime. But deregulation has its own limits, even in traditional capitalist societies as we are going to illustrate, because the protection of public interest needs some kind of (smart) regulation.

⁹ About the relationship between urban sprawl and military goals in the US, see S. Graham, *Cities under Siege*, London 2010, p. 14: “(...) early Cold War urban planning in the US sought to see US cities”, and actively tried to stimulate decentralization and sprawl as means or reducing the nation's vulnerability to a pre-emptive Soviet nuclear attack. And it is often forgotten that the massive US interstate highway system was initially labelled a “defense highway” system and was partly designed to sustain military mobilization and evacuation in the event of a global nuclear war”.

¹⁰ OEDC, 2011, pp. 132–133: “While the current planning law regards Municipal Physical Development Plans as the main instruments for regulating municipal development, their use is still not widespread and does not allow for comprehensive planning. Only a small part of the country is covered by approved Municipal Physical Development Plans that are in accordance with the 2003 Spatial Planning and Spatial Development Act, which are produced at neighbourhood scale. While the share of land covered by these plans in cities with county (*powiat*) status has increased from nearly 11% in 2006 to 17% in 2008, this leaves a significant share of city land that is not managed by Municipal Physical Development Plans”.

“In the absence of Municipal Physical Development Plans, many land-use decisions are made on a case-by-case basis and do not conform to the Studies of Conditions and Direction of Spatial Development and Land Use in Municipalities. The dominant regulatory instruments in Poland are these decisions or “decisions on the location of public land uses” (M. Gdesz, R. Alterman, *Takings International: A Comparative Perspective on Land Use Regulations and Compensation Rights*, Amer Bar Assn 2010). They are ostensibly similar to development permits, but they are detached from any local plans and do not have to conform to higher-order government policies or guidelines. Apart from selected areas governed either by national infrastructure decisions (often accompanied by expropriation) or nationally designated high-quality agricultural land, proposals for “decisions on development conditions” or “decisions on the location of public land uses” are bound by only one rule: local government may reject them if they do not meet the “neighbourhood rule”, that is, if they differ too much from their surroundings. This notion, however, is largely discretionary, and landowners often contest rejection decisions”.

4. IS IT GOOD OR BAD? URBAN SPRAWL VS. COMPACT CITY

There is a consensus about the negative impacts of urban sprawl both in the EU and the US, although it is also possible to find some voices in favor of it. For example, freedom of choice and affordable housing are sometimes used as arguments in support of urban sprawl. Nevertheless, the first cannot be unlimited in a modern and civilized society and externalities created by individual preferences can affect the community in a relevant way¹¹. On the other hand, as we will see later, it is debatable that urban sprawl automatically brings affordable housing.

In any case, we know the negative impacts of urban sprawl. Among them, we can highlight:

1. Environmental impacts: it consumes natural resources (e.g. land, water and energy), impacts natural and protected areas, affects urban quality of life, causes traffic congestion (which causes pollution) and promotes flooding.

2. Economic impacts: due to urban sprawl, local authorities must provide for roads, schools, etc. which impacts public budgets. Urban sprawl also increases household spending on commuting from home to work over longer and longer distances.

3. Social impacts: it generates psychological problems (as the movie *Bowling for Columbine* underlines), physical problems (e.g. obesity: according to the Center for Disease Control and Prevention, 64% of Americans are obese, due in part to the lack of exercise related to the use of automobiles), social problems (lack of community, reduction of social cohesion and urban segregation¹², which is even worse if urban sprawl includes gated communities, as in the Polish case¹³), or problems with family relationships due to the lack of time generated by commuting.

On the contrary, the opposite urban model, the compact city, promotes urban sustainability in several ways, according to the OECD¹⁴.

¹¹ T. C. Schelling, *Microdecisions and Macrobbehavior*, New York 1978.

¹² European Environment Agency, *Urban Sprawl in Europe...*, p. 35.

¹³ Paper submitted by M. Gluszak, B. Marona, *Housing demand, urban sprawl and gated societies: Evidence from Poland*, ENHR Conference 2011, July 5–8, Toulouse, at <http://www.enhr2011.com/sites/default/files/Paper-MichalGluszakBartlomiejMarona-WS08.pdf>.

¹⁴ OECD, *Compact Cities Policies. A comparative Assessment*, 2012, p. 57 at <http://www.oecd.org/gov/regional-policy/compact-city.htm>.

5. WHAT ARE THE SOLUTIONS? CONTROLLING URBAN SPRAWL AND MOVING TOWARDS COMPACT CITIES THROUGH THE LAW. SOME EXAMPLES

Is there anything that societies could do to control urban sprawl? Obviously, it is possible to defend a *laissez faire* solution: doing nothing at all. However, the aforementioned costs and negative impacts strongly recommend the development of diligent and achievable public policies to control market failures and protect the public interest¹⁵.

According to the OECD there are several key policy strategies and sub-strategies for the compact cities, including setting minimum density requirements for new developments, promoting mixed-land use or encouraging the provision of affordable housing, for example¹⁶:

In the Polish case, these measures have also been recommended by the OECD¹⁷. Perhaps knowledge about EU and U.S. experiences can help to develop future regulations that could improve the current situation in Poland, as well as in other parts of the EU¹⁸.

5.1. EUROPE

5.1.1. Density

Among several documents advising EU Member States to stop the urban sprawl trend, we find the important Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 2004 titled *Towards a thematic strategy on the urban environment*¹⁹. Among other recommendations, this document encourages member states to: “*set minimum residential land use densities to encourage higher density use and limit urban sprawl*”.

If we take the Spanish case, the influence of the principle of environmental sustainability on Spanish land use law (through UE law) is visible in regional legislation. Different regional laws establish legal principles guiding urban activity

¹⁵ A discussion about the different public policies is available in National Issues Forum Institute and Public Agenda, *A Nice Place to Live, Creating Communities, Fighting Sprawl*, Kendal/Hunt 1999, at http://conservationtools-production.s3.amazonaws.com/library_item_files/456/501/stream_document.pdf?AWSAccessKeyId=AKIAIQFJLILYGVDR4AMQ&Expires=1442247872&Signature=haWL8oTJeqdAg3ZV9AVCvB1WFSQ%3D

¹⁶ OECD, *Compact Cities Policies...*, p. 172.

¹⁷ OECD, *Compact Cities Policies...*, p. 266 and OECD, *Urban Policy Reviews...*

¹⁸ See for more details and countries: E. J. Siy, *Learning from Abroad: The European Approach to Smarter Growth and Sustainable Development*, Fall 2004, at http://www.fundersnetwork.org/files/learn/Learning_from_Abroad-FINAL.pdf.

¹⁹ At http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52004DC0060_2

towards continuity in urbanization, limitation of urban sprawl and preference for urban infill and revitalization instead of new developments²⁰.

For example, in the case of Spain, the traditional legal limit for density (established by the Land Use Act of 1976, Article 75, and mandatory for local planning) is 75 housing units/hectare (depending on regional laws, some of them can allow a maximum of 100 housing units/hectare) – a hectare being equivalent to 2.47 acres. Recent legal developments go further, setting up *minimum* standards of density²¹.

5.1.2. Urban growth boundaries

The fight against urban sprawl has generated some interesting new legal techniques in Spain. For example, the prohibition of urban development *per saltum* (discontinuity in urban sectors of development)²² or deciding specific limits to new urban developments²³. Another interesting technique is the “capacity of territorial resistance”, which consists of establishing urban growth limits in each city in accordance to population, economic activity, available resources, infrastructure and facilities²⁴.

In the same way, Catalan legislation tried to avoid urban sprawl by establishing legal principles in favor of sustainable urban development (since the art. 3 Land Use Act 2005) including a legal principle guiding urban development towards compactness. New developments are decided by urban local planning considering these legally binding principles. But there are not, in the Catalan case, concrete legal standards with regard to growth boundaries. These kinds of boundaries are established in the Catalan legal system using spatial plans.

A second example can be found in the UK with Green Belts or European urban growth boundaries²⁵. There are 14 separate green belts in England, varying in size from 486,000 hectares around London to just 700 hectares at Burton-on-Trent. The total hectares in March 2014 was 1,639,090²⁶.

²⁰ E.g. Article 9 Andalucía Land Use Act 7/2002; Article 32 Cantabria Land Use Act 2/2001.

²¹ Following the recommendations of the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions of 2004 titled *Towards a thematic strategy on the urban environment*.

²² In that sense, Article 86 Castilla y León Urban regulation.

²³ That is the case of the Asturias legislation which establishes that the Master Plan will decide percentages of land on which new urban developments will be possible (*suelo urbanizable*). This decision will be taken according to the necessities of each municipality but in the case of towns with a population superior to 40.000 inhabitants the percentage of land for new development must be inferior to 50% of land already occupied.

²⁴ E.g. Cantabria’s *Plan de Ordenación del Litoral* (Act 2/2004).

²⁵ See J. M. Levy, *Contemporary Urban Planning*, 8th ed., New York 2009, p. 363.

²⁶ A clear and simple analysis of the Green Belts can be found in the BBC web http://news.bbc.co.uk/2/hi/uk_news/6947435.stm. For more information: L. Smith, *The Standard Note SN/SC/934*, updated 30 June 2015, produced by the Library of the House of Commons has a concise but complete description, at <http://researchbriefings.files.parliament.uk/documents/SN00934/SN00934.pdf>.

The Metropolitan Green Belt around London was first proposed by the Greater London Regional Planning Committee in 1935. The Town and Country Planning Act 1947 then allowed local authorities to include green belt proposals in their development plans. In 1955, Minister of Housing Duncan Sandys encouraged local authorities around the country to consider protecting land around their towns and cities by the formal designation of clearly defined green belts.

Green belts aim to stop urban sprawl and the merging of settlements, preserve the character of historic towns and encourage development to locate within existing built-up areas²⁷. Their current regulation is found in *National Planning Policy Framework*, 2012, pages 19 sqq²⁸.

²⁷ Green Belts have been scenarios of clashes between the protection of land and the need of housing in the case of gypsy people. The European Court of Human Rights has decided in several cases in favor of the UK regulation, prohibiting housing in Green Belts. See for example, the *Chapman v. UK*. 18 January 2001. Application No. 27238/95, at [http://hudoc.echr.coe.int/eng/?i=001-59154#{"itemid":\["001-59154"\]}](http://hudoc.echr.coe.int/eng/?i=001-59154#{), which includes a good explanation about the role of the Green Belts: “28 The purpose of Green Belts and the operation of the policy to protect them is set out in national policy document PPG 2 (January 1995).

»1.1. The Government attaches great importance to Green Belts, which have been an essential element of planning policy for some four decades.

(...)

1.4. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the most important attribute of Green Belts is their openness. Green Belts can shape patterns of urban development at sub-regional and regional scale, and help to ensure that development occurs in locations allocated in development plans. They help to protect the countryside, be it in agricultural, forestry or other use. They can assist in moving towards more sustainable patterns of urban development.

1.5. There are five purposes of including land in Green Belts:

- to check the unrestricted sprawl of large built-up areas;
- to prevent neighbouring towns from merging into one another;
- to assist in safeguarding the countryside from encroachment;
- to preserve the setting and special character of historic towns; and
- to assist in urban regeneration by encouraging the recycling of derelict and other urban land.

(...)

2.1. The essential characteristic of Green Belts is their permanence. Their protection must be maintained as far as can be seen ahead.

(...)

3.1. The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved, except in very special circumstances.

(...)

3.2. Inappropriate development is, by definition, harmful to the Green Belt. It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development«”.

²⁸ At https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf.

5.1.3. Mixed uses

Separating uses in the territory leads to urban sprawl. Therefore, functional or, as it is known in the US, Euclidean zoning (named after the famous US Supreme Court case²⁹) promotes urban sprawl whilst a regulation of uses based on mixing them helps to reduce it.

5.1.4. Case law and urban sprawl: the Spanish example

Finally, reaction against urban sprawl must come from the Courts when they apply legislation. In the Spanish case, the land use act of 2008 includes in its preamble a reference in favor of the compact city in accordance with EU documents and article 2.2.c mentions the need for an “efficient use of land”. Some regional legislation following this model includes an explicit legal principle in favor of the compact city. Using such references, the Spanish Supreme Court has declared illegal several local plans which promoted urban sprawl because municipalities breached the principle of compact city without any kind of explanation about why it was necessary for the public interest (e.g. Decisions of July 10, 2012, March 26, 2013 or May 21, 2015).

5.2. THE U.S.: NEW URBANISM AND SMART GROWTH

If on one side of the Atlantic the idyllic image of compact cities is changing and the EEA calls for a “new urbanism”, on the other side the well-known and still predominant U.S. sprawl is being dealt with by different planning movements (e.g. *Smart Growth* and *New Urbanism*) that promote urban developments based on the ideas of compact cities, urban infill, city center revitalization, mixed uses or a more pedestrian-oriented style of urban life³⁰.

These movements look at the classic European model of a compact city, which is now being replaced. In a paradoxical outcome, *new* urbanism on both sides of the Atlantic now means coming back to the *old* historical European urban roots.

As previously mentioned, mixing uses is an important regulatory tool to fight urban sprawl, as New Urbanism acknowledges. The problem is that classic Euclidian zoning regulations in the U.S. that segregate uses, works against this goal. Therefore, as Blasingame Custer notes, different remedies could exist for this problem, such as finding a way to work within existing ordinances, rewriting entire zoning ordinances or adopting a Smart Code³¹. The first approach is proba-

²⁹ Village of Euclid v. Ambler Realty Co., 272 US 365, 1926.

³⁰ J. A. Kushner, *Comparative Urban Planning Law*, Durham 2003, pp. 243 sqq and J. A. Kushner, *Smart Growth, New Urbanism and Diversity: Progressive Planning Movements in America and Their Impact on Poor and Minority Ethnic Populations*, UCLA Journal of Environmental Law and Policy 2002/2003, Vol. 21, No. 1, pp. 45 sqq.

³¹ J. Blasingame Custer, *New Urbanism and Euclidian Zoning: Can They Co-Exist*, Land Use Clinic. Paper 17, 2007, at <http://digitalcommons.law.uga.edu/landuse/17>.

bly the most difficult because trying to mix uses (e.g. permitting commercial use in a residential area) might be challenged as a zoning decision inconsistent with a municipality's comprehensive plan, a violation of many states' zoning enabling statutes, or as illegal spot zoning (i.e. discriminatory).

6. SMART GROWTH AND AFFORDABLE HOUSING: A DIFFICULT RELATIONSHIP

As we saw, an argument in favor of avoiding public intervention against urban sprawl is that public intervention leads to increasing housing prices. However, urban sprawl is not necessarily equal to affordable housing, according to the American³² and Spanish experiences.

In the Spanish case, the urban plans have been considered by some authors as being out of date, useless and a bureaucratic barrier to the entrepreneurs. In the 90's a new ideological, political and legal movement tried to reduce the role of urban planning and promote the market as a substitutive and more effective tool.³³

For these reasons, a modification of the existent national 1998 Act was passed in 2000. After that, all Spanish land was, in principle, available for urbanization and *there was a legal right to do so* (in contrast to the traditional point of view that emphasized the primary agricultural use of land). It seemed that local plans lost their preeminence and local governments their key role of managing the urban process. The clear goal of the reform was to increase the supply of land available for urbanization because the national government thought that it would reduce house prices. The regulation was compulsory at both regional and local levels.

There was a great deal of discussion in Spain about this point because it meant a change of model, departing from the historic one, and some *Comunidades*

³² M. Cooper, *Smart Growth...*, p. 238: "(...) simply overturning smart-growth rules and relying on market forces to direct development seems unlikely to reverse the lack of adequate affordable housing in wealthy suburban jurisdictions. According to a recent study of the Washington metropolitan area, the wealthiest suburban counties have the fewest affordable housing units. And less-affluent residents are being driven out of housing markets across the country in other fast-growing areas".

³³ This idea found intellectual support in 1993 through the Court Report from for the Defence of Free Competition (a public authority charged with the responsibility of preserving the free market). This report criticized the old legal model, which promotes an extreme interventionism, a high degree of discretionary powers in the hands of governments and an inefficient use of land. The Report suggested several changes, one of them accepted by the later legislation: the general consideration of all the land to be urbanizable in Spain. This Report was followed by another in 1994, coming from an Expert Committee created by the socialist government. The second Report included more reasonable (and better studied) measures to improve the system.

Autónomas (regional authorities), like Catalonia, did not like the change and used their legislative powers to block it. Moreover, municipalities did not agree with legal provisions blocking their discretionary powers for land policy.

Even when there was a coherent national, regional and local policy of liberalization, it is now clear that more construction did not have a positive role in reducing house prices³⁴. If we look at the evolution of housing prices in Spain, available official data seems to show that land liberalization had little impact on the provision of affordable housing (which was the formal reason for developing it). On the contrary, during the period it was in effect (until 2008, where the regulation was changed and returned to the classic model) housing prices increased dramatically³⁵.

But beyond the cases described, it seems obvious that, in principle, the kind of public policies that attempt to contain the effect of urban sprawl can affect housing affordability by affecting the supply of land. As Nelson asks: “Will owners of land, knowing they hold an oligopolistic position in the land market, delay its sale to get a higher price?”³⁶.

In that sense, although there is no conclusive data, the Spanish legislature does believe that it has been one of the relevant causes of the lack of housing affordability in the country, as it is explained in the preamble of the land use act

³⁴ A regional reaction against the legal change in 2000 led to the important Constitutional Court’s decision of July 11, 2001, which suggested that the national Act 1998 could be unconstitutional, because it could breach the constitutional distribution of powers between the national and the regional level. This decision did not actually state explicitly that the National Act 1998 was unconstitutional, but it suggested that a future new decision could make the act recover its original text, and then regional and local governments could, through laws and plans, make land use decisions based on general public interest (environmental protection, rational control of urbanization, etc.). Although according to constitutional case law the national level has little powers in relation to land use (just those necessary to regulate basic conditions of constitutional rights, Article 149.1.1 of the Spanish Constitution, procedural aspects and property rights among other aspects), it is important to remember that housing plans and fiscal instruments are still in national hands.

After this long legal battle before the constitutional court about the distribution of powers between the national and the regional level producing some relevant judicial decisions, the national level passed a new Land use act in 2007 replacing the former Act of 1998. One aspect of the regulation, which is still in force, is to stop the systematic deregulation of land, which has been the cause of significant environmental and social problems (urban segregation). Although the act does not set legal restrictions for growth limits, it implicitly opens the door for regional legislation to establish such a restriction if considered necessary and overturns the previous (and ephemeral, from 1998 to 2007) legal justification that all Spanish land was available for urbanization.

³⁵ At http://www.fomento.gob.es/MFOM/LANG_CASTELLANO/_ESPECIALES/SPANISHREALESTATE/PRECIOS/EVO_MEDIA_NAL/.

³⁶ A. C. Nelson, *Effects of Urban Containment on Housing Prices and Landowner Behavior*, Land lines Newsletter of the Lincoln Institute of Land Policy, May 2000, p. 3, at https://www.lincolnst.edu/pubs/dl/297_LL10005.pdf.

of 2008³⁷. Therefore, the control of urban sprawl should go hand in hand with public policies to promote affordable higher density housing in order to avoid this collateral problem³⁸.

The final question we should answer is whether we, our societies as a whole, are willing to remain passive and pay the high costs of urban sprawl in terms of economic, social and environmental sustainability.

THE “IGNORED CHALLENGE”, URBAN SPRAWL AND ITS NEGATIVE IMPACTS IN POLAND: A COMPARISON BETWEEN THE EU AND U.S.

Summary

Urban sprawl is an important problem in Poland and in the EU, as well as in the US. This article analyzes the concept of urban sprawl, its drivers, its negative environmental, social and economic impacts in the EU context, using Poland as a case study. The research explores the possible ways of controlling urban sprawl and promoting more compact cities through a smart public intervention, protecting the relevant (and sometimes contrary) public interest involved, taking into account American developments like New Urbanism and Smart Growth and some EU experiences.

„ZIGNOROWANE WYZWANIE”, NIEŁAD URBANIZACYJNY I JEGO NEGATYWNE SKUTKI W POLSCE: UJĘCIE PORÓWNAWCZE MIĘDZY UNIĄ EUROPEJSKĄ I STANAMI ZJEDNOCZONYMI

Streszczenie

Nieład urbanizacyjny to ważki problem w Polsce i Unii Europejskiej, a także w USA. Niniejszy artykuł analizuje koncepcje nieładu urbanizacyjnego, jego motywy i negatywne efekty środowiskowe, socjalne i ekonomiczne w kontekście UE, posługując się jako

³⁷ “They are many and authoritative voices from society, industry, the government and the academic community complaining of retention practices and speculative land management which obstruct the performance of their duties and, in particular, access of citizens to housing”. The translation from Spanish is ours.

³⁸ K. A. Danielsen, R. E. Lang, *What does smart growth mean for housing?, Housing Facts and Findings*, 1999, pp. 12–15, at http://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1352&context=sea_fac_articles.

studium przypadkiem Polski. Badania dotyczą możliwych sposobów kontroli nieładu urbanizacyjnego i promowania niewielkich miast przez właściwe interwencje publiczne, ochronę dobrze rozumianego interesu publicznego, biorąc także pod uwagę doświadczenia amerykańskie takie jak Nowa Urbanistyka i Inteligentny Rozwój oraz niektóre doświadczenia europejskie.

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KEYWORDS

urban sprawl, urban growth boundaries, new urbanism, smart growth, housing

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SÃO PAULO, WARSAW AND LANDLOCKED AREAS: FROM FUNCTIONALITY TO PROTO-RIGHT TO THE CITY

1. SÃO PAULO, WARSAW AND GLOBAL CITIES

The centre and periphery infrastructure relies on socioeconomic exclusion. The fashion it is provided determines ghettos, *favelas* and suburbs. There is also an element of labour division since the outskirts aggregate unskilled work force and low salaries. The desire for city life participation is more evident if participative democratic actions are analysed not only concerning institutional parameters such as elections for parliamentary representatives. In the present article, the concept of proto refers to massive people's engagement in city issues and how these individuals are politically committed to promote more transformative spaces in urban context. They aspire to be heard in different demands such as housing, civil rights, free-tickets for students or even more fiscal transparency in public revenues. However, they are not yet considered the representatives of what Henri Lefebvre's ideas suggested as the right to the city, because the French philosopher's concept is linked to an organised working-class, binding nuclei in decision making-processes evolving urban policies in collective boards coordinated by local public administrations and a critical consciousness on property rights using the notion of exchange value from a Marxist perspective¹. In São Paulo, for example, many urban social movements started their activities asking for more rights in a diffuse demand. All of them have used the words "rights", "social" and "State". They allude or refer literally to concepts not necessarily originated by the juridical *status quo*. The entries "collectives", "justice" and "civil partnership" are emblematic. It is interesting how some of the semantics and phrases can be practically intercalated in the municipal agenda. The housing rights claimants usually sing the jingle "Let's create the popular power" and call the attention to

¹ M. Purcell, *Excavating Lefebvre: the right to the city and its urban politics of the inhabitant*, GeoJournal 2002, No. 58, p. 103.

the fact they are fighting for social justice through housing issues². The housing right claimers also promote more transparency, questioning prices, project places and public-private strategies to build entire neighbourhoods. They used “We are many, we are in every occupation” in 1997.

The homo, bi and transsexual movements are other examples of communities. In 1998 and 2005, they said “The rights of gays, lesbians and transvestites are human rights” and “Civil partnership now. Equal rights! Neither more nor less” respectively³. A less dogmatic reading about these urban social movements, i.e., not strictly linking them to unionism as a *cliché* overview, reveals historically a semantic agenda for more rights and occupied urban spaces to say so. Yet, it seems to be a response of our post-Cold War political life with particular cases such as May 1968 in Paris or 1960s-1970s Washington protests against the Vietnam War, people have been more in the public eye claiming for their rights that we imagine. In 1832, Londoners decided to hold a one-month general strike or simply the “holiday” as they demanded: “During this ‘holiday’ period, working-class representatives would draw up a constitution to ‘place every human being on the same footing. Equal rights, equal enjoyments, equal toil, equal respect, equal share of production’”⁴. Although workers clearly feel the lack of effective rights, mainly the unskilled who suffer more with capital changes, they know that the urban space is the place where they have to act if they want to be heard. David Harvey and other authors point out the importance of being attentive to demands linked to rights during 1848 in order to avoid any naturalisation between workers and syndicalism. He recapitulates that the industrial working-class in the urban space was not strictly part of the Paris Commune experience: “There is, for this reason, a dissident and influential view of the Commune that says it was not a proletarian uprising or a class-based movement at all, but an urban social movement that was reclaiming citizenship rights and the right to the city. It was not, therefore, capitalist”⁵.

Warsaw is not only the capital of Poland. It is also part of its long, rich and resilient history. Sometimes the city is remembered by its famous composer Fryderyk

² R. Rolnik, *Afterword – Place, inhabitation and citizenship: the right to housing and the right to the city in the contemporary urban world*, International Journal of Housing Policy 2014, No. 3 (14), pp. 293–300.

³ About the right to housing, look for the social organisations Movimento dos Trabalhadores Sem-Teto (MTST), Frente de Luta por Moradia (FLM) and União dos Movimentos de Moradia (UMM). With reference to free tickets for students and against the continuous increasing ticket prices, Movimento Passe-Livre (MPL). For equal civil rights, check the Associação da Parada do Orgulho de Gays, Lésbicas, Bissexuais e Transexuais (LGBT).

⁴ D. Rosenberd, *Rebel Footprints: A Guide to Uncovering London’s Radical History*, London 2015, p. 23.

⁵ D. Harvey, *Rebel Cities: from the Right to the City to the Urban Revolution*, London 2012, pp. 128–132 and M. L. Souza, *Which right to which city?, In defence of political-strategic clarity*, Interface: a journal for and about social movements 2010, No. 1 (2), pp. 315–333.

Franciszek Chopin (1810–1849), Pope John Paul II and the devastating German World War II attack that completely destroyed the downtown while the Russian troops watched inertly the devastation. The Warsaw ghetto is also remembered as city resistance, but also unfortunately for a complete massacre of the Jewish community and without a shadow of doubt a genocidal action. Warsaw is a phoenix and the Polish have such positive capacity in constructing and re-constructing. Its countryside is remembered by K. Marx and Friedrich Engels in their *Communist Manifesto*: “In Poland, they [the Communists] support the party that insists on an agrarian revolution as the prime condition for national emancipation, that party which fomented the insurrection of Cracow in 1846”⁶. At that time, there was already a consensus for the peasants that historical and economic possibilities forced them to a dependent status. The production was more and more integrated in an international demand and supply chain.

Meanwhile, conservative and leftists disputed the political scenario in 1863, however, none of them knew the next step after assuming the power: “The Polish struggle between 1815–1863 was not only to determine who should rule at home, when independence had been won, but also to decide how Poland should be organized for the future”. R. F. Leslie also tells us about the nationalist sentiment of enterprise in Poland during the 1840s. The Organic Work was an attempt to promote political stability through commercial and industrial activity. Mainly skilled labourers were invited to cooperate under the name of Poland and this was an alternative to inhibit until the disarticulation of insurrection or any kind of revolution. The occupation of the city by the working class depended on an alliance with the peasantry. That coalition revealed the consciousness of the poorest urban inhabitants that the space of the city should be occupied by a country-city united contestation. It was the strategy the unskilled labourers used in order to resist all forms of an economic plan for the nationalist petty bourgeoisie, industrialists and land owners⁷. Production, property and class struggles were in question. Around fifty years later, the Russian Revolution had begun and erupted in 1917. It was decisive to reorganise the forms of production through a political regime based on the idea of the commons, but unfortunately was not followed by a serious project having individual liberty as a quintessential piece of a pluralist society.

⁶ It must be said that the *Communist Manifesto* (1850) is generally reduced to a very misleading overview of anti-pluralistic experiences since the first Industrial Revolution in 1750. It was not a dogmatic document oppressing dissident perspectives about labour, individual liberties and economic programmes. Karl Marx and Friedrich Engels had clear the labour organisation should be based on tolerance and pluralism in many aspects. In France, for example, the communions or the Communists allied with the Social-Democrats to combat the conservative and radical bourgeoisie; in Switzerland, they ally with the Radicals; in Poland, they support the party linked to agrarian revolution; in Germany, they are with the bourgeoisie to fight against the absolute monarchy, feudal squirearchy and petty bourgeoisie. See R. Alan, *The Communist Manifesto*, (in:) A. Ryan, *On Marx*, London 2014, pp. 195–196.

⁷ R. F. Leslie, *The History of Poland since 1863*, Cambridge 1980, pp. 3–7.

Joseph Stalin (1878–1953) took office in the mid-1920s after defeating internally Vladimir Lenin (1870–1924) and Leon Trotsky (1979–1940). He remained as a leader of the Russian Communist Party until 1953 while Poland continued being dominated by the Soviets till 1989 when the Berlin Wall fell down.

The Polish history is so rich and full of details, but the claims for more rights for both working class in urban contexts and peasantry are still alive, yet with more internationalised symbols and consumerist dreams. Today, a long-historical centre-periphery logic leads us not only to a time of effervescent political clashes about voting and future rulers, but mainly the desire of people in taking part in the decision-making process for the whole country. In December 2011, activists and citizens stood for a milk bar to avoid the transformation of the place into a sophisticated and expensive restaurant. They stood for the old Socialist place in *Śródmieście*, which means in Polish “downtown”, as a way to evoke emblematic and semantic strength in city issues. The unconscious wish for transformative platforms with collective participation clash with the urban plutocracy deciding the city. The city administration was taking into consideration the closure of a bar in order to open a fine restaurant. It was not in question whether they could pay or not for the renovated place: “(...) activists and citizens from the Central District (*Śródmieście*) barricaded themselves in old socialist milk bar to prevent this extremely popular cheap food venue from being closed down and redesigned as an expensive restaurant (...) the tent town ‘Occupy Warsaw’ in the city center, co-organized by the tenants’ rights movement among other, demands with a huge banner the “Right to the City”⁸.

At first, Occupy Wall Street may be seen as a complex movement demanding responsibility of bankers and accusing the financial system of being frivolous in managing the economy. The presence of people in the public eye questioning economic powers through property transformation is not new. As mentioned, the Londoners in 1832 and the Paris Commune in 1848 are examples of organised individuals fighting for more rights while one of the variables of accumulation of money was linked to property issues. If any legislation existed protecting collectives at that time, they were not effective to meet people’s political dissatisfaction. This is why we call the attention of these events as historical facts related to different kinds of criticism about the decision-making process. London and Paris had citizens unhappy with the models of representation in formal democracy in which they were allowed to take part just in periods of election, but they could not give their opinions. The claim for rights or the discourse of injustice clash the entire mode of what, how, when, where and for whom the society is produced. Global cities and urban issues are very sensitive to forms of exclusivist decision-making processes. Despite the myriad of demands popping up all over the world and in

⁸ M. Grubbauer, J. Kusiak (eds.), *Chasing Warsaw: Social Material Dynamics of Urban Change Since 1990*, Frankfurt 2012, p. 13.

different urban realities since 2011, the recurring theme has to do with economic and tax changes under non-participative models of representation. The more centralised the making of urban policies to run city developments and redistribution of income, the more conflictive situations. If markets fail in offering options to every citizen under moments of capital crisis, the political demanding variable may appear: “By October, protesters in almost every state had joined in, and demonstrations had jumped both oceans to Hong Kong, Madrid, Tokyo, Frankfurt and Sydney. Occupy was now in hundreds of cities. Crowds gathered in Los Angeles, Albuquerque, Toledo, Knoxville and Fairbanks. Some rallies brought out only a few dozen some thousands”⁹. Our rationale is that models of suburbanisation produce dramatic inequalities in urban context and it can be analysed as one of the city products originating from very restrictive decision-making processes. The cases of São Paulo and Warsaw are not a coincidence, but a repetition of economically geographical centre-periphery logic. So, occupy movements are some of those political strategies to question segregationist urban policies.

2. CITY FUNCTIONALITY AND EXCLUSION IN URBAN POLICIES

The concept of functionality refers to city models that serve the movements of the capital in increasing the marginal returns for investors till the zenith they judge convenient. So highways, means of transportation, cables of electricity, sewage pipelines, litter to be collected, natural gas, water supply, subway, public security and commercial centres are understood as products. The use of such public services is converted into exchange value of a selective urban plan-

⁹ M. Scherer, *Introduction: Taking it to the Streets*, (in:) *What is Occupy? Inside the Global Movement*, New York 2011, p. 6. We understand the concept of citizen as a person who lives in a city under civic and basic economic rights. It has nothing to do with legal, residential and papered status stated by immigrant authorities. In U.S., Spain and many other countries in Europe you do not necessarily have to be a legal immigrant to have a saving account and access to basic services. Immigrant Law Group PC gives support for those in need in United States as the internet page of the office affirms at <http://bit.ly/1IVBvbb>. In 2011, as a special Time edition reported: “Across the U.S., financial and political frustration has spawned a rush of petitions to effect change at a time when Americans have lost confidence in Congress to get the job done. Katchpole’s campaign wasn’t the first to take on Bank of America, which under the Change.org spotlight in the summer of 2011 when a Seattle woman won her fight to keep the bank from foreclosing on her home. Foreclosure petitions were one of two trends Change.org noticed on its site that year. Dozens of students have their deportation cancelled as friends and family used the platform to bring attention to their situation. After Katchpole’s campaign, more than 30 copycat petitions demanded that banks, including Citibank and SunTrust, change their fee plans. Nearly half have already won”. See E. Dias, *The Citizen who Stood Up to the Bankers*, (in:) *What is Occupy? Inside the Global Movement*, New York 2011, p. 74.

ning project. It is not a secret the investors of the housing market will be engaged in those enterprises in which their profits satisfy their wishes. In the same line of production, public policy makers believe cities must be financially inspiring for investors. As a consequence the concept of functionality combines two more variables, i.e., the urban infrastructure for space and the public debt. Yet under legislation and budgetary responsibility discourse, such amalgamation has apparent short-term positive effects, but in the long run, lawful action for indebtedness produces negative externalities. This is a risky element related to contingency, but not inserted in the cases of emerging countries in a strategic plan for social economic development. Investors stay if the enterprise is profitable. The society as a whole assumes the financial risk and high interests, the urban investors the assets. The city policy makers put forward a political agenda much more linked to the rapid transformation of the space without any connection to future economic burdens.

2.1. PERIPHERY, FUNCTIONAL LANDLOCKED AREAS AND SÃO PAULO'S OUTER RINGS

The nonexistence of natural boundaries or limits partially explains the urban development model of São Paulo metropolitan area. The municipality appeared originally as a small village that was founded by Catholic catechisers in 1554. In the 1860s, the municipality grew and its economy prospered with coffee plantations. In the beginning of the XX, the *Belle Époque* city was divided in two main areas. The downtown was the place where there was a commercial petty bourgeoisie and up the hill along Paulista Avenue was the wealthy boulevard with well-done coffee farmers' mansions. Brás, Bexiga and Barra Funda were the first poor working-class neighbourhoods in the periphery of São Paulo. These new zones were respectively located in the east, south and west parts. The white immigrants could only afford tenement houses. Black people made free from the 1888 Abolition Act used to live in yet more run-down and overcrowded zones such as Paissandu Square and along Nove de Julho Avenue. Today, we can affirm that the centre-periphery logic in São Paulo was originated in the first years of the First Brazilian Republic (1889–1930).

The 1922 Modern Art Week or *Semana de Arte Moderna de 1922* may be interpreted as a seminal synthesis of all projects in music, painting, literature and sculpture inspired by São Paulo, its convulsive modernisation and a myriad of possibilities in changing the Brazilian reality with an industrial era being introduced to the country. A project of modernisation started being imported to Brazil and enthusiastically seen by many artists as the time for national development. Two names were very attentive to the vibrant forces of organised work, technology and progress bound up with traditional roots. Mario de Andrade (1893–1945), the novelist of *Macunaíma*; and the composer of *Bachianas Brasileiras*, Heitor

Villa-Lobos (1887–1959) were fascinated with the idea of mixing the Brazilian folklore with universal values in non-dogmatic aesthetics learnt in neoclassical academies of art. Tarsila do Amaral (1886–1973), who could translate clearly a kind of distrust in her paintings with reference to Brazilian modernisation in the beginning of the XX, did the same. She seemed to be hesitating about the image of new urban space and it is possible to apprehend such challenging overview in how she melancholily represented the urban space, its centre-periphery and labourers. Paintings pointing the “Morro da Favela” (1924), “La Gare” and “Operários” (1925)¹⁰ introduce sequentially the ideological functional division of what was about to be modernisation, i.e., *favela*, “train or tram” and “reified labourers”.

Dominated by the coffee elites, the beginning of the XX century was promising for those parts of the city housing the wealthiest. Upper middle classes with their small fortune could take advantages of the urban transformation in São Paulo as well. Investments in infrastructure were the way to transform a timid and historically tiny village into a potential urbanised city with cobbled streets, electricity and running water at home. The constructions of the Municipal Theatre and the Anhangabaú Valley were decisive as the public interventions to provide for public lights in the city. All these facilities and innovations were financed by coffee barony and naturally serving their own needs, industrialists and shop owners. The *Belle Époque* style became also the cultural standard of the city, but at the same time a social grammar for an exclusivist, glamorous and elitist space. Moreover, neoclassical buildings in the city centre, the modernist values and the streets contrasted with the old Portuguese architecture known as *casa-grande* where private life was devoted to rural areas and isolation¹¹. The means of transportation imported by the wealthy, such as Wanderer motorcycles and Overland cars, started being part of a geographically delimited city. The centre-periphery infrastructure model was implanted since the city was understood as a product not for all. Such urban model still persists¹². As an example of past presence, the mayor of São Paulo, Fernando Haddad (Labour Party), presented a project during his 2012 campaign with the idea of creating a road belt linking giant neighbourhoods in order to promote more physical integration. He wanted to connect existent highways and complete a semi-circumference of the 22 million people metropolis making possible an approximate speed of 30 miles per hour. The first

¹⁰ We freely translate the three paintings as “Favela Hill”, “The Train Station” and “Factory Workers”.

¹¹ G. Freyre, *Sobrados e Mucambos*, São Paulo 2003, pp. 134–175.

¹² S. P. Taschner, L. M. Bogus, *São Paulo: o caleidoscópio urbano*, São Paulo Perspectiva 2001, Vol. 15, No. 1, pp. 31–44 and L. C. Pessoa, L. Bogus, *Operações urbanas – nova forma de incorporação imobiliária: o caso das Operações Urbanas Consorciadas Faria Lima e Água Espraiada*, Cadernos Metrôpole 2008, No. 20, pp. 125–139.

year he took office the linkage was aborted. It seems to be difficult to unite a city that has been ideologically internalised as an object of separation for its citizens¹³.

Another aspect of this linkage is the level of salary. The economic matter evolving income is intimately connected to the access to formal urbanism. If lower-working class people become integrated they will desire the same for them as they see in formal richer zones. We use the idea of formality in urban topics to define those areas where the public budget applied corresponds to infrastructural urban policies based on middle and upper middle classes demands, but it does not match with the space standards in the periphery. Paved roads, tunnels, bridges, parks, underground stations, flexibility in legislation for skyscrapers construction, parking lots, commercial centres and public safety are hard issues for the richest in the metropolis, but they have the option whether using that infrastructural offer or not. On the other hand, in those areas outside the formal ring, basic public services are not sufficient, sanitary conditions precarious and the means of transportation scarcely covering comfortably the need of the poor. Moreover, the public safety is an issue in the periphery and most of the time criminal actions in the municipality have the State of São Paulo police present. Public health and educational services are theoretically offered for free, but the quality is poor. The higher the wage average inside the ring, the more we can find formal designs of urban public policies and private services. Economic variables determine who can either pay for the formal city or who cannot. It is a micro-version of a landlocked area, but with the same idea of security guards, cameras, private parking underneath, swimming pools, gym, playground and party premises¹⁴.

The inner-lands with an immense geographical relatively flat area was the object of private enterprise. The urban developer *City of São Paulo Improvements and Freehold Land Company Limited*, which was represented by two English urbanists called Barry Parker and Raymond Unwin, bought an immense area near the Pinheiros River and Butantan Institute. The project was designed to be an upper class suburb not far from the centre of São Paulo. Jardim América, Pacaembu, Alto de Pinheiros e Butantã are some of the neighbourhoods created for a determined socioeconomic rank of the Paulistana society. The profits of the *City of São Paulo Improvements* were attractive and the inaction of the municipal power converged on a zone to serve property investment, roads for cars and prestige. Environmental issues, electricity and sewage were not part of the plan as a whole and the matrix of São Paulo started being designed with highly selective housing projects. The economic progress and relatively formal urban planning for some represented less funds for other neighbourhoods once São Paulo Municipality had to subsidise all infrastructure to link the new suburbs to the old downtown,

¹³ See <http://www.antp.org.br/noticias/clippings/sem-recursos-gestao-haddad-desiste-de-pacote-viario-do-arco-do-futuro.html>.

¹⁴ See http://infocidade.prefeitura.sp.gov.br/mapas/9_distribuicao_das_favelas_2014_10251.pdf.

Paulista Avenue and attract the investors. It was a round table negotiation at which few were invited to sit. They were not really landlocked areas with walls as we see in Barueri and Morumbi today, but the infrastructure and prices for products or services prevent the wealthy families from the presence of poor neighbourhoods.

Some neighbourhoods were born in the city after intense private investments almost without public urban planning. During the 1960s, housing developers bought parts of an old farm land dividing it into plots. Near the Pinheiros and the Tietê River, a new extension of the municipality was urbanised and at the same time isolated by scarce services of public transportation. In the surrounding that area, we find the Jockey Club inaugurated in 1875. Since the inhabitants of these new suburbs had private means of transportation, the access was restricted and also expensive for the working class. The zone has always been symbolically under dispute. In 2004, a bus lane was made along Rebouças Avenue. It was the result of an infrastructure project linking the three 1960s neighbourhoods Alto de Pinheiros – Pinheiros – Butantã and innovating the space with more urban mobility for the poor. There were protests against the exclusive bus lane by the proprietors, because shop owners and residents said it would deeply mark the ugliness of a public means of transportation to transport people going to the region to work¹⁵.

The referring urban policies were idealised to meet the needs of the upper middle classes. São Paulo, its history and the housing construction from a structural perspective tend to be really selective¹⁶. Nowadays, the city invests in massive infrastructure projects to meet means of transportation need for an urban metropolis of 22 million people, housing and sanitary conditions. However, the costs of these investments are too high and even the interests of the public debt to promote them are over world rates¹⁷. Childcare and primary schools are educational areas in desperate situation because parents have to commute every day for at least three hours. The making of inner-land tenure for rich and affluent proprietors during the 1960s forged a very singular system of property in Brazil. Whether walled or not, there was a private condominium concept supported by social codes. The logic of the landlocked areas as a model of urban development inherits the spatial political design from the colonial architecture. The idea is the production of economic equality in an unequal society. These small principalities under the legal condition of properties were constructed on a total private conception, but highly political affluent in the central State. Lawful apparatuses

¹⁵ See <http://acervo.estadao.com.br/noticias/acervo,jardim-america-da-lama-ao-luxo,7201,0.htm>.

¹⁶ E. Maricato, *A Cidade de Pensamento Único*, Petrópolis 2002 and N. Bonduki, *Habitar São Paulo: Reflexões sobre a Gestão Urbana*, São Paulo 2000.

¹⁷ The average loan rates São Paulo State pays every year are approximately 6% plus a General Index Price (IGP-DI). The average in Japan is 1.2%, United States 3% and United Kingdom 0.5% for the long-term period 2011–2014. See the data available for the numbers on <http://bit.ly/1BcgTJO> page and the World Bank information on <http://bit.ly/1nzmckZ> page.

provided by the State were not necessarily effective in these neighbourhoods once the economic power of their proprietors was extremely decisive¹⁸.

2.2. PERIPHERY, FUNCTIONAL LANDLOCKED AREAS AND WARSAW'S OUTER RINGS

The history of Warsaw and the Communist Era may lead us to a different analysis of a singular type of functionality. For questions of methodology and purpose of the present article, we use some post-Socialist political regime facts. Up to a certain extent, functional models of urban planning show us the same two variables we have mentioned before in action since the second part of the 1990s. Housing construction, the phenomenon of suburbs and heavy inputs of capital in city projects for two decades suggest some considerations¹⁹.

The first of our observations starts with some parallels drawn between the district of Ursynów in Warsaw and what we previously defined as functionality. Polish experts highlight the process of suburbanisation and the lack of infrastructure as the main city challenges involving space and transformation. They say “(…), already in the second part of the 1990s, the housing construction began to expand in the direction of the southern borders of the district. As these areas had been used only for agricultural purposes, the investors were aware of a total lack of any infrastructure there. It was mainly the new Metro line that ‘opened’ that area for investors and helped to overcome their lack of enthusiasm for plots with no technical infrastructure. The boom which began at that time has in fact been lasting until now”²⁰. Nonetheless, the construction of highways, underground and basic sanitary conditions to set up innovative urban policies required massive quantities of monetary funds that the Polish did not have at their disposal. The solution was the modernisation of city economies through public debt strategy.

2.3. PUBLIC DEBT: LESSONS FROM WARSAW TO SÃO PAULO

The following table shows us the debt ratios in many aspects. Yet a common topic between the two cities, the Polish were aware of such perilous path during the 1990s. Is the public debt a real credit for all people in cities taking into consideration long-periods? We call attention to the current revenue line and the

¹⁸ E. Marques, *Estrutura Social e Segregação em São Paulo: Transformações na Década de 2000*, Revista de Ciências Sociais 2014, Vol. 57, No. 3, pp. 675–710.

¹⁹ *The Spatial Development of Warsaw Metropolitan Area Comments on “Warsaw Development Strategy until the Year 2010”* prepared for the World Bank by Alain and Marie Agnes Berated, June 11, 2000, revised December 2000.

²⁰ A. Gąsior-Niemiec, G. Glasze, D. Lippok, R. Pütz, *Gating a City: the Case of Warsaw*, Regional and Local Studies, Special Issue 2009, pp. 78–101.

level of interests. Despite numbers positive trends, the costs of modernising the country implies urban policies under indebted status. The construction of means of communication, such as underground and tram, implies high costs related to electricity, logistics and management. Since the national economy is dependent on important expertise, raw materials, knowledge and technologies, the city economy becomes naturally indebted. We could multiply municipal complex tasks if we postulate local governments are not isolate from other urban areas. It is curiously a city domino effect.

Table

Debt Ratios (%)

	2008	2009	2010	2011	2012
			actual		
Increase in liabilities total (y/y)	-0.7	78	31.4	12.8	-4.5
Share of debt in foreign currency	1.0	20.9	15.3	15.1	14.5
Total liabilities/Total revenue	22.0	39.8	50.6	52.8	47.7
Total liabilities/Current revenue	23.6	41.7	53.7	57.5	54.2
Total liabilities/Operating surplus	194.8	999.9	1583.90	2408.3	6912.1
Debt servicing/Total revenue	5.7	3.4	4.1	4.8	4.7
Debt servicing/Current revenue	6.1	3.5	4.3	5.2	5.3
Interests/Current revenue	1.3	1.2	2.1	3.0	3.3

The *Annual Report of the Issuer for 2014*, p. 10, Capital City of Warsaw, 30 April 2013. See <http://bit.ly/1gRahLu>

The *Annual Report of the Issuer for 2014* tells us that the determining variables for such expenses and debts are mainly the ones linked to infrastructure and urbanistic models. Particularly the case of Warsaw, the debt level is originated from the functional ideology of what cities should be. Warsaw has been revitalised for few, but its spatial transformation reveals places where massive investments in urban construction are applied. The costs of an immense city transformation to make landlocked areas viable are collectivised, but unfortunately the assets privatised: so, “Poland’s capital Warsaw illustrates how fiscal issues and infrastructure are managed at the level of a big city (...) Most Warsaw’s investment has been financed by long-term loans on floating interest rates” (Ners, 2007, p.174). The city of São Paulo curiously presents similar strategies to make the urban space a more modern one. The following graph has two functions. The ascending curve represents the municipal public debt and the lower one the payment of it²¹.

Most landlocked areas were constructed in the south of Warsaw where no infrastructure existed, but just open fields combined with farmlands. The concept

²¹ See http://www.tcm.sp.gov.br/painelnoticias/principal/2013/11_13Dissei.html.

was rapidly seen by developers and urbanistic strategists as a marketable idea. The traditional city of Łódź, southwest of Warsaw, is another example in Poland of selective infrastructural development and the collective costs drained by private enterprises. In Warsaw, walled residential areas mushroomed in various zones such as Bielany in the northwest²², which was a working-class neighbourhood during the U.S.S.R. period. The three landlocked areas of Gdańsk, Sopot and Gdynia are very illustrative with a synthesis of outer rings, infrastructure and public debt²³.

There is no evident connection to what kind of urban city the Varsovian citizenship objectively desires and the citizens who receive the benefits. We read such pointless seduction as a repulsive response from the Polish to a Socialist era, but at the same time the idea of privileges and prestige inherited from the high *strata* of the Communist era. The logic of political and economic power in the soul of the city is still alive as the complex symbology presented in the Palace of Culture and Science (1953). The delimitation of social classes is disguised by the discourse of a free society: “Therefore, the rapid spread of gated communities in Polish cities, especially in the capital city of Warsaw may be interpreted as a locally driven ‘exercise’ in the demarcation of social boundaries”. The reasons for such movement come also from those “distances by means of an ostentatious consumption of real estate products that are available in the Polish real estate market”²⁴. Prestige or stylish zones are desired by the same social *strata* that look for private property city detachment inside the same urban matrix²⁵.

3. UNKNOWNABLE LANDLOCKED AREAS IN SÃO PAULO AND WARSAW

Returning to countryside areas is generally interpreted as an alternative for the tiring way of life in modern urban contexts. It is mainly understood as a possibility in escaping from peoples’ animosity in urban contexts, low standards in quality life and relatively high prices for food. However, the move-outs to the

²² M. Górczyńska, *Specificity of gated neighbourhoods in the Bielany district (Warsaw)*, Journal of Urban Research 2012, No. 8.

²³ D. Polanska, *The emergence of gated communities in post-communist urban context: and the reasons for their increasing popularity*, Journal of the Housing and the Built Environment 2010, No. 25, pp. 295–312.

²⁴ A. Gaşior-Niemiec, G. Glasze, D. Lippok, R. Pütz, *Gating a City...*, p. 81.

²⁵ A. Mattissek, *Discursive Konstitution von Sicherheit im öffentlichen Raum am Beispiel Frankfurt am Main*, (in:) G. Glasze, R. Pütz, M. Rolfes (eds.), *Diskurs-Stadt-Kriminalität. Stadtische (Un-)Sicherheiten aus der Perspektive von Stadtforschung und Kriminalgeographie*, Bielefeld 2005.

outer rings from central areas are not an exclusive phenomenon of our age. Dominated by his curiosity and adventurous spirit in London at the very beginning of the XX century, a North-American travelling journalist observed that the richest city in Europe had in its surrounding entire poor communities²⁶. East London was out the perimeter of the capital, but it was where dwellers used to talk about their ceaseless work, mental illnesses and the reduced stamina in their bodies due to the constant stress getting on their nerves. In *The return of the native* and *Jude the obscure*, the English writer Thomas Hardy poses the conflict evolving the country and the city caused by the transformations of the capital and, consequently, the obliteration of small proprietors in rural communities. In a long-run process initiated with the enclosures during the second half of the XVIII, knowable communities disintegrated because they used to have lives in common socioeconomic bounds. In London's and Hardy's writings, property system under the spatial marketable transformation stimulated the making of modern barony, economic contrasts and social otherness.

The brief analysis we suggest in the present article is devoted to the idea of landlocked areas in São Paulo and Warsaw, not necessarily gated communities. For us, the concept of community as a long-lasting experience in people consciousness and human experiences is far beyond the daily life routine. It is not deniable there are elements of social class grammar in terms of values and language in knowable communities. Some XVIII-XIX novelists including Jane Austen and George Eliot extensively documented such cultural and material interests among families and the curiosity for otherness²⁷. Nevertheless, the idea of being socially tagged demands the existence of a community. If there is no identity, based on cultural and economic criteria, the fellowship sentiment disappears in essence and it seems to be much more an apparent phenomenon. The city logic tends to diminish in that sense the concept of knowable communities. Labour, private life and family safety have been colonised by the landlocked aesthetics using an unequal urban architectural grammar. Ursynów is just one more novel telling us the same story as we read in different local settings, narratives and characters

²⁶ "My first impression of East London (1903) was naturally a general one. Later the details began to appear, and here and there in the chaos of misery I found little spots where a fair measure of happiness reigned – sometimes whole of rows of houses in little out-of-the-way streets [periphery/segregation], where artisans dwell and where a rude sort of family life obtains" – p. 28; "I looked out of the window, which should have commanded the back yards of the neighbouring buildings. But there were no back yards, or, rather, they were covered with one-storey hovels, cowsheds, in which people lived. The roofs of these hovels were covered with deposits of filth, in some places a couple of feet deep – the contributions from the back windows of the second and third storeys. I could make out fish and meat bones, garbage, pestilential rags, old boots, broken earthenware, and all the general refuse of a human sty". See J. London, *The People of the Abyss*, Memphis 2012, p. 35.

²⁷ R. Williams, *The Country and the City*, Oxford 1973, pp. 165–181.

in global scale²⁸. This is why we do not use the definition of “gated communities” once the communion of a group does not rely on physical walls to make their internal rules exist as some authors affirm²⁹. A prison is a place for criminals, but the illicit community will not disappear if the walls fall down. The same a religious circle that does not need a church or a temple to keep their beliefs alive. In the case of landlocked areas, even under the market forces of consumerism and selective urban policies, if the physical division disappears they will not feel the same prestige and socioeconomic exclusivism.

In terms of law, landlocked areas reassumes the right to private life under the system of what could be called transversal property law. Condominiums seem to be the same in global urban cities. Morumbi, Barueri, Bielany, Gdańsk, Sopot, Gdynia and Łódź have different names and countries, but the logic of sharing an area derives from economic unconscious *fetiches*. In the original projects sold by the constructors, nobody is invited to know each other and families preserve the right to be an island. It could be the paradise of a high rational micro-society with sophisticated understanding about physical limits in the private neighbourhood, use of common areas and the financial contribution of each to keep the setting of housing units organised. However, such architecture and permissive urban policies based on (re)constructive ideologies hide the disarticulation of a political community in demanding more rights. The capital invested in these landlocked areas nurtures the consumerist desire of citizens as a way to impose their own fulfilment in making profits using methods of geographical inequality³⁰. Moreover, all the aspiration for the public space and healthy life is reduced to infrastructural strategies such as highways, means of transportation, safety and commuting challenges. It is a way to minimise or annihilate as some authors would say the idea of public, space and people³¹. Probably the most affluent socioeconomic *strata* living in landlocked areas prefer the car to open green areas, prestige to communities, isolation to walking to work.

In São Paulo, it is hard to imagine an upper middle class resident from a gated private zone going out of their comfort belt once they feel vulnerable to criminals, kidnapping and beggars. In Warsaw, yet the social and urban agenda does not face such problems, the transformation of the city is under the same effect of what we observe in São Paulo. The urban functionality is a guideline in both cities since the urbanistic model results in more socioeconomic segregation and administra-

²⁸ J. Gądecki, *Gating Warsaw: Enclosed Housing Estates and the Aesthetics of the Luxury*, (in:) M. Grubbauer, J. Kusiak (eds.), *Chasing Warsaw: Social Material Dynamics of Urban Change Since 1990*, Frankfurt 2012, pp. 109–132.

²⁹ S. Blandy, *Gated communities in England as a response to crime and disorder: context, effectiveness and implications*, *People, Place & Policy Online* 2007, No. 1/2, pp. 47–48 and R. Atkinson, S. Blandy, J. Flint, D. Lister, *Gated Communities in England*, London 2004.

³⁰ M. Purcell, *Excavating Lefebvre...*

³¹ D. Mitchell, *The Annihilation of Space by Law: the Roots and Implications of anti-homeless laws in the United States*, *Antipode* 1997, Vol. 3, No. 29.

tive micro-zones inside neighbourhoods. Panic, phobias, mental disorders and depression in São Paulo and Warsaw are linked to these kinds of city models also as studies show us³².

4. MUNICIPAL PUBLIC DEBT AND THE LAWFUL PARAMETER

In Brazil, the legislation to slow down the eagerness of mayors in abusing of the public debt is known as the 2000 Federal Fiscal Responsibility Act (FFRA) or *Lei da Responsabilidade Fiscal* 101/00, which was approved based on the Intent VI, Article 52 of the 1988 Brazilian Federal Constitution. The resolutions 40 and 43 affirm that the municipal limit for public indebtedness shall be 1.2 times the city liquid budget³³. It means that after Brazilian municipalities meeting their financial responsibilities with employees, suppliers and all public services the remainder is the calculus basis. It is almost intuitive that the Brazilian cities set yearly rising goals in applying taxes, fees and fines to make higher positive differ-

³² Jan Czesław Czabala, Institute of Psychiatry and Neurology, Warsaw; Bohdan Dudek, Institute of Occupational Medicine; Lodz Piotr Krasucki, Specialist Emeritus in Occupational Medicine, Warsaw; Bożena Pietrzykowska Institute of Psychiatry and Neurology, Warsaw; Włodzimirz Brodniak, Institute of Psychiatry and Neurology, Warsaw, prepared a study to analyse the challenges around psychological problems in Poland linked to workplace, productivity and city life. As the report says “The impact of mental health problems in the workplace has serious consequences not only for the individuals whose lives are influenced either directly or indirectly, but also for enterprise productivity. Mental health problems strongly influence employee performance, rates of illnesses, absenteeism, accidents, and staff turnover”. The report affirms yet that the “New standards of psychiatric treatment suggest that the basic venue for caring for the mentally ill should be the community and the major goal of psychiatric care should be improving the quality of life of patients with chronic mental health disorders. There has been a significant reduction of beds in the large psychiatric hospitals. Small psychiatric wards are being opened in general hospitals, which are more accessible to patients’ homes; and mobile community teams, day treatment hospitals, and sheltered workshops have been established. Within the framework of community psychiatric care, associations of patients, their families, and friends have been organised and are having an impact on decisions taken by local and central governments. The associations have promoted the treatment of patients in their own communities, raised funds, helped find jobs, apartments etc. Rapid crisis intervention centres have been opened to deal with the sudden onset of psychological problems”. See International Labour Organization (ILO), *Mental Health in Workplace: Situation Analysis in Poland*, 2000, pp. 1–4, at <http://bit.ly/1KfCxyH>. About mental disorders and urban contexts, read the article written by M. Bobak, H. Pikhart, A. Pająk, R. Kubinova, S. Malyutina, H. Sebakova, R. Topor-Madry, Y. Nikitin, M. Marmot, *Depressive Symptoms in Urban Population Samples in Russia, Poland and the Czech Republic*, *British Journal of Psychiatry* 2006, No. 188, pp. 359–365. See also L. H. Andrade, Y.-P. Wang, S. Andreoni, C. M. Silveira, C. Alexandrino-Silva, E.R. Siu, *Mental Disorders in Megacities: Findings from the São Paulo Megacity Mental Health Survey*, Brazil 2012.

³³ These resolutions were passed by the Senate in 2001 as the Article 30 of FFRA affirms.

ences. In 2012, the revenue of the city was around 34 billion Reais and the debt 53 billion³⁴. The fiscal responsibility in both cases has stimulated the opposite. With the excuse of being cautious, São Paulo and Warsaw started working on the limit and being more and more indebted.

In the Polish case, the public debt increased steadily from 42% in 1999 to 53.4% of the GDP in 2010. Although the Polish control since the end of the Soviet Union, the financial authorities knew they had to pay higher interest rates to create a more attractive and speculative conjuncture. They concomitantly passed the 2000 Budget Statute to prevent them from fiscal irresponsibility and make sure the government's actions would be stoppable when 55% of the nominal GDP reached³⁵. The 1997 Constitution of the Republic of Poland, Chapter X, Public Finances, Article 216.5 says "It shall be neither permissible to contract loans nor provide guarantees and financial sureties which would engender a national public debt exceeding three-fifths of the value of the annual gross domestic product". As Adam Reichard affirms "(...) if the public debt reaches above 55% of the GDP, legal requirements force Polish officials to begin automatic cuts in public spending". Nonetheless, the author continues saying that "Poland also saw continued growth and investment in infrastructure investments across local communities (...)"³⁶.

The legislators and the policy makers are trapped by a present insolvable debt and they still resist in such logic insisting on rapid city modernisation, but combined with more inequality in a long-run. Landlocked areas and urban policies inspired in exclusivist physical city transformation reduce the public space for many and impose a disguised private logic. Poland and Brazil uses such property architecture to promote security, socioeconomic status, prestige and global cities. It seems to be a very complex issue, but we could use the legal possibility of being indebted with other purposes. If we substitute massive centre-periphery infrastructure allied to suburbanisation policies to human capital investments through house construction, we are able to provide solid productive citizenships. We use the definition of Radical Housing Network Organisation about decent homes to ventilate the possibilities of a more socioeconomic development: "A decent home should be physically comfortable; be secure; have access to schools; work; health-care; cultural facilities; transport; fresh affordable food and green space; allow people to have control over their indoor and outdoor environment; be genuinely affordable, allow people to develop communities and support each other". As they say, they reject the policy of marketable housing through "rising costs of housing;

³⁴ Just to have an idea, divide by 3.3 to approximately calculate in U.S. Dollars. See <http://bit.ly/1KsgCEG>.

³⁵ Read the *Annual Report, Polish Treasure Security*, 1999, pp. 12–13. See <http://bit.ly/1W-waBQD> and the Polish Ministry of Finance documents on <http://bit.ly/1J9vMhc>.

³⁶ A. Reichard, *Poland and the Global Economic Crisis: Observations and Reflections in the Public Sector*, *Journal of Finance and Management in Public Services* 2011, Vol. 10, No. 1, p. 44.

sell-off of council housing; encouragement of profiteering, speculation and buy-to-let; increase in overcrowding and street homelessness; destruction of housing coops; and other social housing solutions; criminalisation of squatting; welfare reform policies; reduction of security; increasing eviction and displacement; empty homes; decreasing quality of housing; gentrification and displacement³⁷.

5. CONCLUSION

A proto-right to the city starts with decent homes for all as primary and urgent urban policies. Our present discussion incentivises those urban possibilities committed to effective scales, because houses and infrastructure are supposed to serve mainly the most vulnerable in the city. It is very important to remember that the right to the city concept was presented by Henri Lefebvre's book during the very end of the 1960s. The French philosopher idealised the concept linked to urban matters under the umbrella of the decision-making process idea and how collectives could take part of the public spaces. It was a period when Marxist reviewers debated original routes to face politically the capital revivals two decades after the post-World War II era. He pointed out the public space as an arena of political and economic disputes involving decision-making process, construction sectors, speculating plans of urbanism and legislators fragmenting politically the working class demand. The right to the city was a utopian vision of a future totality on which would be founded the philosophical principles to put people in the core of the political urban life³⁸. Landlocked areas promote structural and social divisions, divides the city and generates endless public debts.

SÃO PAULO, WARSAW AND LANDLOCKED AREAS: FROM FUNCTIONALITY TO PROTO-RIGHT TO THE CITY

Summary

São Paulo and Warsaw are undoubtedly different cities. Nevertheless, they both have critical issues and common uncertainties. Challenges involving means of transportation, lack of coordination in integrating neighbourhoods and scarce funds to meet their wishes

³⁷ See <http://bit.ly/1E1JRkA>.

³⁸ H. Lefebvre, *Le droit à la ville*, Paris 2009, pp. 13–14.

in modernising their space are some of them. In recent years, they have expanded their urban policies using public indebtedness as an economic political solution. The aim of this article is the discussion of such a strategy as a selective apparatus promoting places for few in these two vibrant capitals. Landlocked areas and petty bourgeoisie zones usually drain the Varsovian and Paulistano public revenues once they are seen as the unique possibility of bringing rapidly massive investments to cities. The methodology of our analysis relies on a critical comment to lawful possibilities in using the public debt to promote centre-periphery infrastructure through extremely limited circles of decision-makers and functional city planning.

SÃO PAULO, WARSZAWA I TERENY WYDZIELONE: OD FUNKCJONALNOŚCI DO PROTO-PRAWA DO MIASTA

Streszczenie

São Paulo i Warszawa to miasta niewątpliwie się różniące. Mimo to mają swoje wspólne ważne, trudno rozwiązywalne problemy. Wyzwania takie jak środki komunikacji, brak skoordynowanej integracji przedmieść i nikłe fundusze na realizację planów modernizacyjnych – to tylko niektóre ze wspólnych problemów. W ostatnich latach miasta te rozszerzyły swą politykę urbanizacyjną, korzystając z zadłużenia publicznego jako ekonomiczno-politycznego rozwiązania. Celem niniejszego artykułu jest omówienie powyższej strategii jako selektywnej metody promującej rozwój dzielnic tylko dla najbogatszych. Zamknięte i „nowobogackie” osiedla zwykle korzystają na przychodach podatkowych, które są postrzegane jako możliwość wprowadzenia nowych inwestycji do miast. Metodologia naszych badań polega na krytycznym komentarzu prawnych możliwości wykorzystania długu publicznego do rozwoju centro-peryferijnej infrastruktury miejskiej przez bardzo ograniczone kręgi polityczne i funkcjonalnego planowania urbanizacyjnego.

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KEYWORDS

landlocked areas, gated communities, public indebtedness, proto-right to the city and urban policies

SŁOWA KLUCZOWE

obszary bez dostępu do morza, osiedla strzeżone, zadłużenie publiczne, prawo naturalne do miasta, polityka urbanistyczna

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THE EUROPEAN UNION AND URBAN PLANNING

During the study space, which took place in Warsaw, between the 15th and 20th of June, 2015, an interesting issue arose regarding the Warsaw metropolitan area's urban growth. One participant said that the metropolitan area's urban growth was not managed by a general master plan¹, given that it was, for a long period, managed under Communist principles, as opposed to the more liberal political regime now in place. There is of course a zoning ordinance in Warsaw city that regulates land use. But there is no master plan at the metropolitan level in the sense that there is no rational planning process – no future-oriented plan with goals and objectives for future land use and development.

Firstly, it is necessary to underline Warsaw's impact on me. From a French, and more precisely Parisian, point of view, Warsaw seems a tremendously fast-growing city, with a concentration of skyscrapers in the downtown area; this remains just a small stand of trees, so to speak, but in all likelihood it will soon be a forest. This is a city, and a metropolitan area, that requires planning. (Paris, by contrast, counts only one skyscraper in the city-proper: the ugly and much-regretted Tour Montparnasse.)

Secondly, whether or not it is a liberal interpretation of a more nuanced legal reality, the assertion that there was no master plan for Warsaw's metropolitan area knocked this French urban lawyer, who deals nearly daily the EU's rules, nearly unconscious. (Be assured this had nothing to do with an earlier vodka tasting.)

Before dealing directly with European law we must clarify some concepts. The distinction between the master plan and zoning² is not at all obvious for a French lawyer. The usual "*plan local d'urbanisme*" (PLU), or local urbanism plan, plays both roles: the PLU is a zoning ordinance with zones and building rules, while it also lays out a rational planning process. The core of the PLU is meant to be a document known as the "*plan d'aménagement et de développement durable*" (PADD), which can be translated as "sustainable growth plan".

¹ H. Izdebski, *City Planning versus Metropolitan Planning Historical experience on the example of Warsaw*, presentation during Study Space Conference in Warsaw, June 17, 2016.

² Definition of the master plan: J. C. Juergensmeyer, T. E. Roberts, *Land use Planning and Development Regulation Law*, 3rd ed., Saint Paul 2013, p. 26.

The French urban code requires a consistency between the PADD and land use regulation. But we have few examples of judicial review of this required consistency. Thus, the PLU gives a unitary vision of land use regulation. The Catalan *Plan de Ordenación Urbanístico Municipal* (POUM) is quite similar, as it contains both a master plan and land use regulation. We must add a bit of nuance to the notion of a French unitary vision, however: sometimes, above the French PLU there exists a “*schéma de cohérence territoriale*” (SCOT) master plan, though this master plan is not binding with regards to building permits. The relationship between the SCOT and the PLU is that the PLU must be adopted in accordance with the SCOT; when a formerly-adopted PLU is contrary to a more recent SCOT, the PLU must be made consistent with the SCOT within an established timeframe.

In any case, in the moment, my intuition was that the lack of a master plan for the Warsaw metro area did not comport with European Union law. But, in the moment, I could not explain why. Twenty years ago, in 1995, Jean-Bernard Auby wrote a paper on the impact of European law on land-use law³. The focus of his paper was in fact broader than European Union law, strictly speaking, as it included the European Convention on Human Rights and the related protection of private property. The paper concluded with an assertion that EU environmental law requires the establishment of land-use regulation (“*servitudes d’urbanisme*”).

In this paper from two decades ago, “land-use regulation” did not mean “planning”, exactly, in the sense that it did not entail a rational, comprehensive planning process. To my mind, however, environmental considerations necessarily entail a future-oriented planning process, as we are going to see.

The issue is still a live one today. In his book *Droit européen de l’aménagement et du territoire*, Francis Haumont asserts that there is no obligation for States or local authorities to adopt master plans, even if they are in fact encouraged to⁴.

The notion advanced below is that the lack of a formal EU law forcing States and local authorities to adopt future-oriented planning processes does not, in fact, mean there is no obligation to do so. Moreover, the way EU law deals with matters such as the environment, waste management and all sectorial and general policies prohibit a specifically city-oriented perspective, and require the consideration of a larger frame of view – that of the metropolitan area.

³ J.-B. Auby, *Droit européen et droit de l’urbanisme*, L’Actualité juridique Droit administratif 1995, p. 662 sqq.

⁴ F. Haumont, *Droit européen de l’aménagement du territoire et de l’urbanisme*, 2nd ed., Bruxelles 2014, p. 73.

1. A SHORT REVIEW OF EU LAW: IS THERE ANY OBLIGATION TO ADOPT A MASTER PLAN?

A short review is naturally not an exhaustive one. The object of this review is to show, among other things, that some EU legal texts do directly concern urban planning. This point is important to underline, as it shows that despite the liberal framework of the European Union, planning is an important subject the Union deals with.

The Treaty on the Functioning of the European Union (TFEU) establishes two main goals that have much to do with planning: preserving the quality of the environment and promoting social and geographic cohesion. Both of these goals are broader than the administrative limits of a single city.

Article 174 of the TFEU specifies that, in order to promote its overall harmonious development, the Union shall develop and pursue actions leading to the strengthening of its economic, social and territorial cohesion. In particular, the Union shall aim to reduce disparities between the levels of development of the various regions and the under-development of the least favored regions. Article 191 of the TFEU stipulates that Union environmental policy shall seek to preserve, protect and improve the quality of the environment. These are EU policies, and therefore do not entail obligations for the States and local authorities.

Logically, it is in secondary Union law that we find obligations for the States and local authorities. In EU derived law, we find sectorial obligations to plan. First is the well-known EU directive called SEVESO. The last EU directive on industrial risk is the 2012/18 EU of July 4 2012 called Seveso III (the third generation of the SEVESO directive). Article 13 of SEVESO III stipulates that Member States must ensure that the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment are taken into account in their land-use or other relevant policies, and that Member States must ensure that their land-use or other relevant policies, and the procedures for implementing these policies, take into account the long-term need to maintain appropriate safety distances, in order to protect areas of particular natural sensitivity or interest in the vicinity. The directive refers directly to the authorities tasked with urban planning.

The SEVESO directive imposes zoning, at minimum, with non-construction zones defined as a function of industrial risk. It also requires that those in the vicinity take measures to protect zones of particular natural sensitivity or interest. This signifies an extension of zoning beyond considerations of simple risk to human life, and it supposes, in particular, a far broader geographic coverage. From simple hazard zones around dangerous installations, the new directive requires a consideration of the natural surroundings and markedly expands the field of application of planning.

Next, there is Directive 2000/60/EC of the European Parliament and of the Council, of October 23 2000, establishing a framework for community action in the field of water policy. Article 11 of this directive specifies that each Member State must ensure the establishment for each river basin district, or for the section of an international river basin district within its territory, of a program of measures, taking into account the results of the water analyses. The water directive implies a plan that covers the entire district of a given water basin, and thus a broader zone of consideration. According to this logic, water management plans must account for and deal with major sealed-soil zones created by urbanization.

On a similar subject, directive 2007/60/ EU of October 23 2007, on the assessment and management of flood risks⁵, requires that Member States prepare flood hazard maps and flood risk maps either at the level of the river basin district or the unit of management. This directive is of particular relevance for cities, such as Paris or Warsaw, which are built along rivers. Flood risk is a central determinant of urbanization.

Directive 92/43/CEE, on the conservation of natural habitats and wild flora and fauna, is known as Natura 2000. Article 6 of this directive specifies that, for special areas of conservation, Member States must establish conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat. Article 10 adds that Member States must endeavor, where they deem necessary in their land-use planning and development policies and, in particular, with a view to improving the ecological coherence of the Natura 2000 network, to encourage the management of features of the landscape which are of major importance for wild flora and fauna. Directive 92/43 refers directly to land-use planning and requires the creation of continuous ecological corridors.

Article 1 of directive 2002/49/EC on the assessment and management of environmental noise requires that Member States adopt action plans based upon noise-mapping results, with a view to preventing and reducing environmental noise where necessary and particularly where exposure levels can cause harmful effects on human health, and with a view to preserving environmental noise quality where it is good. For obvious reasons, this directive is of particular importance in zones around airports.

Article 28 of directive 2008/98/EC on waste specifies that waste management plans shall propose an analysis of the current waste management situation for a given geographical entity, as well as measures to be taken to improve environ-

⁵ J. Ponce, *Disasters and land use law: the Spanish case in the European union legal framework*, ILSA Journal of International and Comparative Law Summer 2012, p. 650 sqq.

mentally-sound preparations for re-use, recycling, recovery and disposal of waste, and also an evaluation of how a given plan will support the implementation of the objectives and provisions of this directive.

On the basis of the directives on ambient air quality and cleaner air, in case 237/07 Dieter Janecek, on July 28 2008, the European Court of Justice ruled that a directly-impacted citizen may legally enjoin the competent national authorities to draw up an action plan, even though under national law such a person may have other courses of action available to her to compel authorities to take measures to combat atmospheric pollution. The establishment of an action plan to fight atmospheric pollution seems to directly impact the transport sector. In reality, such a plan is far broader in its implications; it includes agricultural and industrial pollution, the pollution resultant from different types of heating systems, etc. In the long term, the geographic location of diverse activities will be affected by this directive.

Last but not least, directive 2001/42/EC of June 27 2001, on the assessment of the effects of certain plans and programs on the environment, specifies in Article 10 that Member States shall monitor the significant environmental effects of the implementation of plans and programs in order, *inter alia*, to identify unforeseen adverse effects at an early stage, and thus be able to undertake appropriate remedial action. In a first reading, this directive seems to present a paradox: in the absence of a plan or program, it would seem, there should be no environmental evaluation. The idea is not to restrict evaluation to public planning, however. In reality, any construction project resulting from a public decision is covered by the directive, even if this project is not undertaken by a public entity.

A directive dealing directly with land use failed to be adopted. On November 10 2006, the European Council decided to consult the European Economic and Social Committee on the proposal of a directive establishing a framework for the protection of soil and amending directive 2004/35/EC. But the project was withdrawn in 2014, having been deemed obsolete⁶. This directive would have specifically addressed the use of land and its protection, as well as phenomena of soil sealing. In reality, the proposed directive looked like a synthesis of several sectorial directives already in place.

As we can observe after this short review, there exists no formal obligation to adopt a master plan. Many policies, such as those for noise, air quality, flood-risk management, industrial risk, etc., imply a planning process and a future-oriented plan, but there is no obligation to gather those policies into a single master plan. The legal framework created by EU law looks like a puzzle that is missing some pieces.

⁶ Decision 2014/C 153/03.

2. A MASTER PLAN AT WARSAW'S METROPOLITAN LEVEL TO FULFILL ITS EU REQUIREMENTS?

As defined by Julian Conrad Juergensmeyer and Thomas E. Roberts, the master plan is a *rational planning process*, based on five criteria⁷:

- 1) it establishes future-oriented goals and objectives;
- 2) it is continuous, non-static and periodically reevaluated;
- 3) it is based upon present and projected conditions;
- 4) it is fair; and
- 5) it is comprehensive in the sense that it deals with city growth not in a sectorial manner but comprehensively, bringing together all the issues a city faces.

All the above-mentioned policies are future-oriented with goals and objectives based on evaluation and data gathering, and are fair in the sense that they are meant to lead to social and territorial cohesion, as laid out in Article 174 of the TFUE. But there is no comprehensive approach, as described in criterion no. 5.

Clearly, the aforementioned issues and related policies and plans are not limited to administrative borders of the city of Warsaw; each issue crosses the border of the city and involves the metropolitan area of Warsaw. Flood-risk management, air quality, industrial risk, and noise management are issues that affect the entire metropolitan area of Warsaw, divided by the Vistula River.

If we return to the example of France and the Paris metropolitan area, we find that there are many sectorial plans there, dealing with air quality, noise, flood-risk management of the river Seine, etc., and that each of these is established by a separate administrative authority. The result is a lack of a comprehensive overview, and the complete absence of what would be gained by a comprehensive view: an accounting for the relationship between each of the above issues, which are intimately linked to one another. Each of these plans was established individually, when its corresponding directive entered into force (even if directive 2001/42/EC concerns all planning processes).

In conclusion, the lack of a master plan for Warsaw's metropolitan area is hardly a disadvantage. The obligation to abide by European Union requirements offers the chance to design a master plan at the adequate level. Moreover, the coming dematerialization of plans⁸, and the prospect of using big-data⁹ as a predictive tool for the creation of those plans, means an opportunity to design master

⁷ J. C. Juergensmeyer, T. E. Roberts, *Land use Planning...*, p. 26.

⁸ See the experience of dematerialization in Santiago Chile, at <https://www.youtube.com/watch?v=eZB643ECe3U&feature=youtu.be>. And soon to be published in the weekly *le Moniteur des Travaux Publics*: C. Mialot, *La planification urbaine à l'heure de la Smart City*, *Le Moniteur des Travaux Publics et du Bâtiment* 2015, p. 84 sqq.

⁹ At <http://radar.oreilly.com/2012/06/predictive-data-analytics-big-data-nyc.html>.

plans with an unprecedented appreciation of the real functioning of a metropolitan area. This will be a revolution.

THE EUROPEAN UNION AND URBAN PLANNING

Summary

There is no master plan for the metropolitan area of Warsaw. Although, at first glance, urban planning seems to be largely unregulated by UE law, the addition of sectorial regulation on many important subjects as environment, risks etc. strongly encourage a future oriented regulation of land use a master plan. And precisely because such matters goes beyond the Warsaw city's administrative boundaries, the metropolitan area seems to appear as the proper level to adopt a master plan.

UNIA EUROPEJSKA I PRAWO ZAGOSPODAROWANIA PRZESTRZENNEGO

Streszczenie

Nie istnieje ogólny plan zagospodarowania przestrzennego dla obszaru metropolitarnej Warszawy. Choć na pierwszy rzut oka planowanie urbanistyczne wydaje się nie dość uregulowane przez prawo unijne. Dodanie sektorowych regulacji w prawie UE w wielu ważnych kwestiach jak na przykład środowisko powoduje, że przyszłe regulacje będą dążyły do stworzenia całościowego planu zagospodarowania przestrzennego. Taki plan obejmowałby swym zasięgiem obszary wykraczające poza administracyjne granice Warszawy.

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KEYWORDS

metropolitan, master plan, EU law, comparative urban planning

SŁOWA KLUCZOWE

obszar metropolitarny, plan główny, prawo UE, zagospodarowanie przestrzenne w ujęciu porównawczym

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EUROPEAN UNION POLICY AND LAW RELATED TO URBAN ENVIRONMENT

1. INTRODUCTORY REMARKS

Europe is the most urbanized part of the World. Today approximately 75% of the European Union (EU) population lives in urban areas, and generates 67% of the EU's GDP¹. It has a direct influence on the lives of millions Europeans and naturally has a substantial impact on environment. While living in urbanized areas has many advantages including social and economic benefits, one should also notice that it brings serious challenges to environmental aspect of their sustainability. The EU policy and law in assuring a quality urban environment are continuously evolving in order to keep it clean, green, healthy and human friendly. Although European cities still face many environmental challenges, it should be noted that over the last 50 years the urban areas in Europe have seen significant progress in terms of improving living standards of their inhabitants.

The European Union recognizes the role that cities play in the lives of many Europeans and has committed itself to act in this field. EU, and particularly the Directorate of the Environment of the European Commission (DG Environment) acts on improvement of the urban environment in a number of different ways². *Inter alia*, through the EU's general environmental legislation on clean air and water, low levels of noise, proper waste management, biodiversity, green infra-

¹ Comp. on the http://ec.europa.eu/regional_policy/sources, *Integrated Urban Development, Cohesion Policy 2014–2020*, factsheet; also D. Czischke, C. Moloney, C. Turcu, *Raising the Game in Environmentally Sustainable Urban Regeneration, Urban II Capitalisation*, (in:) *Sustainable regeneration in urban areas*, URBACT 2015; see urbact.eu/sites/default/files/soa_04-final-03.pdf, pp. 6–14.

² The Directorate-General for Environment is the European Commission department responsible for EU policy on the environment. It aims to protect, preserve and improve the environment for present and future generations, proposing and implementing policies that ensure a high level of environmental protection and preserve the quality of life of EU citizens. It also makes sure that Member States apply EU environmental law correctly and represents the European Union in environmental matters at international meetings.

structure, etc.; with the special action programmes like European Green Capital Reward³ and the European Green Leaf⁴ schemes which allow cities to demonstrate their environmental credentials and share their approaches with other cities; and through the development of a new tool that will allow cities to assess their environmental performance in comparison to similar cities, share good practices and experience, and to monitor their progress over time. There are also a number of other closely related urban environmental activities going on across other departments of the Commission, pertaining to urban environment in particular.

2. EU POLICY ON THE URBAN ENVIRONMENT – AN OVERVIEW

The most important elements of European Union approach to urban environment are included in a number of EU documents issued by EU institutions, especially by the European Commission over last twenty years. Among them, the following would be considered as those creating the policy of the EU on environmentally sound urban development, shaping the UE legal approach to the issue:

2.1. SUSTAINABLE URBAN DEVELOPMENT IN THE EUROPEAN UNION: A FRAMEWORK FOR ACTION⁵

In this document, the Commission points on fact that many of EU policies have an important urban relevance that cannot be ignored. In this document, the Commission is taking a step towards increasing of the effectiveness of EU policies by making them more “urban sensitive”. The Commission explains that there is no attempt to attain responsibilities for urban matters or solutions on the Union level. The EU framework for action for sustainable urban development aims at better-targeted action of the EU for urban problems fewer than four independent policies. One of them is to protect and improve the urban environment towards local and global sustainability. A Framework for action points on those environmental actions that lead to the improvement of urban environment, including urban energy management, transport, waste, air quality, water, noise and contaminated land; emphasis was placed on integrated environmental management approaches. The overall aim in those fields is the protection and improvement of the urban environment to improve quality of life, safeguard human health and protect global and local eco-system.

³ See ec.europa.eu/environment/europeangreencapital/index_en.htm.

⁴ See <http://ec.europa.eu/environment/europeangreenleaf>.

⁵ COM (1998) 65 final, Brussels October 28, 1998, Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and Committee of Regions.

2.2. THEMATIC STRATEGY ON URBAN ENVIRONMENT

It points on better implementation of existing EU environmental policies and law at Member States level through exchange of experience between EU and local authorities for achieving a better quality of life through an integrated approach concentrating on urban areas⁶. Principles contained in this document have been further reflected in other strategies as for example, Thematic Strategy on Air Pollution. The Strategy identifies the main issues most cities in Europe are confronted with such as poor air quality, high level of traffic, high level of ambient noise, poor quality built environment, derelict land, greenhouse gas emissions, urban sprawl, generation of waste and wastewater.

2.3. THE LEIPZIG CHARTER ON SUSTAINABLE EUROPEAN CITIES OF 2007

It is about commitments to make European cities healthy, attractive and sustainable place to live and work⁷. It is a document of the EU Member States that has been drawn up with the knowledge of the challenges and environmental backgrounds of European cities. The Charter considers integrated urban development policy as a best one for action aiming on improving and upgrading the physical urban environment⁸. According to the Charter's provision, a sound built environment and a modern and efficient urban infrastructure are closely linked. For this reason, it is necessary to improve existing building stock in deprived neighborhoods concerning their design, physical conditions and energy efficiency. In order to increase the sustainability of investments in upgrading the physical environment, they must be embedded in a long-term development strategy, which also includes public and private investments.

2.4. SUSTAINABLE DEVELOPMENT STRATEGY FOR THE EU

It calls for the creation of sustainable local communities with the high quality of life, attention to urban transport and the cooperation with rural areas⁹. The Strategy provides a European Union policy framework on sustainable development that takes into account the needs of the present generations without compro-

⁶ Communication from the Commission to the Council and the Parliament on Thematic Strategy on the Urban Environment, COM/2005/718 final, at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:128171>.

⁷ See http://eur-lex.europa.eu/legal_

⁸ According to the Charter, „integrated urban development policy means simultaneous and fair consideration of the concerns and interests which are relevant to urban development. Integrated urban development is a process in which the spatial, sectorial and temporal aspects of key areas of urban policy are coordinated”.

⁹ See http://eur-lex.europa.eu/legal_

missing the ability of future generations to meet their own needs. It rests on four separate pillars, among them environmental ones. The Strategy is based *inter alia* on the principle of solidarity within and between generations, policy coherence, policy integration, use of best available knowledge, the precautionary principle and the polluter pays principle.

The Strategy identifies a number of unsustainable trends on which action has to be taken. According to the Strategy, first of long-term specific action has to be taken on climate change. In addition, energy efficiency, renewable energy and transport have been considered subjects of particular efforts. The next are to limit the adverse effects of transport on environment, changing modes of production and consumption, enforcing sustainable management of natural resources, limiting major threats to public health and combating social exclusion and poverty as an evident threat to environment. In the 2009 review of the EU strategy for sustainable development, all of those objectives were listed again to be improved¹⁰.

2.5. THE LISBON STRATEGY

The strategy was launched in 2000 as a response to challenges of globalization. The objective of the Strategy for European Union was to become the economy respecting the environment¹¹. The renewed 2010 Lisbon Strategy sets as a priority the high quality of urban environment to make Europe a more attractive place to invest¹². The Europe 2020 Strategy aims at achieving a resource efficient Europe, towards a low carbon economy, increasing the use of renewable energy sources, modernizing transport sector, and similar actions that will affect cities and their environment¹³.

2.6. THE EUROPEAN UNION COHESION POLICY 2014–2020¹⁴

It is a document, which contains proposals from the European Commission for cohesion policy on integrated sustainable urban development. The proposals aim to foster integrated urban policies to enhance sustainable urban development in order to strengthen the role of cities within the context of cohesion policy of the EU. As a principle, the European Regional Development Fund (ERDF) should support sustainable urban development through integrated strategies that tackle the economic, environmental, climate and social challenges of the urban areas. The EU Member States are encouraged to make extensive use of financial instru-

¹⁰ *Ibidem*.

¹¹ See www.europarl.europa.eu/summits/lis_1_en.htm?texMode=on.

¹² *Commission Staff Working Document*, Brussels, February 2, 2010, SEC (2010) 114 final.

¹³ See ec.europa.eu/europa_2020/index_en.htm.

¹⁴ For details see http://ec.europa.eu/regional_policy/sources.

ments in supporting sustainable urban development. The reinforced integrated approach to tackle urban issues where more responsibilities and opportunities are given for cities is different from previous 2007–2013 Cohesion Policy.

2.7. 7TH ENVIRONMENTAL ACTION PROGRAMME

The European Commission has, in recent years, been increasing its focus on urban issues, as a response to the fact that by 2020 it is estimated that almost 80% of EU citizens will be living in cities. The political importance of the issue is demonstrated by its inclusion in the 7th Environmental Action Programme (7 EAP)¹⁵ under Priority Objective 8 – Sustainable Cities: Working Together for Common Solutions.

Specifically, the Action Programme states that by 2020 a majority of cities in the Union are implementing policies for sustainable urban planning and design, and that the Commission should develop a set of criteria to assess the environmental performance of cities, taking into account the economic, social and territorial impacts¹⁶. The Programme is to guide European environment policy until 2020. However, in order to give more long-term direction it sets out a vision beyond that, of where it wants the Union to be by 2050. It identifies three key objectives, i.e. to protect, conserve and enhance the Union's natural capital; to turn the Union into a resource efficient, green, and competitive low-carbon economy; to safeguard the Union's citizens from environment-related pressures and risks to health and wellbeing.

The 7th Plan of Action points to four elements that will help Europe deliver these goals: better implementation of legislation; better information by improving the knowledge base; more and wiser investment for environment and climate policy; full integration of environmental requirements and considerations into other policies. In addition, two horizontal priority objectives complete the programme: to make the Union's cities more sustainable and to help the Union address international environmental and climate challenges more effectively.

2.8. GREEN INFRASTRUCTURE STRATEGY

It is the EU strategy to promote the deployment of green infrastructure in the EU in urban and rural areas¹⁷, together with an enclosed document – Commission Staff Working Paper: Technical Information¹⁸. This is an important step in implementing the EU 2020 Biodiversity Strategy and specifically Target 2 requiring that

¹⁵ See <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013D1386>.

¹⁶ *Ibidem*.

¹⁷ *Communication from the Commission: Green Infrastructure (GI) (COM(2010) 249 final*.

¹⁸ SEC(2013)155 final.

by 2020, ecosystems and their services are maintained and enhanced by establishing green infrastructure and restoring at least 15% of degraded ecosystems¹⁹.

In the follow-up of the Commission's Green Infrastructure Strategy, the European Parliament adopted a resolution on Green Infrastructure²⁰. In addition, the Committee of the Region (COR) adopted an opinion on Green Infrastructure, and likewise the European Economic and Social Committee (ECOSOC)²¹. Green Infrastructure (GI) is contributing to all other targets of the EU Biodiversity Strategy, such as: 1) the full implementation of the Directive 2009/147 on the conservation of wild birds (so-called Birds Directive)²² and the Directive 92/43/ on the protection of natural habitats and wild fauna and flora (so-called Habitats Directive)²³ (target 1, and 2) to maintain and enhance biodiversity in the wider countryside and the marine environment (targets 3, and 4).

The European Commission had convened two Working Groups in order to develop European Green Infrastructure policy and provided concrete recommendations. The revised Working Group on Green Infrastructure Implementation and Restoration will develop documents supporting Green Infrastructure, in particular on national and regional level.

3. AN OVERVIEW OF THE EU LAW RELATED TO URBAN ENVIRONMENT

Over the past decades, the European Union has adopted a broad range of legislation related to environment. As a result, air, water and soil pollution has significantly been reduced. In addition, chemicals legislation has been modernized and the use of many toxic or hazardous substances has been restricted. Today, the EU citizens enjoy some of the best water quality in the world, and over 18% of EU's territory has been designated as protected areas for nature.

3.1. CLEAN URBAN AIR

Clean air is essential to our health and to the environment. However, since the industrial revolution, the quality of the air we breathe has deteriorated considerably, mainly because of human activities. Industrial and energy production, the burning of fossil fuels and the dramatic rise in road traffic – all contribute to

¹⁹ See ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm.

²⁰ See ec.europa.eu/environment/nature/ecosystem/.

²¹ *Ibidem*.

²² OJ 2010, L 20, p. 7.

²³ OJ 1992, L 206, p. 7.

air pollution in our towns and cities, which, in turn, can lead to serious problems for both health and the environment. Air pollution causes lost working days, and high healthcare costs, with vulnerable groups such as children, asthmatics and the elderly the worst affected. It damages ecosystems through excess nitrogen pollution (eutrophication) and acid rain. For these reasons, air quality is an area in which the European Union has been very active. Since the early 1970s, the EU has been working to improve air quality by controlling emissions of harmful substances into the atmosphere, improving fuel quality, and by integrating environmental protection requirements into the transport and energy sectors. As the result, much progress has been made in tackling air pollutants; however, despite the progress made, air quality continues to cause serious problems.

The EU's policy, included in the Clean Air for Europe (CAFE) strategy embodied in the Directive 2008/50/EC on ambient air quality and cleaner air for Europe²⁴, forms a policy framework for achieving safe air quality levels for all European citizens, especially for those that live in cities. The Directive, which harmonized standards for the air pollutants, requires the UE Members States to define air quality zones covering the territory of each Member State. Where standards are not met, the local and national authorities holding responsibilities for those zones must develop air quality management plans. According to the right to information, the Directive's provisions includes also mechanisms for informing citizens about the quality of the air, including situations when local air pollution reaches potentially unhealthy levels what needs an introduction of special measures.

Control over environmentally damaging emissions from the heaviest industrial air polluters in cities is in place through the following EU legal acts: the Directive on limitation of emission of certain pollutant into the air from large combustion plants (2001/80/EC)²⁵; the Directive on integrated pollution prevention control (IPPC) (2008/1/EC)²⁶; the Directive on the incineration of waste (2000/76/EC)²⁷; the Directive on the control of volatile organic compound (VOC) emissions resulting from storage of petrol and distribution from terminals to service stations (94/63/EC)²⁸ (volatile organic compounds, which contribute to ozone formation); the Directive on the limitation of emissions of volatile organic compounds due to the use of organic solvents in certain activities and installations²⁹.

The EU has established European Pollutant Release Register, which provides access to emissions data reported from more than 24 000 industrial facilities³⁰,

²⁴ OJ 2008, L 152, p. 1.

²⁵ OJ 2001, L 309, p. 1.

²⁶ OJ 2008, L 24, p. 8.

²⁷ OJ 2000, L332, p. 91.

²⁸ OJ 1994, L 365, p. 24.

²⁹ OJ 1999, L 85, p. 1.

³⁰ See <http://prtr.ec.europa.eu>.

inter alia in order to inform the European citizens about emissions from major sources of pollution near their cities.

Motor vehicles are other sources of air pollution in the cities and towns. The EU law regulates vehicle emissions through directives covering cars and vans (70/220/EEC)³¹ and heavy-duty vehicles (88/77/EEC)³² where steadily issued amendments tighten emission standards. Also important is the Directive (2009/30/EC) as regards the specification of petrol, diesel and gas-oil and introducing a mechanism to monitor and reduce greenhouse gas emissions³³, which aims to further reduce polluting emissions from petrol by setting minimum quality standards. The Directive also addresses climate change by requiring minimum 6% reduction of greenhouse gas emissions from road transport by 2020.

The European Commission has carried out a comprehensive review of the existing EU air policy building on the 2005 thematic Strategy on Air Pollution. In December 2013, drawing on the conclusions from the review, the Commission has adopted a Clean Air Policy Package, consisting of a new Clean Air Programme for Europe with new air quality objectives for the period up to 2030, a revised Directive on national emission ceilings for certain air pollutants (2001/81 EC)³⁴, stricter national emission ceilings for the six main pollutants, and a proposal for a new Directive to reduce pollution from medium-sized combustion installations.

3.2. URBAN WASTE

According to the EU data, every year, each of the 500 million citizens living in the EU throws away more than half a ton of waste³⁵. The Directive on waste (2008/98/EC)³⁶ sets out norms for waste management across the EU. The Directive sets an order of priorities for waste management with the preferred option of waste prevention, followed by re-use, recycling, other forms of recovery such as energy from waste, and improved final disposal followed by monitoring. Waste should be managed so that it does not endanger human health, does not harm the environment, pose risk to air, water, soil, plants or animals, be a nuisance through odors or noise, or adversely affect the environment. By 2020, the EU Member States must take all necessary measures to ensure that at least 50% of paper, plastics, metal and glass from households and similar origins is prepared for reuse

³¹ Directive 70/220 on measures to be taken against air pollution by emissions from motor vehicles, OJ 1970, L 42, p. 16.

³² Directive 88/77 relating to the measures to be taken against the emission of gaseous pollutants from diesel engines for use in vehicles, OJ 1988, L36, p. 33.

³³ OJ 2009, L 140, p. 88.

³⁴ OJ 2001, L 309, p. 22.

³⁵ *Making our cities attractive and sustainable. How the EU contributes to improving the urban environment*, European Commission 2010, p. 12.

³⁶ OJ 2008, L 312, p. 3.

or recycled. By 2020, Member States also must take all ‘necessary measures’ to ensure that at least 70% of non-hazardous construction and demolition waste is reused, recycled or undergoes material recovery.

A number of waste streams have been targeted for special attention by various EU directives, such as the Directive on packaging and packaging waste (94/62 EC)³⁷; the Directive on end-of-life vehicles (2000/53/EC, as amended)³⁸, and the Directive on waste electrical and electronic equipment (2002/96/EC)³⁹. Most European cities now have special systems to collect, re-use, recycle and dispose of these types of waste. In addition, provisions of two other directives are to be mentioned as far as the waste management is concerned. The Directive on the incineration of waste (2000/76/EC) is applied in case waste cannot be re-used or recycled⁴⁰, and the Directive on landfills (99/31/EC) that sets guidelines for landfill management, including targets for reducing quantities of biodegradable waste⁴¹.

3.3. TOXIC FREE URBAN ENVIRONMENT

As far as the urban environment is concerned, one should mention the effects of exposure to hazardous substances because of their potential harm to human health. It should be stressed that the EU has set a new international standard for chemical regulation through the Regulation concerning the registration, evaluation, authorization and restriction of chemicals (EC/1907/2006)⁴². Further regulatory controls important for the urban environment are provided through the Regulation concerning the placing of plant protection products on the market (EC/1107/2009)⁴³ and the Directive establishing a framework for Community action to achieve the sustainable use of pesticides (2009/128/EC)⁴⁴. The directives’ provisions include measures to protect drinking water and to reduce pesticide use or risks in specific areas such as public parks and gardens, sports and recreation grounds, school grounds and children’s playgrounds.

3.4. SAFE URBAN WATER

The importance of clean drinking water for all EU residence has been one of the priorities of the European Union institutions. Since the 1970s, a series of

³⁷ OJ 1994, L 365, p. 10.

³⁸ OJ 2000, L 269, p. 34.

³⁹ OJ 2003, L 37, p. 24.

⁴⁰ OJ 2000, L 332, p. 91.

⁴¹ OJ 1999, L 182, p. 1.

⁴² OJ 2006, L 396, p. 1.

⁴³ OJ 2009, L 309, p. 1.

⁴⁴ OJ 2009, L 309, p. 71.

EU directives have been adopted to achieve objectives relating to water pollution and management. These have addressed, *inter alia*, the following issues: setting standards or practices to control emissions of substances to water; setting quality objectives for water and setting overall management structures for water. One of those directives is the Directive on the quality of water intended for human consumption (98/83/EC), which ensures that the water delivered to citizens through urban water supply system is safe to drink⁴⁵. According to its provisions, cities and towns must regularly monitor the quality of water delivered at the taps and keep consumers informed of the quality.

The clean urban environment is among the goals of the Directive on urban wastewater (91/271)⁴⁶. Its objective is to protect the environment from the adverse effects of urban wastewater discharges and discharges from certain industrial sectors and concerns the collection, treatment and discharge of domestic wastewater, mixture of wastewater and wastewater from certain industrial sectors (comp. Annex III of the Directive).

Four main principles pertaining to wastewater have been laid down in the Directive i.e. planning, regulation, monitoring and information. Specifically the Directive requires the collection and treatment of wastewater in all agglomerations of 2000 population equivalents; secondary treatment of all discharges from agglomerations of 2000 population equivalents, and more advanced treatment for agglomerations of 10 000 populations' equivalents in designated sensitive areas and their catchments. The Directive sets also requirements for pre-authorization of all discharges of urban wastewater, of discharges from the food-processing industry and of industrial discharges into urban wastewater collection systems as well as monitoring of the performance of treatment plants and receiving waters; and controls of sewage sludge disposal and re-use, and treated wastewater re-use whenever it is appropriate.

Although those provisions are the most costly of all of the environmental requirements to implement, the reductions in environmental pollution are significant. The Directive has helped rivers, lakes and coastal areas in Europe and has been important for meeting the health-based standards of the Directive on the quality of bathing water (2006/7/EC)⁴⁷.

Another EU legal act i.e. the Directive establishing a framework for Community action in field of water policy (2000/60/EC) has comprehensively expanded the scope and the objectives of water management and water protection both for surface waters and for ground waters. Its aim is to balance the competing demands for water from consumers, industry, agriculture and nature⁴⁸. The Direc-

⁴⁵ OJ 1998, L 330, p. 32.

⁴⁶ OJ 1991, L 135, p. 40.

⁴⁷ OJ 2006, L 64, p. 37.

⁴⁸ OJ 2000, L 327, p. 1.

tive absorbs the environmental objectives of several elements of legislation from the 1970s and 1980s, and repeals the old legislation step by step.

Other measures aimed at preventing pollution from contaminating our water resources include the Directive on environmental quality standards in the field of water policy (2008/105/EC)⁴⁹, the Directive on integrated pollution prevention control (2008/1/EC)⁵⁰, and Directive on the protection of groundwater against pollution and deterioration (2006/118/EC)⁵¹.

3.5. GREEN URBAN INFRASTRUCTURE

Green infrastructure is a very important factor for well-being of inhabitants of cities and towns, contributing to quality of life in urban environment. From the very beginning of its activities in the field of environment, the idea of the EU green spaces has been promoted through the EU legislation for nature and biodiversity protection.

The EU is committed to the protection of biodiversity and to preventing biodiversity loss within the EU by 2020. Over the last 25 years, the EU has built up a vast network of 26,000 protected areas in all the Member States and an area of more than 750,000 km², which is 18% of the EU's land area, known as Natura 2000, the largest network of protected areas in the world, and proves the importance the EU attaches to biodiversity⁵². The legal basis for Natura 2000 comes from the aforementioned Birds Directive and Habitats Directive, which both form the base for the EU's internal biodiversity policy.

3.6. URBAN NOISE POLLUTION

Environmental noise is the most common source of environmental pollution for city dwellers. As the demand for mobility grows, the use of cars, trains, and planes increases, and so does the level of noise. The Directive relating to assessment and management of environmental noise (2002/49) is the main EU instrument to identify noise pollution levels and to trigger the necessary action both at Member State and at EU level⁵³. To pursue its aims, the Directive focuses on three main activities: the determination of exposure to environmental noise; ensuring that information on environmental noise and its effects is made available to the public, preventing, reducing environmental noise where necessary; and preserving environmental noise quality where it is good.

⁴⁹ OJ 2008, L 348, p. 84.

⁵⁰ OJ 2008, L 24, p. 8.

⁵¹ OJ 2006, L 372, p. 19.

⁵² See ec.europa.eu/environemnt/nature/natura2000/index_en.htm.

⁵³ OJ 2002, L 189, p. 12.

The Directive applies to noise to which humans are exposed, particularly in built-up areas, in public parks or other quiet areas in an agglomeration, in quiet areas in open country, near schools, hospitals and other noise-sensitive buildings and areas. It does not apply to noise that is caused by the exposed person himself, noise from domestic activities, noise created by neighbors, noise at work places or noise inside means of transport or due to military activities in military areas.

The Directive requires that the EU Member States prepare and publish, every 5 years, noise maps and noise management action plans for: agglomerations with more than 100,000 inhabitants; major roads (more than 3 million vehicles a year); major railways (more than 30,000 trains a year); major airports (more than 50,000 movements a year, including small aircrafts and helicopters). When developing noise management action plans, Member States' authorities are required to consult the concerned public.

Member States' noise maps and action plans can also be consulted in the European Environment Agency⁵⁴. It is important to note, however, that the Directive does not set limit or target values, nor does it prescribe the measures to be included in the action plans, thus leaving those issues at the discretion of the competent Member State authorities. In implementing the Directive, the European Commission is supported by the Noise Regulatory Committee⁵⁵ and the Noise Expert Group⁵⁶, as well as the European Environment Agency.

3.7. TOWN AND COUNTRY PLANNING AS A POSSIBLE TOOL OF ENVIRONMENTAL POLICY

In general, towns and country planning (TCP) law regime is not particularly oriented on environmental protection. However, there are some areas of TCP regulation with relevance to environmental law like, for example, the system of development plans which ensures that environmental requirements are considered at the level of policy-making and the development control process, in which planning permission is required. It should be stressed that the town and country planning is a political system of decision-making of State's authorities as well as of authorities on the local level, which are supposed to make decisions by balancing economic, political, environmental, and social factors. Therefore, the TCP law is ultimately about procedures, ensuring that decisions are made correctly.

The system of development plans is of central importance in many areas of environmental law, especially when used in connection with other control measures. The practice shows, that although planning remains a political process, the concern is that a much more comprehensive approach to environmental require-

⁵⁴ See www.eea.europa.eu.

⁵⁵ See ec.europa.eu/environment/noise/directive_en.htm.

⁵⁶ See ENN-NOISE@ec.europa.eu.

ments is needed because the impact of planning control is in many ways incomplete or inadequate from the environmental protection perspective.

Although the Lisbon Treaty does not include provisions related to TCP principles covered by the EU primary and secondary law in relation to environment and eventually, in town and country planning, law could be divided as follows: 1) general principles stemming from the European Union primary law connected with environmental protection issues are: balance and sustainable development principle (Article 3 of TEU); subsidiarity and proportionality principle; integration principle (Article 5 of TUE); high level of protection and improvement of the quality of the environment principle (Article 3 of TEU); and 2) Particular principles of the EU policy on environment listed in Article 191 of TFEU) are as follows: precautionary principle, the principles that preventive action should be taken, that environmental damage should, as a priority, be rectified at source, and that the polluter should pay⁵⁷.

From the EU environmental protection law perspective, town and country planning system should be perceived as an anticipatory regulatory mechanism emphasizing prevention of harm to environment. The so-called SEA Directive on assessment of the certain plans and programs on the environment (2001/42) applies to a wide range of public plans and programmes (e.g. on land use, transport, energy, waste, agriculture, etc.)⁵⁸. The SEA plans and programmes in the sense of the SEA Directive must be prepared or adopted by an authority (at national, regional or local level) and be required by legislative, regulatory or administrative provisions.

The SEA is mandatory for plans and programmes which are prepared for agriculture, forestry, fisheries, energy, industry, transport, waste/water management, telecommunications, tourism, town and country planning or land use, and which set the framework for future development consent of projects listed in the so called EIA Directive on the assessment of the effects of certain public and private projects on the environment (2011/92 with further amendments)⁵⁹, or have been determined to require an assessment under the so-called Habitat Directive.

Broadly speaking, for the plans and programmes not included above, the Member States have to carry out a screening procedure to determine whether the plans/programmes are likely to have significant environmental effects. If there are significant effects, a SEA is needed. The screening procedure is based on criteria set out in Annex II of the Directive.

The SEA procedure can be summarized in the following way: an environmental report is prepared, in which the likely significant effects on the environment

⁵⁷ For more detailed analysis of the EU environmental policy and law principles see: M. M. Kenig-Witkowska, *Prawo środowiska Unii Europejskiej. Zagadnienia systemowe [European Union Environmental Law. Systemic Issues]*, Warsaw 2011.

⁵⁸ OJ 2001, L 197, p. 30.

⁵⁹ OJ 2014, L 124, p. 1.

and the reasonable alternatives of the proposed plan or programme are identified. Then the public and the environmental authorities are informed and consulted on the draft plan or programme and the environmental report prepared. Regarding plans and programmes that are likely to have significant effects on the environment in the another EU Member State, the Member State in whose territory the plan or programme is being prepared must consult the other Member State(s). On this issue, the SEA Directive follows the general approach taken by the SEA Protocol to the UN ECE Convention on Environmental Impact Assessment in a Transboundary Context⁶⁰.

The environmental report and the results of the consultations are taken into account before adoption. Once the plan or programme is adopted, the environmental authorities and the public are informed and relevant information is made available to them. In order to identify unforeseen adverse effects at an early stage, significant environmental effects of the plan or programme are to be monitored.

It should be noted that there are some differences between the EIA and SEA procedures. For example, the SEA requires the environmental authorities to be consulted at the screening stage; scoping is obligatory under the SEA; the SEA requires an assessment of reasonable alternatives (under the EIA the developer chooses the alternatives to be studied). Under the SEA, the EU Member State must monitor the significant environmental effects of the implementation of plans or programmes in order to identify unforeseen adverse effects and undertake appropriate remedial action. The SEA also obliges the EU Member States to ensure that environmental reports are of a sufficient quality.

4. CLOSING REMARKS

There is a simple conclusion arising from the review of EU policy and law on urban environment, which shows that the European Union is committed to make European town and cities healthy and attractive to live. A key feature of many EU's policies and laws on environment are measures aimed specifically at protecting the urban environment. The EU acts in a number of important ways in this field, setting policies, adopting legal measures, setting standards and providing financial resources for protecting urban environment.

The European Union policy and law in supporting, protecting and improving the urban environment is continuously evolving and developing. In general, the urban sustainable development promoted in the EU is about the needs of the present without compromising the ability of the future generation of urban dwellers to meet their needs. The concept of urban development is based *inter alia* on

⁶⁰ See www.unece.org/env/eia/documents/legaltexts/protocolenglish.

sustainable use of environment, also from the aspirations of the future generation perspective. Therefore, the urban environmental history, which is often neglected when it comes to assess the present state and plans for urban development, should be taken into consideration when it comes to the town and country planning. It looks very logical that lessons from urban environmental history have to be seen as a knowledge base for long-term horizons to current debates over urban development's consequences on environment, keeping in mind that historical approach offers perspective for the current policy maker in this matter⁶¹.

EUROPEAN UNION POLICY AND LAW RELATED TO URBAN ENVIRONMENT

Summary

The paper, based on policy documents and legal acts, presents an overview of the EU policy and law related to town and cities environment. The European Union recognizes the role that urban areas play in the lives of many Europeans and committed itself to act in this field. The EU and especially the European Commission (DG Environment) has been intensively acting on improving the urban environment in a number of ways. The overview of the EU policy and law on urban environment shows that the European Union is committed to make European towns and cities healthy and attractive to live. A key feature of many EU's policies and laws on environment are measures aimed specifically at protecting the urban environment. The EU acts in a number of important ways in this field, setting policies, adopting legal measures, setting standards and providing financial resources for protecting urban environment.

POLITYKA I PRAWO UNII EUROPEJSKIEJ W ODNIESIENIU DO ŚRODOWISKA MIEJSKIEGO

Streszczenie

Artykuł przedstawia zagadnienia polityki i prawa Unii Europejskiej w materii ochrony środowiska miejskiego. Unia Europejska, zwłaszcza Dyrekcja Generalna ds.

⁶¹ D. Schot, *Urban environmental history: what lessons are there to be learned?*, Boreal Environmental Research December 2004.

Środowiska Komisji Europejskiej, przywiązuje dużą wagę do poprawy stanu środowiska miejskiego. Przegląd polityki UE i regulacji prawnych dotyczących środowiska na obszarach zurbanizowanych pokazuje, że prawo UE tworzy zobowiązania, zarówno po stronie UE, jak i państw członkowskich, zmierzające do zapewnienia mieszkańcom miast europejskich zdrowych i atrakcyjnych warunków życia. Główną cechą polityki i przepisów prawa UE w dziedzinie środowiska jest zastosowanie specjalnych środków skierowanych na ochronę środowiska miejskiego. Unia Europejska wykazuje aktywność w tej dziedzinie, wyznaczając kierunki działań, przyjmując prawne rozwiązania, wyznaczając standardy oraz przewiduje finansowe środki przeznaczone na ochronę środowiska miejskiego.

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SŁOWA KLUCZOWE

Unia Europejska, ochrona środowiska miejskiego, polityka dotycząca środowiska naturalnego, ochrona prawna środowiska

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URBAN CLIMATE CHANGE GOVERNANCE IN CHINA 2015

1. INTRODUCTION

Most urban responses to climate change worldwide have focused on climate change mitigation – the actions taken to reduce the impact of human activity on the climate system, primarily through reducing net greenhouse gas (GHG) emissions¹. The objective of the United Nations Framework Convention on Climate Change (UNFCCC) is to achieve “stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”². The Intergovernmental Panel on Climate Change (IPCC) suggests that the plausible limit of “dangerous anthropogenic interference” set out in policymaking is beyond the work of science because normative judgments are inherently involved. The policy and scientific communities have basically agreed that a 2°C increase (from pre-industrial levels) in the global annual mean surface temperature is the maximum acceptable threshold of risk to the ecosystem³.

¹ IPCC, *Climate Change 2007: Mitigation of Climate Change*, (in:) B. Metz, O. R. Davidson, P. R. Bosch, R. Dave, L. A. Meyer (eds.), *IPCC Fourth Assessment Report – Working Group III*, Cambridge, New York, Intergovernmental Panel on Climate Change 2007; IPCC, *Climate Change 2013: The Physical Science Basis – (Approved) Summary for Policymakers. IPCC Fifth Assessment Report: Working Group I*, Stockholm, Intergovernmental Panel on Climate Change 2013.

² United Nations, *The United Nations Framework Convention on Climate Change*, Rio de Janeiro 1994.

³ CEU 2005. *Presidency Conclusions – Brussels, 22 and 23 March 2005*, European Commission, Council of the European Union. Brussels, Belgium, at <http://www.eu2005.lu/en/actualites/conseil/2005/03/23conseileuropen/ceconcl.pdf> (visited Sept. 27, 2013); J. Hansen, M. Sato, R. Ruedy, K. Lo, D. W. Lea, M. Medina-Elizade, *Global Temperature Change*, Proceedings of the National Academy of Sciences 2006, No. 103, pp. 14288–14293; F. R. Rijsberman, R. Swart, *Targets and Indicators of Climatic Change*, Stockholm 1990.

While there is recognition that we are already locked into climate change due to past emissions, and that there is a need to adapt to stress and change and to build resilience, efforts remain focused on policies to measure and monitor emissions, set targets and develop action plans. This is also the case in China. The 2°C threshold requires nations to follow the ‘common but differentiated’ principle by which the reduction of emissions is offset by a country’s current growth needs.

In the past three decades, government policies in China have created an ‘energy-intensive’ and ‘high carbon’ urban mode through their prescriptions to increase urbanisation and economic growth⁴. Although China’s per capita GHG emissions remain the lowest among the BRICS countries and the global north, its total CO₂ emissions are on a rapid growth trend since economic reforms were launched in 1978.

In 2009, shortly before the Copenhagen Conference of Parties (COP15), China announced a national commitment to a 40–45% reduction in carbon dioxide (CO₂) per unit of GDP by 2020 from 2005 levels (17% for the 2011–2015 period). Moreover, the 12th Five-Year Plan, which charts the social and economic development of China from 2011–2015, states that the main priorities during this period are sustainable growth, industrial upgrading and the promotion of domestic consumption. These priorities explain why certain sectors, including energy, automotive, IT infrastructure and biotechnology, receive a high degree of focus⁵. In particular, *energy security and climate change mitigation* have emerged as key policy priorities. This demonstrates that the Chinese central government (CCG) is committed to carbon control and a low carbon transition, despite the fact that such transition challenges current development patterns and poses great implementation difficulties, such as changing production and consumption patterns, and generally altering what is currently considered by many in China as quality of life – the accumulation of material wealth. On 3 June 2014, He Jiankun, chairman of China’s Advisory Committee in Climate Change, told a conference in Beijing that absolute cap on carbon emissions will be introduced in 2016.

The implementation of these national carbon reduction policies is prescribed to take place at the municipal level through regular policy implementation avenues and through low carbon experiments (pilot projects) in metropolises such as Baoding, Shanghai, Hangzhou, Jilin, Zhuhai, Nanchang, Xiamen and 100 other cities. According to the official account, these localities have developed blueprints for building low carbon cities that are spontaneously initiated and

⁴ S. Dhakal, *Urban Energy Transitions in Chinese Cities*, (in:) H. Bulkeley, V. C. Broto, M. Hodson, S. Marvin (eds.), *Cities and Low Carbon Transitions*, New York 2011.

⁵ KPMG Insight Series, *China’s 12th Five-Year Plan (2011–2015) – KPMG Insight Series*, at <http://www.kpmg.com/cn/en/issuesandinsights/articlespublications/publicationseries/5-years-plan/pages/default.aspx> (visited May 8, 2013).

experiment-oriented⁶. The approaches these cities have taken to the low carbon transition are determined by their own choice of pathways. For example, Shanghai used the building of the Expo Park as a means to implement a low carbon strategy through site selection, planning, design, construction and operation of the park and of the transport and accommodation infrastructures. Nevertheless, the city was unable to extend the same development pattern to other structures or to the whole city due to financial and land-use constraints. Baoding branded itself as China's Power Valley and devised its transition by investing in photovoltaic, wind, power-storage and power transmission, with 105 districts powered by solar energy, although it was unable to make the transition in other sectors of its economy⁷.

While it is difficult to evaluate and determine the success of urban carbon reduction actions and activities and how much they contribute to absolute or relative GHG emissions in China, it is essential to recognise three intertwined *issues affecting carbon reduction in Chinese cities: municipal governance* (including the effects of decentralisation, personnel incentives for municipal authorities and their legitimacy/accountability), *policy design of development plans* (including financial resources and land concessions, urban planning and sectoral innovation)⁸ and *urban contribution to energy consumption*⁹.

2. MUNICIPAL GOVERNANCE

The CCG establishes broad national policies and targets for urbanisation, rural to urban conversion, energy saving and CO₂ emissions reduction. The CCG also reviews and approves urban master plans, large investment infrastructural and development projects and applications for rural to urban land conversion. In addition, it provides technical guidelines and standards for cities in specific areas

⁶ G. Zhuang, *Towards a Low-Carbon Economy: International Experience and Development Trends*, (in:) W. Wang, G. Zheng, J. Pan, Y. Luo, Y. Chen, H. Chen (eds.), *China's Climate Change Policies*, Abingdon 2012.

⁷ *Ibidem*.

⁸ J. Wang, M. Tang, *The Romance of the Three Kingdoms in the Formulation of City Master Plan*, *The Outlook Newsweek* 2005, Vol. 45; B. Qiu, *Responding to Opportunities and Challenges: Key Issues and Policies for Urbanization Strategies in China*, Beijing 2008; World Bank, *The Spatial Growth of Metropolitan Cities in China: Issues and Options in Urban Land Use*, Washington DC 2009; Z. Liu, A. Salzberg, *Developing Low-Carbon Cities in China: Local Governance, Municipal Finance, and Land-Use Planning – the Key Underlying Drivers*, (in:) A. Baeumler, E. Ijjasz-Vasquez, S. Mehndiratta (eds.), *Sustainable Low-Carbon City Development in China*, Washington DC 2012.

⁹ S. Dhakal, *Urban Energy Use and Carbon Emissions from Cities in China and Policy Implications*, *Energy Policy* 2009, No. 37, pp. 4208–4219.

such public transport and utility services. Direct financial support is limited to intergovernmental transfers to provincial and municipal governments, primarily in less developed provinces.

At the local level, municipal governments have functions that range from developing the local economy and employment to the provision and management of municipal services (waste collection, leisure and culture, etc.). This devolution of government functions puts Chinese municipalities in the enviable position of being able to make decisions and to implement them swiftly. One only needs to look at the past three decades of rapid urban development to ascertain Chinese municipalities' governing capacity. However, in the planning of urban low carbon transitions that require looking beyond short term economic growth towards longer term planning for sustainable development, this capacity is being driven by a combination of decentralisation, incentives for municipal authorities, questions about their legitimacy (accountability) and emerging forms of urban governance.

2.1. DECENTRALISATION

China has devolved a range of functional and fiscal responsibilities from the national to the subnational governments, particularly municipalities. Beyond the review and approval of master plans (including urban spatial plans, national socio-economic development five-year plans and state land utilisation plans), investment in large urban infrastructure projects, setting technical standards, providing policy guidelines and facilitating knowledge transfer and capacity building, the central (national) government's capacity to guide and control subnational governments is limited by the rapid economic and spatial changes at the local level and by the limited budget available for urban management (not development).

Spillovers from rapid urban development such as CO₂ emissions and energy security have been the concern of local governments. The co-benefits of transitioning to a low carbon economy at the local level – such as energy saving, reducing the environmental and health risks posed by degradation and improving quality of life – are not sufficient incentives for cities to take action without central government support. Chinese mayors are held accountable not only for the provision of urban public services, but also for the performance of the urban economy, investment and employment. They face difficult choices between higher GDP growth and more sustainable urban development.

2.2. PERSONNEL, INCENTIVES AND ACCOUNTABILITY

Since the opening up in the 1980s, China's local authorities – Communist Party secretaries of provinces and cities, provincial governors and city majors – have been evaluated almost exclusively by their contribution to annual GDP

growth. This has created a culture of competition across time and space (with preceding and with neighbouring authorities), driven by a system that rates individuals on their technical competence and good economic performance. As such, local authorities focus on the single issue of economic development. Nevertheless, as we argue in this volume, this focus is now beginning to change due to the formation of climate collaborative municipal networks and policy directions such as ‘green GDP’ (2004) and ‘people-centred development’ (2003), which are starting to be implemented even if their effects are only just beginning to be felt.

3. POLICY DESIGN OF DEVELOPMENT PLANS

3.1. FINANCIAL RESOURCES AND LAND CONCESSIONS

Since 1994, China has adopted a tax sharing system that stipulates that the “ratio of subnational revenues to the total revenues averages 50 per cent, while the ratio of local fiscal expenditures to the total is at about 70 per cent”¹⁰. However, local governments do not have tax collection powers over residential property tax and land value incremental tax, although pilot projects were launched in Shanghai and Chongqing 2011. As such, local governments increasingly face the burden of rapidly increasing expenditures without the power to raise revenues at the required scale. This gap is filled by two sources of funds: revenue-sharing transfers and tax rebates¹¹ and specific purpose funds usually designated for poor and rural communities. These funds tend to be insufficient to meet capital expenditures for urbanisation and industrial development, given that most of these expenditures are overestimated as they are used to attract investments (FDI) and jobs. The gap is then filled using off-budget funds: revenues from land concessions, borrowing through municipal government-owned urban development investment corporations (UDIC), municipality-imposed surcharges, public-private-partnership (PPP) financial arrangements and build-operate-transfer schemes.

UDICs are established by local governments to bypass the constraints imposed by the Chinese Budget Law for municipalities to borrow from commercial banks. UDICs are given plots of public land as starting assets. With these as collateral, UDICs borrow on behalf of municipalities to fund infrastructure investments. Some UDICs are also created as majority shareholders for municipally owned urban utility companies (water supplies, central heating, town gas), thus generat-

¹⁰ Z. Liu, A. Salzberg, *Developing Low-Carbon Cities in China...*, p. 103.

¹¹ A. Shah, C. Shen, *The Reform of the Intergovernmental Transfer System to Achieve a Harmonious Society and a Level Playing Field for Regional Development in China, Policy research working paper*, Washington DC 2006.

ing cash flows. Other UDICS are simply fiscally backed ‘empty shell’ companies able to borrow either commercial loans from commercial banks or policy loans from the China Development Bank. Despite these extra resources, municipal governments are under tremendous pressure to continue raising funds to deliver municipal services. The only way they can do this is through the appropriation of rural land within municipal boundaries.

The conversion of rural land to urban use is undertaken through a land acquisition plan based on an urban master plan, a process that is closely monitored by the Ministry of Land and Resources (MLR). The MLR sets the price based on agricultural revenues and the cost of relocating farmers (usually very low in cost), services the land with urban infrastructure and then sells or auctions the serviced land to property developers. The revenues from land sales (concessions) are significant. According to the MLR, total revenue from land sales nationwide in 2010 amounted to RMB2.7 trillion or RMB2000 (US\$300) per capita. The prospect of huge earnings continues to drive large developments on the understanding that the rapid growth of the urban population, incomes and property prices will maintain the demand for more flats and houses. Nevertheless, in the past few years, ‘ghost towns’ made up of empty but perfectly finished villas and towers of flats have become increasingly common. This relentless conversion of land and construction is also creating significant amounts of local debt.

Rural land is also converted into urban land by leasing rural land in suburban villages for residential, commercial or industrial development. This entails *in situ* urbanisation without relocation. Estimates based on the World Bank’s Sustainable Development on the Urban Fringe study¹² suggest that *in situ* urbanisation accounted for almost 40% of the growth in China’s urban population during the 1990s, of which 33% was attributed to natural population increase (births exceeding deaths). These developments occur outside of the urban land acquisition plan and outside of the supervision and monitoring of the municipal government. As such, the developments tend to be fragmented and unregulated with consequential inefficient land use¹³. In sum, local governments’ excessive reliance on off-budget funds for development plans is creating a series of hidden financial liabilities that are the concern of the central government. More sustainable sources of local revenue such as property taxes, betterment charges and municipal access to loans are either underdeveloped or not permitted by law. Moreover, the rate of urban expansion that sustains such development plans cannot continue indefinitely. This financing system has a huge effect on the nature of urban development and, in turn, on the creation of planning and implementation strategies that can support carbon reduction and low carbon growth in Chinese cities.

¹² World Bank, *EAP Sustainable Development on the Urban Fringe*, Washington 2007.

¹³ B. Qiu, *Responding to Opportunities...*

3.2. URBAN PLANNING PROCESS

Urban planning is another aspect of the policy design of development plans that impinges on China's ability to make the transition to low carbon development by mainstreaming it into the urban planning process. While the formulation of urban planning in China is rather rigorous, its implementation is less so. Most master plans are not fully implemented within their 20-year timeframe due to two interrelated issues. First, cities have been growing at an unprecedented rate and most are unwilling or unable to overcome the rigidity imposed by the master plans to enable them to accommodate the growing urban population and demand for urban services. While the urban planning process produces 20-year master plans, 5-year implementation plans and a number of associated sectorial master and implementation plans for a given jurisdiction, urbanisation has occurred so rapidly that the actual urban population often exceeds the planned population target for the entire 20-year time horizon of the master plan. Often, the urbanisation area goes beyond the delineated jurisdictional boundaries. Any amendment to the original master plan requires lengthy and cumbersome processes¹⁴.

The second issue affecting the implementation of master plans is the lack of a system of checks and balances that hold municipal authorities accountable to provincial authorities, the People's Congress of the city and to citizens. While planners carry out their work, mayors often use the rapid pace of urban growth and demand for urban services as a reason to deviate from the master plan and to raise additional GDP growth¹⁵. The People's Congresses in many cities are increasingly playing a supervisory role by checking the actions of municipal authorities against urban master plans, but the lack of technical expertise and insufficient representation from all stakeholders diminish their effectiveness. There is also no established procedure for expert witness testimony over issues relating to the public interest in urban planning¹⁶.

3.3. SECTORIAL INNOVATION

Sectorial innovation is a crucial aspect of the policy design of development plans. Low carbon transition can be regarded as a system innovation, as it is a radical but gradual shift agglomerating various technological innovations across different socio-technical systems. A socio-technical system is a cluster of "technology, regulations, user practices and markets, cultural meanings, infrastructure, maintenance networks and supply networks" that encompasses "pro-

¹⁴ J. Wang, M. Tang, *The Romance of the Three Kingdoms...*

¹⁵ *Ibidem*.

¹⁶ *Ibidem*.

duction, diffusion and use of technology”¹⁷. A system innovation is defined as a “large-scale transformation in the way societal functions such as transportation, communication, [and] housing (...) are fulfilled, which can also be understood as a change from one socio-technical system to another”¹⁸.

Municipal governance and the design of development policies have implications for carbon emissions because the rapid growth of low density areas at the urban periphery (urban sprawl) increases GHG emissions (mostly CO₂) from a variety of sources such as density, land-use mix, transport, commuting distances, etc.¹⁹. Urban sprawl means longer journeys by public and private transport and more private vehicle ownership, all of which are sources of GHG emissions. It also means lower density (people per square metre), which leads to higher GHG emissions per person for home heating, cooling and power generation²⁰. Low density development produces infrastructure that is less intensively used than that in denser core areas such as suburban access highways, thereby raising emissions per capita²¹.

4. URBAN ENERGY CONSUMPTION

Examining the urban contribution to China’s energy uses helps in understanding how important urban areas in China are for key ongoing national concerns such as improving energy security, mitigating climate change and substantially reducing the energy intensity of the Chinese economy. Dhakal estimated that the urban contribution to China’s total energy use was 84% of the total energy consumed in 2006²². The International Energy Agency (IEA)²³ estimated that renewable sources contributed to 10.6% of total energy use in China in 2006, and this was assumed to be mainly due to the high use of biomass in rural areas. Taking these IEA figures and assuming that urban areas only use non-renewable energy

¹⁷ B. Elzen, F. W. Geels, K. Green (eds.), *System Innovation and the Transition to Sustainability: Theory, Evidence and Policy*, Gloucestershire 2004; F. W. Geels, *From Sectoral Systems of Innovation to Socio-Technical Systems: Insights About Dynamics and Change from Sociology and Institutional Theory*, Research Policy 2004, No. 33, pp. 897–920.

¹⁸ *Ibidem*.

¹⁹ R. O’Toole, *The Myth of the Compact City: Why Compact Development Is Not the Way to Reduce Carbon Dioxide Emissions*, Cato Policy Analysis Series 2009.

²⁰ J. Norman, H. L. MacLean, C. A. Kennedy, *Comparing High and Low Residential Density: Life-Cycle Analysis of Energy Use and Greenhouse Gas Emissions*, Journal of Urban Planning and Development 2006, No. 132, pp. 10–21.

²¹ L. Kamal-Chaoui, A. Roberts, *Competitive Cities and Climate Change*, OECD Regional Development Working Paper 2009, No. 2; M. A. Brown, E. Logan, *The Residential Energy and Carbon Footprints of the 100 Largest US Metropolitan Areas, Working Paper 39*, Atlanta 2008.

²² S. Dhakal, *Urban Energy Transitions...*

²³ IEA, *World Energy Outlook 2007*, Paris 2007.

sources, China's urban input to the total energy use in 2006 would have been about 75%. There is a huge gap in energy use between urban and rural populations: the ratio of urban to rural energy use per capita is 6.8, and that of urban to national use is 1.9²⁴.

Dhakar analyses data from cities that are highly urbanised and explicitly designated in China's National Plan as important cities for economic development, and concludes that there are 35 cities²⁵, including provincial capitals, provincial cities and special economic zones (including Guangzhou and Shenzhen), that are important for economic growth and infrastructure development in China. These are the places through which urban transition is forged. While this transition includes the growing energy intensity of urban life, it also includes the implementation of key policy measures for urban energy efficiency and climate change mitigation. The average carbon and energy intensity (energy/carbon per unit GRP) of the province to which the city belongs is used as a proxy for the city's energy and carbon intensity.

Table

Key Indicators (Population, Energy and CO₂ for Key Thirty-five Cities of China, 2006)

	China	Frontrunner cities	Cities' contribution
Total population, million	1,314	237	18%
GRP (market price), billion US\$	2,719	1,109	41%
Total commercial energy consumption, million TJ	65.7	26.2	40%
Commercial energy consumption per capita, MJ/person (registered permanent population)	50,000	110,771	2.2 times more
GDP/GRP per capita, US\$/person (registered permanent population)	2,068	4,681	2.3 times more
CO ₂ emissions (commercial energy-related), million tons	5,645	2,259	40%
CO ₂ emissions per capita (commercial energy-related), tons/person	4.30	9.54	2.2 times more

Source: S. Dhakar, *Urban Energy Transitions in Chinese Cities*, (in:) H. Bulkeley, V. C. Broto, M. Hodson, S. Marvin (eds.), *Cities and Low Carbon Transitions*, New York 2011

Table shows that while these cities represent less than one fifth of the population, they produce a large share of the nation's GDP. Collectively, they consume

²⁴ S. Dhakar, *Urban Energy Transitions...*

²⁵ These cities are Beijing, Tianjin, Shijiazhuang, Taiyuan, Hohhot, Shenyang, Dalian, Changchun, Harbin, Shanghai, Nanjing, Hangzhou, Ningbo, Hefei, Fuzhou, Xiamen, Nanchang, Jinan, Qingdao, Zhengzhou, Wuhan, Changsha, Guangzhou, Shenzhen, Nanning, Haikou, Chongqing, Chengdu, Guiyang, Kunming, Xi'an, Lanzhou, Xining, Yinchuan and Urumqi.

40% of the total commercial energy of the nation and emit a similar proportion of CO₂. The wide disparity between these cities and the national GDP per capita, energy consumption per capita and CO₂ emissions per capita shows that their influence in shaping the national energy and carbon profile is disproportionate to their population.

There are also large differences within these cities. Shenzhen, a manufacturing centre and China's gateway to the Hong Kong financial centre, stands out as having an extraordinarily high GDP per capita (US\$38,000 per person). There are three clear pathways in China's 35 key cities²⁶: the low energy consumption and high economic output path adopted by cities such as Ningbo, Beijing, Guangzhou and Shanghai (eastern coast, with a strong presence of service industries, maritime warm climate); the high energy consumption and low economic output path adopted by cities such as Urumqi, Taiyuan and Hohhot (central and western region, with a strong presence of energy intensive industries and continental extreme climate); and the third somewhere in between these two. While these differences certainly affect the criteria by which one can compare and evaluate energy performance and prescribe energy policies, local authorities have little control over the criteria and indicators used in the ratings.

Following Dhakal²⁷, it is possible to evaluate the implications of urban energy consumption for CO₂ emissions by looking at the available data on total energy related CO₂ emissions (million tons) of three megacities: Beijing, Shanghai and Tianjin. The data show rapid growths in energy use and CO₂ emissions from each of these cities, particularly since the early 2000s. In Shanghai, emissions increased by 5 times between 1985 and 2006, in contrast to 2.6 times for Beijing and 2.8 times for Tianjin in the same period. In the 2000–2006 period alone, these cities increased their emissions by a factor of 1.5–1.7. In 2006, the gap in emissions among the three cities was large. In 1995, energy use in Beijing, Tianjin and Shanghai was equivalent to 2 tons of oil in each city, with 8 tons of CO₂ emissions per capita (registered population); however, by 2006, CO₂ emissions per capita for Beijing and Shanghai had reached 9 tons and 12.6 tons, respectively.

The sectorial analysis indicates that the industrial sector has dominated CO₂ emissions in these cities. In particular, Beijing and Shanghai underwent rapid transformations between 1985 and 2006, characterised by a rapid decline in the industrial sector's share of total CO₂ emissions – 65–43% for Beijing and 74–64% for Shanghai – and increasing shares for the commercial and transportation sectors. These figures indicate a rapid urban transition. The residential sector (buildings) has also grown tremendously in energy use and carbon emissions. However, due to the rapid growth and expansion of other energy consuming sectors, the residential sector's proportion of energy use and carbon emissions has

²⁶ S. Dhakal, *Urban Energy Transitions...*

²⁷ *Ibidem*.

remained more or less unchanged over the past two decades in Beijing, Shanghai and Tianjin. Although the transportation sector's share in 2006 was relatively small – 7% for Tianjin and 16% for Beijing – its growth rate has been very high due to the rising car ownership rates in these cities. Despite strong control over vehicular ownership in Shanghai, CO₂ emissions from the transportation sector increased eight-fold between 1985 and 2006. Beijing registered close to a seven-fold increase in the same period. In the past decade alone, CO₂ emissions in Tianjin have increased by a factor of almost 3.5.

Fuel usage has brought a rapid change in CO₂ emissions. A rapidly declining trend in the contribution of coal burning to both energy consumption and CO₂ emissions is evident. Between 1985 and 2006, coal's share of CO₂ emissions declined from 58 to 26%, 51 to 18% and 61 to 33% in Beijing, Shanghai and Tianjin, respectively, thus indicating a rapid transition. In contrast, the contribution of electricity and oil to CO₂ emissions and energy consumption is rising, which is compensating for the declining share of coal burning.

5. THE MISSING LINK

What these factors do not fully reflect is that urban responses to climate change in Chinese cities is experiencing a governance transition – from the traditional state-centric mode of governing to a more pluralistic and collaborative approach. Through the theoretical lenses of different conceptual streams in the governance paradigm (i.e. network governance, collaborative governance and interactive governance), there is a need to further examine how such transition dynamics – involving interactions of state and non-state actors – are leading to changes in China's climate governance and in the overall evolution of the Chinese environmental state. Scholars of the Study Space are committed to continue contributing to these and other challenges of metropolitan growth in the 21st century.

URBAN CLIMATE CHANGE GOVERNANCE IN CHINA 2015

Summary

In the last 30 years, China has experienced rapid economic development and urbanisation, which has resulted in high levels of environmental degradation and considerable pressure on the country's infrastructure and natural resources. While China's rate of development may be slowing down, China's continuing commitment to considerably lowering the carbon intensity of its economy will still have a significant

impact on the world's quest to curb the proportion of climate change that is due to human induced-greenhouse gas emissions. This paper puts into context the governance challenges the nation encounters in achieving its carbon reduction goals. It identifies the characteristics of China's municipal governance, policy design and development, and urban energy consumption as having the highest impact on the governance of climate change. It concludes there is a pressing need to further research on urban governance transitions to ascertain enabling and constraining factors to climate governance.

ZMIANY KLIMATYCZNE NA OBSZARACH ZURBANIZOWANYCH W CHINACH W 2015 ROKU

Streszczenie

W ciągu ostatnich 30 lat Chiny doświadczyły gwałtownego rozwoju ekonomicznego i urbanizacyjnego. Spowodowało to degradację środowiska i znaczne zużycie infrastruktury oraz surowców naturalnych. Podczas gdy chiński poziom rozwoju może spowalniać, kraj ten będzie dalej dążyć do obniżenia emisji CO₂, ponieważ jego gospodarka wciąż będzie znacząco przyczyniała się do wzrostu efektu cieplarnianego. Niniejszy artykuł skupia się na wyzwaniach związanych z obniżeniem emisji dwutlenku węgla przez Chiny. Praca analizuje cechy charakterystyczne dla gospodarki miejskiej Chin, kształt polityki rozwoju i konsumpcję energii miejskiej jako czynniki mające największy wpływ na zmiany klimatyczne. W konkluzji autorki stwierdzają, że istnieje pilna potrzeba prowadzenia dalszych badań nad zmianami w zarządzaniu miast w celu określenia tych czynników, które mają największy wpływ na zmiany klimatyczne.

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KEYWORDS

governance, climate change, low carbon transitions, Chinese cities

SŁOWA KLUCZOWE

zarządzanie, zmiany klimatu, niskie emisje dwutlenku węgla, chińskie miasta

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HOW BIG CAN A FLOOD OF THE VISTULA RIVER BE IN WARSAW – HISTORICAL AND HYDROLOGICAL PERSPECTIVE

1. INTRODUCTION

In the process of city of Warsaw development, an important factor controlling and limiting spatial planning is the flood risk from the Vistula River. The flood risk is understood as a product of flood probability and exposition of the society to the hazard. In spatial planning, it is important to know if the given area is in the range of flood and what would be the consequences of the flood if it occurred. Very important in building the society's awareness of exposure to hazard is the knowledge of probability and range of catastrophic floods recorded in historical data. For this purpose, the common practice in the urban areas is to record high extreme floods by preserving high water marks on important buildings to inform citizens about the range of catastrophic floods. Vistula's high water marks are preserved in Warsaw, for example in Wilanów Park; the levels of summer floods in 1813, 1844 and 1934 are indicated as well as the snow melt floods of 1924 and 1947.

In the classical civil engineering approach, calculations of maximum floods is done with the use of probability distribution functions. The inefficiency of this approach is due to a limited length of time series of the observations and the fact that many rivers are not controlled by the hydrological gauges. Using probability distribution functions we estimate the floods with a recurrence interval of century or millennium using the data representing a few decades. This paper presents alternative methods of estimating the highest possible Vistula River floods in Warsaw.

2. DESCRIPTION OF THE STUDY AREA

High water on the Vistula may occur virtually any time throughout the year. The most common and greatest floods occur in the summer, usually in June and July, and less often in August. They are associated with long-lasting and large

scale rainfall covering the greater part of the basin. During rainfall lasting for several days and giving 150–200 mm of rain, flood waves develop on the Carpathian tributaries. Flood water from the source area of the Vistula reaches Krakow within several hours and with a velocity of 10–15 km/h moves down the river.

The Vistula River valley in the city of Warsaw was formed at the end of Pleistocene and through the Holocene period. At the end of the Vistulian glaciation the higher Pleistocene terraces called Otwock terrace and Falenica terrace were formed. At the beginning of Holocene the over-flood Praga terrace was formed. The higher flood terrace (Wawer terrace) was developed in the early Holocene. It stretches along both banks of the river, forming the widest flood plain. The digital elevation model based on SRTM data of the river valley and glacial upland is shown at the figure 1. The foundation of the Warsaw as a city can be explained also by the fact that this place offers a convenient passage across the river valley, due to a close proximity of Praga over flood terrace and safe elevation of the glacial plateau where the old town has been build.

According to historical accounts, the largest flood in Warsaw in terms of its extent was the flood of 1635. During this flood, King Władysław IV traveled down the river to Prussia, as it has been described by A. S. Radziwiłł (1593–1656) in the memoirs contained in his diaries¹ as follows: “On 13th June the king departed from Warsaw entrusted to the Vistula route, and appreciating such a great man she widely opened her womb and, in a way not seen for many years, flooded so widely that Praga showed only the roofs of houses, and over the four miles to Radzymin the villages and fruits of the earth were flooded to the great detriment of the owners”.

In the period of 19 c., the biggest flood occurred in 1813. In Warsaw, low-lying neighbourhoods and semirural areas from Wilanów to Kazuń were flooded². At that time the Vistula in Warsaw had no embankments; the water flooded the streets of Solec and its church, Czerniakowska, Fabryczna, Przemysłowa, Dobra, Topiel, Furmańska, Browarna, Sowia and Rybaki with their side streets³.

Łysiak⁴ describes the effects of another catastrophic flood in July 1884 on the basis of reports published in *Biesiada Literacka*. Over 28 km² of the district Saska Kępa was flooded, as well as the districts of Żerzeń and Gocław. Wilanów Park was flooded up to the terrace of the palace. The districts of Morysin, Augustówka, Zawady, Siekierki and Czerniaków were under water. This flood was the impetus to undertake regulatory work on the Vistula in Warsaw, linked with the construction of a water intake for the municipal water supply system in the district of Czerniaków.

¹ A. Przyboś, R. Żelewski (eds.), *Pamiętniki o dziejach w Polsce, 1632–1636, Radziwiłł*, Warsaw 1980, Vol. 1.

² J. Grela, H. Słota, J. Zieliński J., *Dorzecze Wisły. Monografia powodzi lipiec 1997*, Warszawa 1999.

³ F. Galiński, *Legends o Warszawie*, Warsaw 1937.

⁴ W. Łysiak, *Historia Saskiej Kępy*, Warsaw 2008.

On 27 March 1924 a transit of the snowmelt flood wave was recorded in Warsaw. Flooding in Warsaw was caused by an ice jam created at km 541; the embankments in Buraków and Jabłonna were breached and the dammed water flooded Czerniaków⁵.

On 22 July 1934 a flood wave of a discharge $Q = 5460 \text{ m}^3/\text{s}$ passed through Warsaw. Despite the existing system of embankments, it caused damage in Czerniaków and Wilanów, as well as in Łomianki.

Until almost the end of the 19th century the Warsaw stretch of Vistula river remained in its natural state. The catastrophic flood of July 1884 sparked regulation of the river and construction of the flood protective dikes. In the years 1923–1931 further regulation work was carried out, after the flood of 1924. Immediately after World War II, the river channel of the Vistula in Warsaw became the debris dumping ground, so that the cross sections of the river got narrowed down, forming the so-called Warsaw corset over the segment of 507–517 km (figure 2).

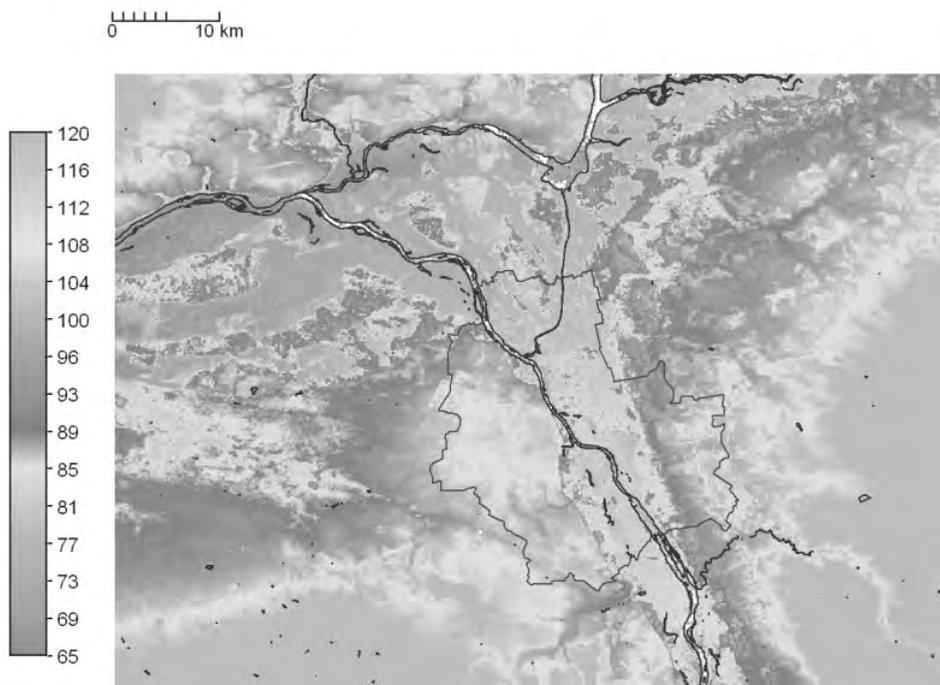


Figure 1. Relief of the Vistula river valley in Warsaw data of SRTM obtained from Global Land Cover Facility⁶

⁵ J. Kobendzina, *Powodzie na Wiśle w okolicach Warszawy*, *Gospodarka Wodna* 1954, R. XIV, Vol. 4, pp. 156–157.

⁶ A. Magnuszewski, M. Gutry-Korycka, Z. Mikulski, *Historyczne i współczesne warunki przepływu wód wielkich Wisły w Warszawie cz. I i II*, *Gospodarka Wodna* 2012, No. 1, pp. 9–17, and No. 2, pp. 58–63.



Figure 2. Aerial photo showing part of of the Vistula river “corset” in Warsaw near Gdański Bridge (photo by MGGP Aero)

The hydrological regime of the Vistula River in Warsaw is represented by the water gauge Port Praski, which has been in operation for nearly 200 years. Gauge controls the catchment area of 84 857 km², and it is located at the 513 km of the river chainage. Most of the major floods in the Vistula River have been formed in summer by intensive rainfalls in the Carpathian Mountains. The highest recorded by hydrological measurements floods occurred in summer – years 1960, 1962, 2010.

3. METHOD OF FLOOD MAGNITUDE ESTIMATION

Flood risk optimization is the rational process by which managers estimate the level of hazards, and use that knowledge for water management and spatial planning. The estimation of flood risk is done usually in relation to extreme floods levels. There are number of information sources on extreme floods levels. The available approach includes:

- 1) estimation of maximum flood from hydrological observations and measurements using probability distribution functions;
- 2) estimation of maximum flood range from geological evidences such as fluvial deposits and river channel forms;
- 3) retro-modelling, defined as the use of archival hydrological information and geospatial data in state-of-the-art hydrodynamic models to assess historic flow conditions.

The **first approach** needs long time series of hydrological observations both stage and discharge. Having long time observations, it is possible to use probability methods to calculate the discharge of given recurrence. Vistula is measured in Warsaw at gauge Port Praski. The length of discharge observations is reaching 100 years. Characteristic discharges are⁷: mean low flow $Q_L = 194 \text{ m}^3/\text{s}$, average flow $Q_M = 561 \text{ m}^3/\text{s}$, $Q_{p1\%} = 7214 \text{ m}^3/\text{s}$, $Q_{p0.1\%} = 9960 \text{ m}^3/\text{s}$. The maximum flood of $p_{0.1\%}$ is used for the design of flood protective dikes in Warsaw. Flood protective dikes in the rural area out of Warsaw boundaries are lower and designed for a flood of $p_{1\%}$. Having the value of maximum discharge, it is possible to estimate the potential reach of the flood by comparing digital elevation model altitudes with an altitude of high water.

Having hydrological measurements data it is also possible to find a relationship between catchment area and magnitude of flood. It can be expressed as flood potential index – k , calculated after J. François⁸ as

$$k = 10 \cdot \left(1 - \frac{\log QH - 6}{\log A - 8}\right),$$

where, QH – highest measured discharge (m^3/s), A – river catchment area (km^2).

Highest k values in Poland are common for the mountain rivers such as Dunajec, Soła, Raba, Skawa, all being Carpathian tributaries of the Vistula River. It is possible to draw an envelope line on a maximum values of k (figure 3). From this line the maximum possible flood in Warsaw can be estimated as $Q_{\max} \approx 9000 \text{ m}^3/\text{s}$.

⁷ B. Fal, P. Dąbrowski, *Dwieście lat obserwacji i pomiarów hydrologicznych Wisły w Warszawie. Przepływy Wisły w Warszawie*, Gospodarka Wodna 2001, No. 12, pp. 503–510.

⁸ J. A. Rodier, M. Roche, *World Catalogue of Maximum Observed Floods*, Wallingford 1984.

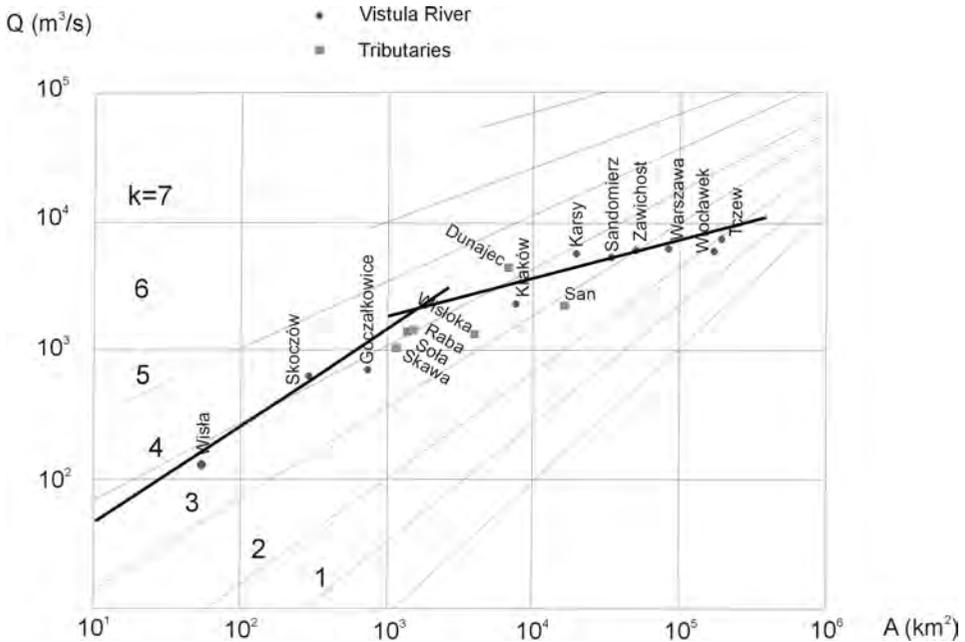


Figure 3. Maximum discharge as a function of the Vistula catchment with selected tributaries⁹, on Françou's k index and the functions $QH(A)$: 1 – rivers according to the World Catalogue (2003), and 2 – rivers of Poland¹⁰

The **second approach** has been used by Polish Geological Institute in the map covering the whole country and representing maximum range of floods in the river valleys¹¹. The map has been created using information from the accurate geological maps in the scale 1:50000. It has been assumed that the range of Holocene deposits related to fluvial processes are good indicators of the maximum possible range of contemporary floods. These deposits comprise fluvial sands, silt, peats. Fluvial forms are also analyzed like oxbow lakes, flood cones, river flood terraces. The range of flood estimated from geological evidences for Warsaw is shown at figure 4. About 23% of the city area is located in the potential catastrophic flood range. This method is not giving the value of the discharge but indirectly informs about the reach of the maximum possible flood range. It can be used for spatial planning and first effort to delineate the flood risk. The area of the flood range and the area of the buildings standing on it can be useful characteristic to be considered in the decision making at flood risk management processes.

⁹ A. Magnuszewski, *Procesy korytowe rzek nizinnych a bezpieczeństwo powodziowe*, WGR UW, Warsaw 2013.

¹⁰ B. Fał, *Maksymalne przepływy rzek polskich na tle wartości zaobserwowanych w różnych rzekach świata*, *Gospodarka Wodna* 2004, No. 5, pp. 188–192.

¹¹ PIG, *Mapa obszarów zagrożonych podtopieniami w Polsce*, Warsaw 2007.



Figure 4. Vistula river reach 500–521 km: range of potential flood of $Q_{p1\%}$

The **third approach** makes use of the retro modeling using the hydrodynamic 2D model called CCHE2D, developed at the National Center for Computational Hydroscience and Engineering (NCCHE) at the University of Mississippi, USA. The model simulates free surface flow, and it is based on the depth-averaged Navier-Stokes equations. The set of equations is solved implicitly by the control volume approach and the efficient element method. This model has been applied successfully to simulate flow in natural channels, and has proven to be an effective tool for hydraulic research¹².

The level of catastrophic floods is known from high water marks. The flood levels of 1813 and 1844 were commemorated by a cast iron plate on the wall of a building on Kłopotowskiego Street in the Warsaw district of Praga (figure 5). High water marks for 1888 and 1891 can also be found on the cover of the spring flowing out at the foot of the hill near the Camaldolese church in the Warsaw district of Bielany.

¹² Y. Jia, S. S. Wang, Y. Xu, *Validation and application of a 2D model to channels with complex geometry*, Int. J. Computational Engng Sci. 2002, pp. 57–71.



Figure 5. Metal plate showing high water mark of the floods from 1813 and 1844 years at Kłopotowskiego street in Warsaw

The numerical calculations are carried out at the nodes of an irregular rectangular mesh. Data needed in the modeling comprise geometric data of the channel and flood plain, as well as Manning roughness values. For retro modeling of the flood passage, the recent river training structures, flood protection dikes and bridges narrowing were removed from the DEM by editing elevation values. The retro modeling also used the geometry and location of the recent river channel, assuming that for the extreme flood passage, the geometry of the flood plain is most important¹³. An example of the retro modeling approach is shown at figure 6, representing flow in a natural conditions (without the flood protective dikes). Using retro modeling, it was possible to estimate the discharge corresponding to the high water marks of the catastrophic floods from 1813 and 1844 years (table).

¹³ P. Kuźniar, A. Magnuszewski, *Przeptyw wód wielkich Wisły w Warszawie – rekonstrukcja powodzi historycznych*, (in:) A. Magnuszewski (eds.), *Hydrologia w ochronie i kształtowaniu środowiska. Monografie Komitetu Inżynierii Środowiska*, Warsaw 2010, No. 69, pp. 109–118.

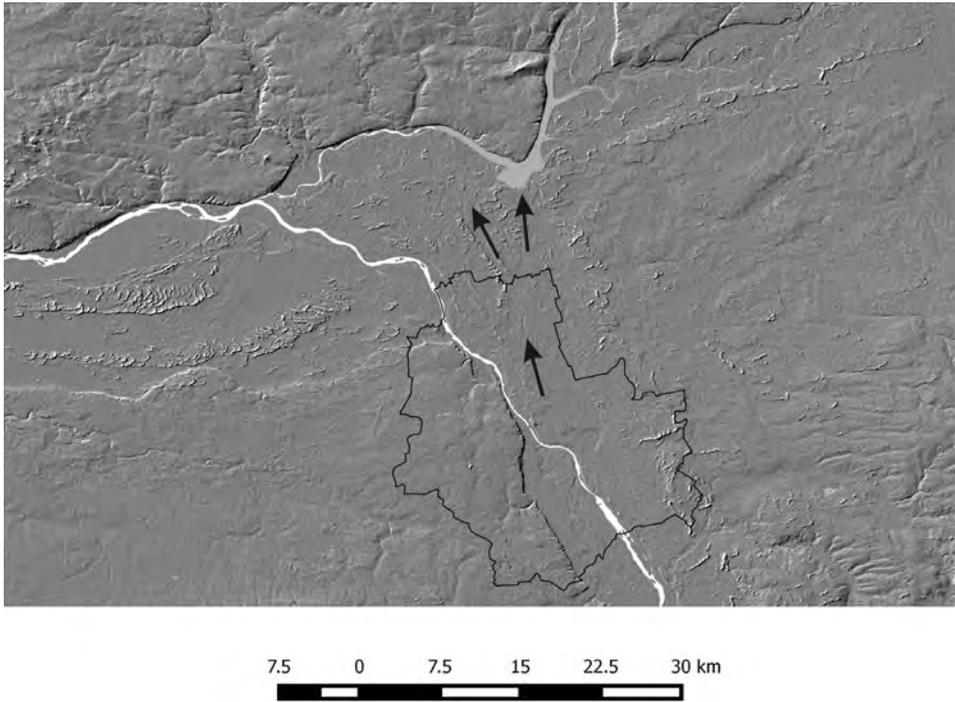


Figure 6. Flow of one thousand years recurrence flood $Q_{p_{0.1\%}}$ calculated by CCHE2D hydrodynamic model across the city of Warsaw in natural conditions without the flood protective dikes

It has been proved also that in a natural state the extreme floods could flow over Praga terrace finding a shortcut directly to Narew tributary of Vistula.

Table

High water stages and corresponding discharge of the largest historical floods of the Vistula River in Warsaw profile (Port Praski) obtained from retro modelling by CCHE2D

Water stage H (cm)	Year	Origin of the flood S – snow melt/R – rainfall	Discharge Q (m ³ /s)
849 (863)	1844	R	8 250
808	1813	R	7 430

4. DISCUSSION

Presented methods of extreme flood estimation can be seen as a complementary. The classical approach based on probability distribution functions has many inadequacies resulting from limited length of hydrological observations, changing climate conditions and changes caused by river training and embankment

structures. The flood range estimation by retro-modeling is interesting due to the fact that we have a record of high water marks and other proxy data such as press reports. The retro modeling can also be used for verification of the historical floods range. In this way the flood range of 1635 is evidently overestimated. The maximum width of the flooded valley could be 5 km in the borders of Warsaw, while in the report of Radziwiłł we read about the distance to Radzymin which is about 28 km.

In the design stage of water engineering many structures such as bridges, flood protective dikes, and boulevards, there is an important unknown about the maximum possible flood magnitude. Presented methods can give the approximation of such a maximum flood. This information is also very important for flood risk management. One of the important aspects is lowering the flood risk exposition which can be done by proper spatial management. Warsaw is a very fast growing metropolis characterized by urban sprawl. The knowledge about the historical floods range is very important for proper decisions in spatial planning.

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Summary

Flood risk management is the recent methodology of lowering flood hazard in the urban areas. One of the important aspects of the flood risk is the exposure to the flood risk due to an improper settlement location. The spatial planning and estimation of the exposure to flood can be done on the basis of proper information of extreme floods. Three methods of maximum historical floods range and discharge estimation has been discussed. The example of the Vistula River in Warsaw has been used as a case study.

ZASIĘG POWODZI W WARSZAWIE – PERSPEKTYWA HISTORYCZNA I HYDROLOGICZNA

Streszczenie

Zarządzanie zagrożeniem powodziowym to nowa metodologia zmniejszania niebezpieczeństw dla przestrzeni miejskiej. Jednym z ważnych aspektów zagrożenia powodziowego jest ekspozycja na zalanie spowodowana niewłaściwą lokalizacją zabudowań. Planowanie przestrzenne i ocena zagrożenia powodziowego mogą być dokonane na podstawie właściwej informacji o ekstremalnych powodziach. W niniejszym artykule

dokonano analizy studium przypadku powodzi Wisły w Warszawie w różnych okresach historycznych, biorąc pod uwagę trzy metodologie oceny wielkości powodzi ekstremalnych w miastach.

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KEYWORDS

Vistula river, Warsaw, flood risk, spatial planning, retro modeling

SŁOWA KLUCZOWE

Wisła, Warszawa, zagrożenie powodziowe, planowanie powodziowe, modelowanie historyczne

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WHITHER WARSAW

Warsaw, Poland lies on the Mazovian Lowlands, bisected by the Vistula River. Warsaw is both a city and part of the larger Warsaw Metropolitan Area. It is the largest city in Poland and thus also by far the largest city in the Mazowieckie Voivodship (province). The current population of the city is about 1.8 million, the metropolitan area 2.9 million, and the voivodship 5.32 million. Warsaw's size is 517.24 square kilometers compared to the 35,578 square kilometers for the voivodship and 6,204 for the metropolitan area, which has 85 municipalities compared to 314 in the voivodship.

Warsaw is the capital of Poland, a country with continuously shifting borders compounded by its location between Germany and Russia. Its borders even shifted before, during, and after World War II. The Polish people are of mixed ethnicity, reflecting the vicissitudes of northern Europe over the millennium.

Warsaw, Poland was one of the most vibrant cities in Europe prior to World War II. It emerged from the war as one of the most devastated cities in the world, 86% destroyed, mostly by the Nazis who occupied Warsaw for 5½ years. The Nazis leveled the Jewish ghetto to the ground in 1943 after suppressing the Jewish uprising, followed the next year by destroying the fabled Old Town after suppressing the 63-day Warsaw Uprising. They left the historic Hotel Bristol standing because it served as their headquarters. Bombs and shells also had their impact on Warsaw.

1. LIBERATION

Warsaw was liberated from the Nazis on January 17, 1945, only to fall under the yoke of the Red Army. The population of Warsaw fell from 1.3 million pre-war to 162,000 at the time of Soviet "liberation" in 1945, of which about 140,000 were on the right side of the Vistula River (Praga). The returning citizens came home to piles of rubble. Only 1,223 buildings remained intact at the war's end out

of 25,498 buildings on the western side (left) prior to World War II¹. The Nazis virtually destroyed the infrastructure, but the people came. They started rebuilding by manually removing the rubble brick by brick.

Reconstruction was facilitated by the Warsaw Decree of October 26, 1945, which expropriated all real property in the city and transferred it to the municipality². The expropriation gave the planners the opportunity to rebuild the city as they saw fit seven decades ago, but is complicating current planning for two reasons.

The first is the footprint these planners left as their legacy. The second is the highly laudable the goal of post-Communism Warsaw to return land to the original owners and their heirs or otherwise compensate them. Many parcels remain in limbo as the ownership rights are settled.

The planners were presented with a tabula rasa with Warsaw in 1945. They could rebuild the past or embark on a new, “modern” direction. They did it all with varying degrees of success: rebuilt Old Town, planted the Palace of Culture and Science in Warsaw’s center, and adopted socialist realism elsewhere.

Three major construction projects emerged from the rubble of Warsaw. The city had to be rebuilt. An early decision was to restore Old Town as accurately as possible to its pre-war appearance, actually 150–200 years earlier. The Communist planners wished to skip over the roughly 150 years of capitalistic construction.

Old Town’s rebirth was critical to the identity of Warsaw and the Polish people. Too many Poles died for freedom to let the dream die. It was symbolic of the rebirth of the city of Warsaw and the nation of Poland such that Poles contributed nationally to the reconstruction. Old Town is the Phoenix Rising of Poland.

Most of the rebuilt facades are fairly close to as they were, although the interiors and infrastructure are different. The street pattern is overlaid on the pre-existing street pattern. Tourists may think they are visiting a traditional European old town in Warsaw’s Old Town, but it is an impressive faux Old Town of which Walt Disney would be proud³.

The decision to rebuild to the pre-War architecture was limited to Old Town. For example, the leveled Jewish quarter was replaced with monolithic block apartments⁴. Similarly, the downtown was déclassé from the Communist perspective, representing capitalistic architecture. Thus, the central downtown business district was not to be recreated.

¹ S. Dzierwulski, S. Jankowski, *The Reconstruction of Warsaw*, *The Town Planning Review* 1957, No. 28, pp. 209, 212–223.

² Decree of 26 October 1945 on Ownership and Usufruct on Land in Warsaw. The decree did not extend to the rest of Poland.

³ Walt Disney modeled his main Street in Disneyland after his boyhood in the small town of Marceline, Missouri.

⁴ The Jewish Quarter became large 8-10 story towers of “vast and open superblocks”. J. Goldman, *Warsaw: Reconstruction as Propaganda*, (in:) L. Vale, L. T. Campanella (eds.), *The Resilient City: How Modern Cities Recover from Disaster*, New York 2005, pp. 135, 147.

Instead, the second project destroyed any chance of recreating a viable core downtown and central business district. Joseph Stalin's "gift" to the Polish people is The Palace of Culture and Science in the center of downtown Warsaw near the central train station. The Palace's spire reaches 758 feet into the sky while the footprint and the accompanying parking lots were planted on a 24 hectare (640 acres) site. One hundred homes were destroyed and 4,000 persons displaced to make room for the Palace⁵.

The 758 foot high Palace dominates both the center of Warsaw and the Warsaw skyline. It is not unsightly, but neither does it rival the Eiffel Tower, Chrysler Building, the Empire State Building, or Big Ben in elegance. It fits into nothing, visible from seemingly everywhere in Warsaw. There is a lack of architectural and developmental symmetry around the site.

The third project was the rebuilding of Warsaw's housing stock. Socialist Realism, imposed on the Eastern European countries by the Soviet Union in the form of monolithic block buildings of shoddy construction, reared its ugly head. One tradeoff, though, was that the planners widened some existing boulevards.

Thus we have a rebuilt Warsaw of hodgepodge architecture with no central business district. The recent building of highways into the suburbs has also drawn business away from the center of Warsaw, paralleling a similar pattern in the United States.

2. INDEPENDENCE

2.1. THE RESTORATION OF PROPERTY RIGHTS OR COMPENSATION

The post-Communist independent Poland sought to right a wrong perpetrated by the Communists. The expropriated property would be returned to the original owners if possible. The result, though, is that the rehabilitation of many properties has been delayed because of the tangled chain of ownership, determining the heirs of the original owners, or adjudicating their rights.

2.2. WARSAW'S GROWTH

Warsaw and its suburbs have soared in population with a corresponding increase in problems that plague large metropolis, including water, sewage, air and water quality, and mass transit. The result is that Warsaw is inevitably following the course of almost every capital city: rapid population growth, sprawling into the burgeoning suburbs. It encounters substantial infrastructure, pollution, and transportation problems in its rapid growth.

⁵ D. Crowley, *People's Warsaw, Popular Warsaw*, J. Design Hist. 1997, No. 10, pp. 203, 212.

Infrastructure is expensive. For example, the three phase expansion of the Municipality of Warsaw Czajka Wastewater Plant completed in 2013 cost €769 million, 40% of which was covered by the European Union. Warsaw was discharging most of the sewage into the Vistula River when Poland entered the European Union on May 1, 2004. The refuse then flowed into the Baltic Sea. The plant solved much of Warsaw's disposal problem with incineration of the sewage sludge, destroying 90% of the waste.

2.3. THE PLANNERS' PROBLEMS

The fall of Communism was a great victory for the Polish people, but conversely a hindrance to the development of comprehensive regional planning in the greater Warsaw metropolitan area. Central planning is anathema to the Polish people, who suffered through 4 decades of moribund Communist central planning. Yet problems of water supply and quality, air quality, and urban mass transit defy parochial approaches and necessitate regional planning.

Land use planning was also fairly non-existent. Office buildings sprang up, scattered all around the center of the city. Indeed, only about 16% of the city is governed by master plans.

The city's planners recognize the problem. Current Warsaw planners are concerned by road congestion, the incomplete highway system, and an incomplete mass transit system. Yet, they are hamstrung by the lack of central planning, the people's reaction to the fall of the Communist central planners.

The suburbs are now growing faster than the city. They have grown from 40% of the metropolitan area's population in 1988 to 44% in 2013. The need for coordination and regional planning has grown but the will is not there. No administrative structure exists between the voivodship and Warsaw, which is but one of 314 cities and towns in the voivodship and one of 85 in the greater metropolitan area with no greater rights than the others.

2.4. THE AUTOMOBILE

The automobile came to an unprepared Warsaw, challenging the planners. The Communist central planners did not envision a future for the automobile in Warsaw. Thus, the post-War rebuilding did not consider roads for traffic or parking for cars. Marszałkowska and Świętokrzyska Boulevards were widened, but not for the purpose of facilitating traffic, but rather to promote the large Soviet style parades. Highways and parking were not in the Soviet style five-year plans. The independent Poles rapidly embraced the automobile as a preferred means of transportation. The country averaged 25,000 new monthly registrations from 2003 to 2015. Today's Warsaw is playing catch-up on traffic. It is attempting to

complete the ring around Warsaw. In addition, not all Warsaw suburbs have convenient road or mass transit access into the city. The metro extends out only two directions from the city.

2.5. POLLUTION

One of the legacies of the Fall of Communism is substantial air, soil, and water pollution from heavy industry. Poland is no exception. Stalin's central planners saddled Poland with polluting heavy industry. Most of these factories have closed, such that Warsaw now has little industry. Those sources of pollution have thus been eliminated⁶. The animus towards central planning has not.

A recent study ranks Poland second only to Bulgaria with the worse air pollution in Europe in particulate matter⁷. The urban population of Poland is subjected to excessive levels of particulate matter and nitrogen oxides⁸. Six of the ten most polluted cities (Cracow, Nowy Sącz, Gliwice, Zabrze, Sosnowiec, and Katowice) are in Poland⁹. Warsaw is not one of the ten, but its air quality can be bad.

Part of the problem is external, as pollution does not respect artificial political boundaries. However, much of Poland's air pollution is internally generated through the burning of coal. Poland rejected nuclear power in the aftermath of Chernobyl. Coal is a cheap fuel source for Poland, but one which generates pollution. The United States banned coal plants in large cities in the 1950's, but Poland depends on coal for up to 90% of its electricity. No instant miracles can be expected as long as Poland is dependent on coal.

3. THE PRESENT

Warsaw is a city in transition. Heavy industry is gone as the city cleaned up the Soviet legacy. Its economy, as with many large cities, has become a service economy. The city hosts regional headquarters of multi-national corporations because of ample land and low wages, but is short on national corporations. In addition, pensioners comprise 30% of Warsaw's population. The city needs additional sources of employment and revenues.

⁶ For a discussion of pollution under the Soviet regime as compared to the free Poland of today, see J. Warner, *Poland: The Environment in Transition*, The Geographical Journal 1999, No. 65, p. 209.

⁷ European Environment Agency, *Air Quality in Europe – 2014 Report*, at <http://www.eea.europa.eu/publications/air-quality-in-europe-2014>.

⁸ *Ibidem*, p. 10.

⁹ *Europe's Polluted Cities*, International New York Times, October 15, 2013. The survey was of 365 cities.

3.1. TOURISM

Tourism can be a vital contributor to the Warsaw economy. Tourism is a large source of service jobs in many cities. However, Warsaw is a capital city without a cachet to attract tourists. Paris is the City of Light, and much more. Rome, the Eternal City, is the City of Love. London is the City of Dreams. Prague is the City of Spires. Vienna is the City of Music. Budapest is the City of Spas while Bucharest is the City of Joy. Budapest and Prague are also noted for their beauty. Istanbul is the center of empires with the Hagia Sophia, Blue Mosque, and Grand Bazaar.

3.2. WHAT IS WARSAW?

3.2.1. The City of Ruins

Tourists may be attracted to the excavated ruins of a Pompeii or Troy, but not the paved over ruins of Warsaw. Its symbol is a mermaid with sword. The city's motto is "*Comtemit Procellas*", "It defies the storm". It is an accurate depiction of Poland's history, but not one that will attract tourists.

Cities do not necessarily need a cachet if they can offer other attractions to travelers. However, Warsaw lacks an international exhibit hall, thereby missing the opportunity to attract large international conferences and conventions. It also has not taken advantage of the Vistula River.

3.2.2. The Undeveloped Tourist Resource: The Vistula River

Warsaw has not developed or promoted its tourist industry to the extent of other European cities. For example, the Vistula River is an unexploited resource. The Vistula Riverfront is undeveloped on both banks with the eastern bank to remain in its natural state.

Absent are the restaurants, hotels and resorts, gift shops, harbor cruises, bicycle, walking and jogging paths common to waterfronts, not to mention apartments and condos, or the Polish equivalent overlooking the water. Recreational sports, such as walking, jogging, boating, para-sailing and jet skiing are virtually non-existent.

The Vistula has historically flooded Warsaw, but the recreational opportunities are limited without dredging. Warsaw is not even a port city today.

3.2.3. Museums

Every large city, especially capital cities, has museums. The key is to have unique museums that can attract tourists. The Palace of Culture and Industry is truly a unique iconoclastic structure, which offers a panoramic vista of Warsaw. Most of the museums and other attractions and historic sites are within a 1–2 mile radius of the Palace, the center of Warsaw.

Warsaw opened three new museums of world quality in the New Millennium. One is the Copernicus Science Centre, which opened its doors in 2010 and has been substantially expanded. It is very popular.

The other two sprang out of the tragedy of World War II. The Warsaw Uprising Museum, opened in 2004, commemorates the failed uprising, mostly in Old Town, against the Nazis and the Red Army standing back, watching the Nazis destroy the Polish Home Army.

The Polin Museum of the History of Polish Jews, the third museum, opened in 2014. It focuses on the 1,000-year history of the Jews in Poland, including, but not ending with, the Holocaust. Poland lost during World War II about 6 million (20%) of its pre-War population, of which 3 million were Jews.

These museums do not obviously match the Louvre and Hermitage in international renown, but they can be a draw if marketed right. Missing though are major museums for two of Warsaw's famous expatriates, Frederick Chopin and Madam Curie¹⁰. Also under-publicized are the few remaining Milk Bars, which represent the post-war cafeterias of the masses.

4. THE FUTURE

Warsaw is a work in progress. It escaped from Communism a quarter century ago. It has cleaned up the economic and environmental messes left behind. Its population has soared 1.100% since its liberation by the Red Army and exceeds its pre-War population.

The city is following the path of other capital cities with its rapid growth and the even greater growth of its suburbs, but without the tools other countries have in responding to the sprawl.

Warsaw, due to the popular resistance to central planning, is a part of a disjointed metropolitan area and voivodship with substantial problems in transportation and critical resources. Similar problems have existed in the United States and the booming cities of the world. A solution exists, which falls short of broad central planning. The United States uses special regional authorities, such as for transportation. Such an agency coordinates, plans, and develops mass transit in a metropolitan area. Other agencies exist for water supply, sewage disposal, and flood control as well as environmental protection.

Models for Warsaw could include the Port Authority of New York and New Jersey for comprehensive transportation and various regional transit authorities for highways and mass transit. The Adirondack Park Agency, San Francisco Bay Conservation and Development Commission (SFBCDC), and the Tahoe Regional

¹⁰ Small, relatively unpublicized museums exist for Chopin and Marie Curie.

Planning Agency are examples of environmental protection. America has a multiplicity of water districts and sewage districts which cut across political boundaries to address problems too large for individual communities to resolve. Warsaw can look to the rest of Europe for regional river authorities.

5. CONCLUSION

Warsaw is at a pivotal point in its evolution. It can take the difficult steps of planning for the future or continue trying to manage unregulated chaos with a deterioration in the quality of life. Other major cities experiencing substantial growth, such as Beijing and Istanbul, have risen to the challenge.

Warsaw can do it. It has overcome much harder challenges in the past.

WHITHER WARSAW

Summary

Warsaw emerged from the Nazi occupation as a physically destroyed city, followed by surviving the Soviet occupation for four decades. The people persevered, recreating a magnificent Old Town. The city is growing rapidly and catching up to the rest of Europe. It is also facing the infrastructure, urban sprawl, mass transit, pollution, and transportation issues of growing metropolis, without the regional planning and other land use planning tools available elsewhere as a result of its aversion to central planning. Its history provides a unique dynamism to study post-disaster planning.

QUO VADIS WARSZAWO?

Streszczenie

Warszawa wydostała się spod nazistowskiej okupacji jako zniszczone miasto, a następnie przez cztery dekady była pod sowiecką okupacją. Ludzie, którzy przetrwali, odbudowali Stare Miasto. Warszawa szybko się rozwija i nadrabia zaległości do reszty Europy. Jednakże Warszawa doświadcza też problemów infrastrukturalnych związanych z beładną zabudową miejską, transportem publicznym, zanieczyszczeniem środowiska

i komunikacją metropolitarną bez planowania regionalnego i innych metod zarządzania przestrzennego, znanych gdzie indziej. Wynika to z historycznej awersji do centralnego planowania. Historia tego miasta zapewnia unikalną możliwość studiowania gospodarki przestrzennej na przykładzie zdewastowanych obszarów.

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KEYWORDS

regional planning, central planning, urban planning, rebuilding and rebirth

SŁOWA KLUCZOWE

planowanie regionalne, planowanie centralne, urbanistyka, przebudowa i odrodzenie

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PHOENIX CITIES: LESSONS ON RESILIENCE FROM WARSAW TO ATLANTA

The rebuilding of Warsaw and the present-day state of development and economic progress are dissimilar from Atlanta in many respects but are worth comparison. Both city/regions have benefited from national sources of public investments. However, the economic and social progress that have resulted from those investments, and each region's long-term resilience, are still evolving.

The development of metro Atlanta after the American Civil War can be broken into distinct periods of reconstruction and growth. A relatively young city but one that was critical as a Confederate rail and supply hub, Atlanta was effectively destroyed in 1864. Reconstruction after the war led to the rebuilding and continued development of the rail network and, in the late 19th and early 20th centuries, significant growth in manufacturing and industry. Substantial growth also occurred from a period immediately before the 1996 Olympic Games to the Great Recession in 2008. During this period metro Atlanta experienced extensive outward expansion to the suburban fringe, as well as an urban renaissance within the City of Atlanta. During the most recent period of growth from 2011 to 2016, urban development and multi-family construction have dominated the metro Atlanta region.

However, the true boom period of Atlanta was over 100 years after the end of the Civil War. While growth and investment occurred during late 19th century and the first half of the 20th, the State of Georgia's population grew by only three million between 1860 and 1960. By contrast, Georgia then added three million more residents in the period from 1960 to 1995. The Atlanta region in this period became a magnet for growth in the southern U.S. The physical manifestation of this growth was relatively normal at first, until several large public investments in the region began to leverage a larger economy, global reach and new development pattern.

These investments began in the years following World War II. Buford Dam was constructed for the creation of Lake Lanier as the region's primary water source. Hartsfield-Jackson International Airport was expanded multiple times and became the region's airport. Interstates 75, 85, 20 and 285 provided immense vehicular access throughout the region. Finally, the MARTA rail transit system

was the first in the south. These investments were key to the growth of metro Atlanta, particularly after 1970. They provided the structure that enabled millions of migrants and jobs to move to the region and cause the population to swell. Leading up to the 1996 Olympic Games, metro Atlanta had positioned itself for long-term economic growth, but potentially at the cost of resiliency. By the late 1990s, Chris Leinberger famously stated that “Metro Atlanta has grown faster than any human settlement in history”.

The metro Atlanta economy and that of the nation have been built on a model of transportation distinct from the remainder of the industrialized world. Automobiles have dominated the American transport system and its middle class lifestyle since World War II, and metro Atlanta’s biggest phase of growth coincided with this period of automobile ascendancy nationwide. Atlanta has become one of the primary research models for automobile dominance and resulting land development patterns in the U.S, since it grew largely on the model of suburban expansion from 1970 to 1995. Metro Atlanta became the depiction of a sprawling modern American region – low labor costs, low taxation and low land costs served as fuel for a region that had also received federal financial assistance to build major infrastructure in the form of dams, airports, highways and transit. But few effective U.S. models for growth management policy during this period undermined the long-term potential resiliency of the region.

Georgia adopted a limited version of the Florida growth management model in 1989. While beneficial to local governments and the state in many ways, the Georgia Planning Act was too little and too late. The power to zone land was provided exclusively to local governments and locked into the State Constitution. Euclidean zoning, exclusionary housing practices, and the influence of the construction industry would create growth patterns that were dominant until the 21st century.

With the growth that has occurred after the 1996 Olympics to the present, metro Atlanta began to change the growth trajectory. The region was no longer sprawling, but rather retrenchment and redevelopment began in the urban core and then first-ring suburbs. By 2010 and continuing today, real estate development within the existing built areas of the region is the dominant practice. Development close to the MARTA rail system or “ITP” (Inside the Perimeter highway, or I-285) is surging rapidly. Areas outside but close to the I-285 beltway and major job centers are densifying. These trends, similar to early Atlanta growth patterns, are somewhat a reflection of national trends – younger professionals’ desire for urban living, tight mortgage underwriting and the flight of capital preferring more solid real estate investments after the real estate foreclosure crisis of 2008 to 2014.

So the Atlanta growth model could be summarized as major national migration to a southern region, enabled by federally funded public investments, during a period of auto domination, but lacking land use policy and laws to create resiliency. The U.S. and metro Atlanta remain economically dominant but possibly at the cost of resiliency and social progress. The U.S. has a 4.4% share of global

population but with 18% of global energy consumption and 22% of global prison population, as an indicator of social progress.

Metro Atlanta as a model for U.S. economic growth mirrors larger national growth and resiliency indicators. The automobile is used for 90% of trips made within the Atlanta region. While substantial progress has been made expanding commuting options and building new urban development in Atlanta, automobiles and highway construction have virtually created permanent patterns of commuting and economic conditions that rely upon the maintenance of highways for a large share of all annual transportation funding.

Current economic conditions are expected to further densify the existing core and suburbs of Atlanta, which eventually will transform the region towards more efficient growth patterns. But it could require several decades of retrofits to auto-centric areas and substantial new transit investments. National policy favoring highway funding that produced the auto-oriented economy of the U.S. and metro Atlanta are most often perceived in a global context as not resilient. U.S. energy consumption per person is twice that of other developed countries such as Japan and Germany. Without inexpensive fuel, the U.S. economy would have difficulty competing with more efficient countries.

Given the current state of the economy and infrastructure, Warsaw appears positioned for attracting growth at an increased rate during the coming decade. The A2 motorway connecting to Berlin opened in 2012. The international Warsaw Chopin airport is connected to the Warsaw city center by a rail link also opened in 2012. The Warsaw Metro continues to expand rail lines and stations. Foreign investments and funding from the European Union have spurred economic growth and new public facilities. Warsaw has four major universities and over a quarter-million university students in the city. These conditions seem to make Warsaw particularly ripe for attracting growth from technology industries or other innovation-related sectors. A Google campus is scheduled to open in Warsaw later in 2015. However, the startup environment is apparently still in its adolescence, based on discussions during Study Space.

Balancing economic growth, land use and development is key to maximizing the resiliency of Warsaw and the Mazovian region during the coming decades. Unlike the Atlanta region, the Mazovian region has large, productive agricultural lands. Protecting and leveraging the agricultural lands of the region should be a long-range priority. Many of the best U.S. models for land use planning and growth management feature productive agricultural sectors within or near the region that help support the metro area in various ways and vice versa (Minneapolis, Seattle, etc.). Regulatory structures in Warsaw and the Mazovian region should be reviewed continuously to ensure they are effective at guiding industrial uses and urban development to key centers and areas of existing infrastructure, while protecting agricultural lands for reasons of food security, economic resiliency and efficient development patterns.

In the case of the Atlanta region, major interstate highway expansions funded by the federal government, and investments by state and local governments, ensured automobile and truck access to large areas of vacant land during the 1970–2000 period. U.S. migration to the south ensured the Atlanta region expanded its footprint of development. While these highway investments were a major economic catalyst, inefficient uses of land are apparent across the metro area, limiting long-term growth. Large single-family residential communities often have excellent access to major highways or proximity to economic centers, while available land and access for new commercial or industrial uses have been virtually absorbed within close proximity to much of the region.

Atlanta’s MARTA rail transit system began development during the same period as transit systems in Washington, D.C. and San Francisco in the early 1970s. At that time, Seattle declined transit funding from the federal government, and Atlanta was the fortunate recipient of that region’s decision. However, urban decline and suburban migration in Atlanta during the 1970–2000 period coincided with the creation of the MARTA rail system, ensuring that it would require decades more to reach its full potential. At the time, contemporary urban development models for density and mixed-uses were unknown and untested in the south, and thus financing flowed to suburban growth. Today, redevelopment of many areas in metro Atlanta, including MARTA rail station areas, is rapidly occurring, but the historical development patterns of the metro will likely always be a challenge and limiting to economic growth.

A visit to Warsaw, Poland in 2015 was thrilling as an American who had never traveled east of Germany. Poland has an amazing history and welcoming culture. Based on my professional training and experience, Warsaw and the Mazovian region appear to be on a trajectory for continued economic and social achievements. Ensuring continued financing for adequate infrastructure investments and effective development policy is a challenge for every growing metropolitan area around the globe. Warsaw, like Atlanta, has a strong spirit of resilience and flexibility within its identity. This is a uniting strength that will serve both regions well in the coming periods of economic and population growth.

PHOENIX CITIES: LESSONS ON RESILIENCE FROM WARSAW TO ATLANTA

Summary

The City of Atlanta and the City of Warsaw, Poland, have similar wartime histories separated by 80 years. These two “Phoenix Cities” have created new infrastructure,

societies and cultural identities since their destruction and post-war rebuilding. Present-day metro Atlanta is larger than Warsaw, with a greater economic impact, but recent investments in Warsaw signal a possible trajectory for growth similar to what occurred in Atlanta over the past 45 years.

Warsaw in 2015 – unlike Atlanta in 1970 – has many contemporary city/region models for successful economic development and growth management in Europe and abroad, including Atlanta. These models offer Warsaw the possibility of more resilient growth and alternate development decisions to those which currently undermine metro Atlanta. Warsaw is a dynamic and increasingly important region on the global stage. Economic growth to the next tier of global cities that excel in innovation and resiliency is within its grasp.

MIASTA FENIKSY: WARSZAWSKA LEKCJA ODRODZENIA PRZESTRZENI MIEJSKIEJ DLA ATLANTY

Streszczenie

Miasto Atlanta i Miasto Stołeczne Warszawa mają podobne historie wojenne oddzielone o 80 lat. Te dwa miasta feniksy stworzyły od czasu zniszczenia i odbudowy nową infrastrukturę, społeczeństwo i tożsamość kulturową. Dzisiejszy obszar metropolitalny Atlanty jest większy niż Warszawa, ma większą siłę oddziaływania gospodarczego, ale ostatnie inwestycje w Warszawie sygnalizują podobną ścieżkę wzrostu w porównaniu do tego, co stało się w Atlancie w ciągu ostatnich 45 lat.

Warszawa w 2015 roku – w przeciwieństwie do Atlanty w 1970 roku – ma wiele współczesnych wzorców miejsko-regionalnych służących pomyślnemu rozwojowi gospodarczemu i zarządzaniu wzrostem. Dzięki tym wzorom Warszawa ma możliwość bardziej elastycznego rozwoju i efektywniejszych decyzji w stosunku do tych, które obecnie podważa Atlanta. Warszawa jest dynamiczna i ma coraz większe znaczenie na arenie międzynarodowej.

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SŁOWA KLUCZOWE

zarządzanie wzrostem, odporność gospodarcza, inwestycje publiczne

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LAWS REGARDING CONTROVERSIAL CULTURAL HERITAGE IN SOUTH AFRICA AND THE UNITED STATES: PUBLIC MONUMENTS AND STREET NAMES

1. INTRODUCTION

Like stalagmites, the characteristics of a culture – sensibilities, world-view, spirituality, language, myths and stories, literature, mores – accrete slowly. This incremental development of culture tethers generations past, present, and future with powerful bonds of “memory, continuity, and identity” that have far-reaching, positive effects on society¹. Yet unique tangible manifestations of cultural heritage, such as art, architecture, writings, monuments, relics, and handicrafts, may vanish in an instant².

To display legitimacy and authority, nascent social movements and political regimes tend to erase the cultural capital of the old, often in cities which themselves have been or remain designated national or ‘cultural’ capitals. Monuments are destroyed, relocated or repurposed; landscapes are changed; buildings are dismantled; streets are renamed; literature is banned or “cleansed”; movable relics embodying past identities are eradicated or reinterpreted to support a new cultural narrative.

Targeting cultural heritage to buttress new political and social aims is an ancient, and unfortunately, omnipresent practice among authoritarian regimes. Pharaohs’ excised the names of predecessors (and carved their own) on Egyptian obelisk cartouches; King Edward I of England captured and transported the Stone of Scone – Scotland’s coronation stone – to Westminster Abbey in 1296;

¹ T. Mayes, *Why Do Old Places Matter? How Historic Places Affect our Identity – and our Wellbeing*, National Trust for Historic Preservation, Washington DC 2014, pp. 1–2.

² Consider how much more we would know about the ancient Mediterranean World if the great universal libraries at Alexandria were not entirely ravaged and destroyed. See M. El-Abbadi, *Life and Fate of the Ancient Library of Alexandria*, Paris 1992.

Chairman Mao's "Great Leap Forward" led to the wholesale destruction of Chinese feudal culture in the mid-20th century; the Nazis methodically bombed and bulldozed over 90% of Warsaw's historic Old Town³; and the Islamic State (ISIS) recently demolished the tomb of the biblical prophet, Jonah, in Iraq⁴.

Calculated removal of cultural heritage, however, is also a widespread threat in representative polities like South Africa and the United States. This is particularly true when historic monuments and street names highlight controversial chapters of an unreconciled past, like slavery and racial inequality. Monuments and street names that some significant minorities and newly empowered groups associate with slavery and racial inequality are significant threads that delineate and reinforce a distinct and unwelcome cultural narrative of identity and importance across many urban tapestries in South African and the United States. But the laws for protecting or removing monuments and street names that have become controversial in these two countries has received little attention. This article will, therefore, examine and compare the legal frameworks for protecting or removing controversial historic monuments and renaming controversial streets in South Africa and the United States.

2. CULTURAL HERITAGE AT RISK IN SOUTH AFRICA AND THE UNITED STATES

Despite their geographic separation, South Africa and the United States share many political and cultural similarities. Both countries have representative governments; South Africa is one of the youngest parliamentary republics, while the United States is the oldest functioning democracy. These countries also share a long history with slavery and racial inequality that legally ended only in the latter half of the twentieth century⁵. But most important for this study, recent dis-

³ The deliberate, careful targeting of Polish heritage in Warsaw by the Nazis in World War II is one of the grimmest examples of systematic cultural annihilation by an authoritarian regime. See A. Tung, *Preserving the World's Great Cities: The Destruction and Renewal of the Historic Metropolis*, New York 2001, pp. 81–82.

⁴ See J. Moyer, *After Leveling Iraq's Tomb of Jonah, the Islamic State Could Destroy 'Anything in the Bible'*, Washington Post, 25 July 2014; S. J. Evans, *Shocking Moment ISIS Militants Take Sledgehammers to Mosul Tomb of Prophet Jonah as More than 50 Blindfolded Bodies are Found Massacred South of Baghdad*, Daily Mail, UK, 9 July 2014.

⁵ We say "legally ended" here because we are cognizant that mere legal change did not, and has not, terminated the pain, discrimination, and attitudes promoted by Apartheid laws in South African and Jim Crow laws in the United States. Apartheid in South Africa officially ended with the promulgation and enforcement of a new South African Constitution on 4 February 1997. See Constitution of the Republic of South Africa, 1996. And in the United States, the Civil Rights Act of 1964 outlawed discrimination on the basis of race, color, religion, sex, or national origin,

putes over race relations in South Africa and the United States has led to vandalism, removal, or contemplated removal of historic monuments and street names honoring individuals who some view as symbolizing and thus reinforcing racial inequality.

In South Africa, frustration over the lack of educational and economic opportunities for black South Africans nearly twenty years after apartheid's demise has prompted the defacement (and in some cases removal) of statues honoring colonial-era figures. This recrudescence of anti-apartheid and anti-colonial sentiment was sparked by University of Cape Town (UCT) students protesting against a large, bronze statue memorializing British imperialist and mining magnate, Cecil Rhodes, situated in the middle of the UCT's picturesque campus. In early 2015 one student splashed the statue with excrement. This was followed by supportive mass protests, vandalism of the statue, and sit-ins demanding that UCT remove the statue. Following the 30-member UCT Council vote and subsequent approval from the provincial heritage authority, the Rhodes statue was relocated "for safekeeping"⁶. The rage over the Rhodes' statue in Cape Town elicited a 'vandalism domino effect' on other monuments to apartheid and colonial figures in other South African cities. A statue in Pretoria to Paul Kruger, a 19th century Afrikaner leader opposed to the British, was doused with green paint as was a 112 year-old statue of Queen Victoria that stood outside the library in Port Elizabeth. In Durban, a statue of King George VI located on the grounds of KwaZulu-Natal University was spray-painted⁷. And many streets named after apartheid and colonial leaders have been renamed (or are in the process of being officially renamed) in honor of historic South African leaders and heroes of the struggle to end apartheid⁸.

Likewise, some groups in the United States are advocating for cultural heritage that is arguably connected to racism to be removed. Against a backdrop of ongoing racial inequality in education, employment, and housing along with several recent fatal shootings of unarmed black men by white police officers, Dylann Roof's horrific, racially-motivated killing of nine African-American parishioners at a church in Charleston, South Carolina and his connections to white supremacist groups triggered intense social and political backlash to historic icons hon-

required equal access to public facilities and employment, and enforced desegregation of schools and the right to vote See United States Code § 1981 sqq.

⁶ University of Cape Town (UCT), Communication and Marketing Department *Application for permanent removal of CJ Rhodes Statue*, September 16, 2015; BBC, *Rhodes Statue Removed in Cape Town as Crowd Celebrates*, 9 April 2015.

⁷ D. Smith, *Vandalism of Apartheid-Era Statues Sparks Fevered Debate in South Africa*, The Guardian, April 10, 2015.

⁸ *Apartheid Street Names Replaced*, at www.Joburg.org.za (visited July 22, 2015); T. Farber, *Name Changes: Cape Town*, Mail & Guardian, June 29, 2007.

oring the Confederate States of America⁹ – a collection of eleven Southern states who championed slavery and ignited the American Civil War (1861–1865)¹⁰.

In Tennessee, for example, a 9,500 pound brass statue to Confederate general Nathan Bedford Forrest (a notorious slave dealer and grand wizard of the Ku Klux Klan) is slated to be removed from a public park in Memphis. Forrest's body along with that of his wife, which lay encased since 1905 in the monument's eight-ton marble base, will be disinterred and relocated¹¹. In South Carolina, the state legislature recently voted to permanently remove the Confederate battle flag from the grounds of the state capitol¹². In Louisiana, a vigorous debate has erupted as to whether streets honoring Confederate leaders should be renamed for Civil Rights advocates and whether a 60-foot tall granite monument of Robert E. Lee (the leading general of the Confederacy) should be removed from a prominent intersection of New Orleans, where his statue has stood watch for over a century¹³. And in the state of Georgia, activists are demanding that streets named for Confederate heroes be renamed and that memorials honoring rank-and-file Confederate soldiers killed during the Civil War be removed from public lands¹⁴.

3. LEGAL FRAMEWORK FOR PROTECTING OR REMOVING HISTORIC MONUMENTS

3.1. SOUTH AFRICA

South Africa's National Heritage Resources Act of 1999 (NHRA) describes the legal framework for preserving and managing the country's cultural heritage¹⁵. Significantly, the Preamble to the Act states that cultural heritage has the

⁹ F. Robles, *Dylann Roof Photos and Manifesto are Posted on Website*, New York Times, June 20, 2015. Photos of Dylann Roof show him with several white supremacist symbols, including the apartheid-era flags.

¹⁰ The Confederate States of America were comprised of the following states: South Carolina, North Carolina, Virginia, Tennessee, Arkansas, Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas.

¹¹ E. Yellin, *A Confederate General's Final Stand Divides Memphis*, New York Times, July 19, 2015.

¹² E. Izadi, A. Phillip, *South Carolina House Votes to Remove Confederate Flag from Statehouse Grounds*, The Washington Post, July 9, 2015.

¹³ M. Rhodan, *New Orleans Mayor Asks City Council to Remove Confederate Statues*, Time, July 9, 2015; R. McClendon, *Jefferson Davis Parkway Should be Names for Norman Francis, Mitch Landrieu Says*, Times-Picayune, July 9, 2015.

¹⁴ B. York, *Most Oppose Removal of Confederate Names*, Landmarks, Washington Examiner, July 2, 2015; P. Ramati, *Former Macon Mayor Wants Confederate Statues Removed from Public Property*, The Telegraph: Middle Georgia's News Source, June 25, 2015.

¹⁵ National Heritage Resources Act, No. 25 of 1999 [hereinafter NHRA].

ability define cultural identity, affirm diverse cultures, shape the national character, redress past inequities, and “facilitates healing and material and symbolic restitution”¹⁶. The NHRA provides that “those heritage resources of South Africa which are of cultural significance or other special value” form part of the “national estate” and fall within the jurisdiction of various heritage resource authorities¹⁷. The Act defines “national estate” broadly to include nationally significant buildings, objects, landscapes, sites, and structures, including historic monuments and memorials older than 60 years that are erected on public lands or monuments and memorials on private lands that were funded by the public purse¹⁸.

The South African Heritage Resources Agency (SAHRA) is the national body established under the NHRA to manage nationally significant historic resources¹⁹. The Act also provides for the establishment of provincial heritage resource authorities (PHRAs) to manage heritage resources of significance on the provincial and local levels through coordination with local authorities and through enacting by-laws conforming to the NHRA²⁰. With the assistance of the PHRAs, SAHRA is identifying and creating a Heritage Register comprised of three classes of significant resources that determine the appropriate heritage resource steward: 1) Grade I heritage resources are those deemed to have national significance and are managed by SAHRA; 2) Grade II heritage resources are those with provincial, regional, or local significance and are managed by the applicable PHRA; 3) Grade III heritage resources are “other heritage resources worthy of conservation” and are managed by the appropriate PHRA or by delegated local authorities, usually municipalities²¹.

If a public monument or memorial is listed under any of the three grades, the NHRA offers this monument or memorial significant legal protections. No governmental body may take any “action”²² that adversely affects any listed historic monument unless “there is no feasible and prudent alternative to the taking of that action” and “all measures that can reasonably be taken to minimize the adverse effect will be taken”²³. On its face, the NHRA’s “no feasible and prudent alter-

¹⁶ NHRA, Preamble.

¹⁷ NHRA Section 3(1).

¹⁸ NHRA Sections 2(xxxviii, xivl), 3(2-3), 34, 37.

¹⁹ NHRA Sections 11-22.

²⁰ NHRA Sections 24-26; Each of South Africa’s nine provinces has created a Provincial Management Authority, but variations in resources, competence, and desire to engage in the responsibilities and challenges of cultural heritage management has meant that some provinces have enacted more significant heritage legislation than others.

²¹ NHRA Sections 7-8, 39.

²² Governmental “actions” include making recommendations, issuing licenses, granting permissions, approving programs, or making decisions that would affect a heritage resource. See NAHRA, Section 9(5).

²³ NHRA Section 9(3). The NHRA’s “no feasible and prudent alternative” legal standard was likely influenced in the drafting stage by consultation with United States heritage authorities, as it closely tracks the legal standard articulated in Section 4(f) of the U.S. Department of

native” legal standard is an incredibly powerful tool for preserving controversial monuments, as any government actions that might adversely affect a historic monument, like removal or relocation, cannot be taken unless all the alternatives have been considered and there is simply no better alternative. And even if a historic monument must be removed or relocated, the government authority must take affirmative steps to minimize the adverse effect that a removal or relocation would have. However, the decentralization of heritage resource identification and governance into this relatively fluid tripartite management system has led to some “confusion about which authority is ultimately responsible for decisions about the possible removal, relocation, or re-interpretation of existing monuments and the addition of new commemorative objects”²⁴. Despite this uncertainty, the NHRA’s highly protective legal standard for existing monuments underscores one of its key principles for heritage resource management: that “heritage resources have the capacity to promote reconciliation, understanding and respect, and contribute to the development of a unifying South African identity”²⁵. Removing controversial monuments, therefore, should be the exception not the rule.

Anyone may apply to the relevant heritage authority for a permit to remove or relocate a historic public monument or memorial²⁶. In the province of Western Cape, for example, an application for removal must include documentation regarding the cultural significance of the monument; results of wide-ranging public consultation processes including the PHRA, local planning authorities, conservation organizations registered with the PHRA, and other interested stakeholders; and statements about where the monument will be relocated and who will maintain it²⁷. The PHRA or local authority must also independently consult the owner(s), planning authority, and relevant conservation and non-governmental organizations²⁸. Decisions on whether to remove the monument should be grounded in the “no feasible and prudent alternative” legal standard, the “cultural significance” of the monument, the financial costs of removal and maintenance, and have due regard for heritage conservation principles stated in the NHRA. Appeals from a decision can be made within 30 days to an independent tribunal composed of three experts appointed by the Minister of Arts and Culture²⁹.

In sum, South African Law offers its historic public monuments and memorials – even those viewed by some as symbolizing racism or reinforcing racial

Transportation Act of 1966, which provides the strongest heritage protections under United States law. See 49 United States Code § 303(c).

²⁴ S. Marschall, *Landscape of Memory: Commemorative Monuments, Memorials and Public Statuary in Post-Apartheid South Africa*, Leiden 2009, pp. 140–141.

²⁵ NHRA Section 5(1)(c).

²⁶ NHRA Section 27(18).

²⁷ *Heritage Western Cape Draft Guidelines for Public Monuments and Memorials*, Section 5.3-4, August 26, 2015.

²⁸ *Ibidem*, at 5.4.

²⁹ NHRA Section 49.

inequality – powerful procedural and substantive legal protections. This strongly suggests that most public monuments and memorials honoring the colonial and apartheid eras will remain *in situ*. Even in extreme cases where a monument or memorial is removed, a “suitable plaque should be placed to mark the position and relevant information pertaining to the monument or memorial” as a lasting reminder of the role the monument once played in civic life³⁰. Anyone who defaces monuments or memorials may also be fined and/or imprisoned according to the severity of the offense³¹.

3.2. UNITED STATES

The United States’ National Historic Preservation Act of 1966 (NHPA) provides the primary legal framework for preserving and managing the country’s cultural heritage, including historic monuments³². The purpose of the NHPA is to preserve the “historical and cultural foundations” as a “living part of our community life and development in order to give a sense of orientation to the American people”³³. The NHPA established the National Register for Historic Places (National Register) – the inventory of nationally significant historic properties, objects, districts, structures, and sites worthy of preservation – which is administered by the United States National Park Service³⁴. Historic resources, including monuments and memorials, must be listed, or eligible for listing, on the National Register to receive legal protections under the NHPA³⁵. For a monument or memorial to be listed or eligible for listing on the National Register, it must meet the following four criteria: 1) it must be one of five types of resources – a district, site, building, structure or object (intangible heritage resources are not currently recognized or protected by U.S. law); 2) it must be relevant to a prehistoric or historic context; 3) it must be significant; and 4) it must have integrity, that is, the monument or memorial must be able to communicate its significance³⁶.

³⁰ *Heritage Western Cape Draft Guidelines for Public Monuments and Memorials*, Section 5.5, 26 August 2015.

³¹ NHRA Section 51.

³² 16 U.S.C. § 470 sqq; Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. §303(c)) offers powerful protections for historic resources threatened by federal transportation programs or projects. However, since monuments and commemorative memorials are typically unaffected by federal transportation projects this law will not be discussed here.

³³ 16 U.S.C. § 470(b)(2).

³⁴ 16 U.S.C. § 470(a).

³⁵ 36 Code of Federal Regulations [hereinafter C.F.R.] § 800.16(1)(2); S. Bronin, R. Rowberry, *Historic Preservation Law in a Nutshell*, St Paul 2014, pp. 86–87.

³⁶ 16 U.S.C. § 470a(a)(1)(A); Each of these four criteria – type, context, significance, integrity – has been further defined and elaborated through regulation. For “type” see 36 C.F.R. § 60.3; for “context” see 16 U.S.C. § 470a(a)(1)(A); for “significance” see 36 C.F.R. § 60.4; for “integrity” see

If a monument or memorial is listed or eligible for listing on the National Register, it receives procedural legal protections under Section 106 of the NHPA. Section 106 of the NHPA establishes a review process for actions carried out, funded, or approved by an agency of the federal government that may impact historic monuments listed or eligible for listing on the National Register³⁷. Regulations implementing the Section 106 process consider the relocation or removal of monuments listed on the National Register as an “adverse effect” that requires the federal agency sponsoring the action to consult with affected parties to try and mitigate the negative effects of removing the monument from its original context³⁸. If a negotiated solution cannot be reached, the Advisory Council for Historic Preservation, an independent federal agency responsible that promotes the preservation, enhancement, and productive use of United States historic resources, issues comments to the head of the sponsoring federal agency, who in turn makes a final decision on whether or not to remove the historic monument³⁹.

Thus, while the NHPA Section 106 process allows historic monuments to be removed or relocated, it does mandate that certain procedures to be followed before the monument may be relocated; you must look closely before you leap. As a further disincentive, “structures [including monuments] that have been moved from their original locations” are typically ineligible for listing in the National Register and thus for financial assistance under the NHPA⁴⁰ and for related national tax benefits⁴¹. United States national law, therefore, discourages – but does not prohibit – the removal or relocation of nationally important historic monuments from public lands.

Using the NHPA as a model, states have also enacted legislation protecting historic resources on public lands, including monuments that have state or local significance⁴². For example, Georgia has created the Georgia Register of Historic Places, an inventory that uses the same criteria and documentation procedures as the National Register⁴³. Georgia also requires a similar review process to NHPA Section 106 – finding of adverse impact, consultation with affected parties, mitigation – for state and local government actions that may impact historic mon-

36 C.F.R. § 60.4; see also National Register Bulletin No. 15, *How to Apply the National Register Criteria for Evaluation*.

³⁷ 16 U.S.C. § 470(f).

³⁸ 36 C.F.R. § 800.5(a)(2)(iii); 36 C.F.R. § 800.5-6.

³⁹ 36 C.F.R. § 800.6-7.

⁴⁰ 36 C.F.R. § 60.4; Exceptions can be made for properties “primarily commemorative in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance” See 36 C.F.R. § 60.4(f).

⁴¹ 36 C.F.R. § 67.4(h).

⁴² See S. Bronin, R. Rowberry, *Historic Preservation Law...*, pp. 57–68.

⁴³ Georgia Code Annotated [hereinafter Geo. Code. Ann.] § 12-3-50-1.

uments⁴⁴. And like its national counterpart, a state or local historic monument that is relocated generally loses valuable financial aid and tax incentives that can help to maintain it. Thus, like the national government, states and their political subdivisions generally discourage but do not prohibit removal of historic monuments of state or local significance from public lands. One example of the ability of most states, counties, and cities to remove monuments can be found in New Orleans, Louisiana, where Mayor Mitch Landrieu has asked the City Council to invoke city ordinances to declare four historic monuments dedicated to Confederate leaders as ‘public nuisances’ and remove them⁴⁵.

In addition, it should be noted that South Carolina, Georgia, and Tennessee – three former Confederate states – have enacted laws designed to make the removal, relocation, or alteration of historic monuments honoring the Confederacy that reside on public lands throughout their states, including those in political subdivisions like counties and municipalities, incredibly difficult⁴⁶. The 2013 Tennessee Heritage Act forbids Tennessee counties and cities from removing historic Confederate monuments unless they obtain a waiver from the Tennessee Historical Commission. Such a waiver would presumably allow for removal or relocation of a historic monument, but has never been tested⁴⁷. The Heritage Acts of Georgia and South Carolina are even more protective of historic monuments to the Confederacy. Georgia simply bars the removal or relocation of historic monuments on public lands throughout the state⁴⁸, while South Carolina prohibits removal or relocation unless two-thirds of both branches of the General Assembly (the state legislative body) vote to amend the Heritage Act, a virtual impossibility⁴⁹. While none of these three Heritage Acts have been challenged in court, the Attorney General of South Carolina has issued opinions broadly construing South Carolina’s Heritage Act to forbid the relocation of a Confederate monument to a different location within the same park, suggesting that Confederate mon-

⁴⁴ Geo. Code Ann. § 12-16-1 sqq.

⁴⁵ R. Rainey, *Are Confederate Statues Nuisances? New Orleans City Council to Decide*, NOLA.com, December 1, 2015; The ordinances that deal specifically with removing monuments from public property can be found at New Orleans, Louisiana – Code of Ordinances, Chapter 146, Article VII, section 611.

⁴⁶ For Georgia, see Geo. Code Ann. § 50-3-1; for South Carolina see S.C. Code Ann. § 10-1-165; for Tennessee see Tenn. Code Ann. § 4-1-412. For a comprehensive list of monuments and markers to the Confederacy in Georgia (with photographs), see United Daughters of the Confederacy Georgia Division, *Confederate Monuments and Markers in Georgia*, 2002; in 2016 the state of Mississippi will be considering a ballot initiative that could add similar Confederate monument removal prohibitions to its state constitution. See A. Ganucheau, *Ballot Petition Aims to Protect Confederate Heritage*, The Clarion-Ledger, November 5, 2014.

⁴⁷ Tenn. Code Ann § 4-1-412(d).

⁴⁸ Geo. Code Ann. § 50-3-1.

⁴⁹ S.C. Code Ann. § 10-1-165.

uments in South Carolina will likely remain in their historic locations⁵⁰. Financial penalties and injunctions are also available against any person or entity that defiles these monuments⁵¹.

3.3. COMPARATIVE ANALYSIS

A close comparison of the laws for protecting or removing controversial historic monuments in the South Africa and the United States reveals important similarities but even greater differences. With respect to the most important similarities, both countries share a powerful common ethos that heritage is critical to shaping, informing, and changing national and community identity to be more inclusive of diverse cultures. Furthermore, South Africa and the United States have cultural heritage management systems that are decentralized, offering provincial/state and local government autonomy in deciding how to manage the identification, protection, and possible removal of controversial monuments in their respective spheres of authority. This regional and local autonomy is tempered somewhat by the fact that the legal standards for designating a monument as historic (thus triggering legal protections) on the provincial/state and local levels are those framed by the national/federal government⁵². Furthermore, as one might expect in representative governments, both countries have crafted a consultation process for removing historic monuments involving a high degree of public participation. Whether or not the realities of this participation truly represent the public at large in either country is a topic for another article.

Yet compared to the similarities, the differences between the laws of South Africa and the United States are far greater. The two most important differences lie in the strength and scope of the legal standards protecting historic monuments in both countries from adverse governmental actions. South African historic monuments enjoy powerful substantive protections from removal under the “no feasible and prudent alternative” standard – meaning that authorities must refrain from removing a monument unless there is no other viable alternative. United States historic monuments, on the other hand, are offered only procedural protections of the NHPA; that is the overwhelming majority of U.S. historic monuments can be removed for *any* reason provided that the public consultation process outlined in Section 106 is followed. Even when states’ legal standards deviate from the federal norm – like Tennessee, South Carolina, and Georgia – the tendency

⁵⁰ See *Opinion Letter from Attorney General of South Carolina Alan Wilson to Senators Grooms and Verdin*, June 10, 2014.

⁵¹ See, e.g., Geo. Code Ann. § 50-3-1(b)(4).

⁵² For South Africa see NHRA Sections 2(xxxviii, xivl), 3(2-3), 7, 30, 34, 37; for the United States see 16 U.S.C. § 470a(a)(1)(A); S. Bronin, R. Rowberry, *Historic Preservation Law...*, pp. 57–63.

is to create stronger procedural protections for monuments rather than impose substantive mandates. Comparing the strength of legal standards alone, therefore, controversial monuments in South Africa appear more likely to remain in place than controversial U.S. monuments.

However, there is also an important difference in the scope of protections offered to historic monuments in both countries that must be considered in conjunction with the protective power of their respective legal standards. In South Africa, only those monuments listed as part of the inventory of the “national estate” receive the robust protections of the NHRA; unlisted monuments are not covered⁵³. But this process for identifying and declaring what monuments comprise the “national estate” has been hampered by the inability or unwillingness of provincial/local governments to work with SAHRA on establishing the national inventory as well as confusion over which authority – national, provincial, or local – is responsible for deciding whether a monument meets the NHRA’s “national estate” criteria and deserves listing⁵⁴. In contrast, the United States’ NHPA affords its procedural protections to monuments listed on *or eligible* for listing on the National Register⁵⁵. This means that federal agencies must evaluate the significance all historic monuments that might be impacted by their actions during the Section 106 process and offer unlisted historic monuments that meet the National Register criteria the same procedural protections afforded to listed monuments⁵⁶. The same is generally true of state and local agencies, as state historic resource review processes usually mimic the federal ones.

In sum, while South Africa boasts a more powerful legal standard for protecting controversial monuments than that of the United States, the range of monuments to which South Africa’s “no feasible and prudent alternative” applies is narrower than the range of controversial monuments protected by the NHPA and its various state incarnations in the United States. Arguably, then, one might conclude that South Africa offers stronger legal protections to its controversial monuments than the United States, but it protects fewer of them.

⁵³ NHRA Section 39.

⁵⁴ Many of the objectives that require the cooperation and participation of PHRAs and local governments have not been achieved, or are only partially achieved. See SAHRA Annual Report (2014), pp. 19-24; S. Marschall, *Landscape of Memory...*, pp. 140–141.

⁵⁵ 36 C.F.R. § 800.16(1)(2).

⁵⁶ S. Bronin, R. Rowberry, *Historic Preservation Law...*, pp. 86–87. There are currently over 90,000 historic properties listed on the National Register. See *National Register of Historic Places Program: Research*, at <http://www.nps.gov/nr/research/>.

4. LEGAL FRAMEWORK FOR RENAMING CONTROVERSIAL STREETS

4.1. SOUTH AFRICA

National roads in South Africa are devoid of names honoring individuals or events. The South African National Roads Agency Limited (SANRAL), an independent statutory company whose sole shareholder is the South African government, is responsible for naming, constructing, and maintaining a series of national roads (toll and free) throughout the country's nine provinces⁵⁷. Rather than naming national roads SANRAL labels them, combining the letter 'N' for 'national' and a number (e.g., N1) to designate national roads in South Africa.

In contrast to national roads, many provincial and municipal roads in South Africa serve as memorials to people or events. The South African Constitution confers upon provincial governments and municipalities the power to govern street names in their respective jurisdictions⁵⁸. And the laws and policies enacted by South African local governments to guide the renaming of controversial streets are relatively consistent in their broad scope. For example, one of the leading objectives of the Cape Town Naming Policy is "to address or replace names which are held to be controversial or offensive"⁵⁹. Similarly, in E'Thekwini Municipality (formerly the City of Durban) names that are "offensive" should be replaced with those that "strengthen community identity"⁶⁰. And in Johannesburg, the primary criteria for renaming streets are if the street name is "considered offensive", "historically irrelevant", or where "the name change is desirable to promote the goodwill of people now living in the new South Africa"⁶¹. With the demise of the apartheid government, several street names honoring apartheid leaders in Johan-

⁵⁷ The South African National Roads Agency Limited and National Roads Act, Act No. 7, 1998; a map of national roads under SANRAL's jurisdiction can be found at: <http://www.nra.co.za/content/9596SanralRoads.jpg>.

⁵⁸ For provincial authority over streets see Constitution of South Africa, Chapter 6, Section 104(1)(b)(2) and Schedule 5 Part A; for municipal authority over streets see Constitution of South Africa, Chapter 7, Section 156 and Schedule 5 Part B; See also *The Democratic Alliance v. Ethekwini Municipality*, Supreme Court of Appeal of South Africa, Case No. 887/2010 (November 30, 2011) (holding that the Ethekwini Municipal Council had the authority to rename streets and buildings within its jurisdiction).

⁵⁹ City of Cape Town, *Amended Naming Policy of the City of Cape Town* [hereinafter Cape Town Amended Naming Policy] April 2012, Section 2.5.

⁶⁰ E'Thekwini Municipality, *Public Notice – Street Renaming*, January 9, 2012; see also J. Duminy, *Street Renaming, Symbolic Capital, and Resistance in Durban, South Africa*, Environment and Planning D: Society and Space 2014, No. 32, pp. 310–328.

⁶¹ City of Johannesburg, *Policy on the Naming and Renaming of Streets and Other Public Places* [hereinafter Jo-Burg Policy on the Naming and Renaming of Streets], 2nd Revision, August 2007, Section 8(i-iii).

nesburg – like Hendrik Verwoerd Drive (named for the Prime Minister of South Africa (1958–1966) who is “considered to be the architect of grand apartheid”) – met the criteria of being “offensive” and have been renamed for anti-apartheid heroes, like Bram Fischer, an Afrikaner lawyer who fought for equal rights for all South Africans during apartheid⁶².

The process for renaming a controversial street in Johannesburg is typical of street renaming in South Africa localities generally. Any person or group may submit a proposal to the relevant local authority. In Johannesburg, this is the Executive Director in the Development Planning and Urban Management unit⁶³. The proposal must include:

- 1) the proposed name and reasons for the name change;
- 2) a locality map showing the feature proposed for renaming; and
- 3) proof of legal residency of business address in Johannesburg⁶⁴.

The Executive Director then reviews the application in terms of the criteria mentioned above and sends the application to the City’s Naming/Renaming Committee who also review the application under the set criteria⁶⁵. The Committee then makes a recommendation on the application, which is sent with a report to the City Council for a decision on whether to proceed with the renaming⁶⁶. If the City Council rejects the renaming application, it must state clear reasons for doing so⁶⁷. But if the City Council decides to move forward with the renaming, the relevant Ward Councillor(s) are informed and a public consultation process begins in which comments and alternatives to the proposed name are requested and considered for about one month’s time⁶⁸. At the end of this public consultation process, the Ward Councillor(s) submits a report to the Executive Director detailing the proposal, their recommendation, and the financial implications of their recommendation⁶⁹. The Executive Director then assesses the report with its

⁶² *Apartheid Street Names Replaced*, at www.Joburg.org.za, Official Website of the City of Johannesburg, July 22, 2015. For other name changes see.

⁶³ Jo-Burg Policy on the Naming and Renaming of Streets, Section 9(i); see also Cape Town Amended Naming Policy, Section 7 and 7.1.

⁶⁴ Jo-Burg Policy on the Naming and Renaming of Streets, Section 9(ii); in Cape Town the person or group applying for a street to be renamed must supply proof “reflecting substantial support for the nomination in the community most affected” and financial implications of the change. See Cape Town Amended Naming Policy, Section 7.2-7.3.

⁶⁵ Jo-Burg Policy on Naming and Renaming of Streets, Section 9(iii); Cape Town has also made provision for its Naming Committee to have the assistance of an expert panel if necessary. See Cape Town Amended Naming Policy, Section 9.

⁶⁶ Jo-Burg Policy on Naming and Renaming of Streets, Section 9(iv); see also Cape Town Amended Naming Policy, Section 8.

⁶⁷ Jo-Burg Policy on Naming and Renaming of Streets, Section 9(iv).

⁶⁸ *Ibidem* at Section 9(v-ix).

⁶⁹ Jo-Burg Policy on Naming and Renaming of Streets, Section 9(x); see also Cape Town Amended Naming Policy, Section 8.

recommendation and submits it to the City Council for consideration and final approval or rejection⁷⁰. If the name change is approved, notices are erected on the street, the relevant local agencies are notified, and the City budget should make a provision for capital funds and operating funds needed for implementation⁷¹.

4.2. UNITED STATES

Honorific street names in the United States are governed solely by state and local law, as the federal government uses only numbers to designate interstate roads. Old transcontinental named routes, like the Lincoln Highway or the Jefferson Davis National Highway, were originally named by the states through which the routes passed and were split among several numbers when interstate highways “adopted the U.S. numbering plan in November 1926”⁷². This U.S. numbered highway system (e.g. U.S. 15, U.S. 80) “was simply a marking device for identifying the nation’s best interstate roads” while “the roads remained under state control”⁷³. After the passage of the Federal Aid Highway Act of 1956 which authorized construction and massive expansion of highways between the states, the newly created U.S. Department of Transportation Federal Highway Administration subsumed several of the U.S. numbered highways into the federal Interstate Highway System and decided to label interstates with a numbering system prefaced by the capital letter ‘I’ for ‘interstate’ (e.g. I-90, I-20)⁷⁴.

States, counties, and cities in the United States generally retain wide discretion on the naming or renaming of streets. State Constitutions usually grant counties and municipalities extensive powers to govern their own affairs under what is known as Home Rule provisions, which includes authority to name or rename streets within their jurisdictions⁷⁵. A recent controversy over streets named for Confederate heroes in the city of Alexandria, Virginia exemplifies the broad authority that most local governments in the United States – whether county or city – wield over honorific street names and the process used to rename controversial streets. In 1963, the City Council of Alexandria passed an ordinance requiring that all north-south streets in the city be named for Confederate military

⁷⁰ Jo-Burg Policy on Naming and Renaming of Streets, Section 9(xi-xii).

⁷¹ *Ibidem* at Section 9(xii-xiv).

⁷² R. F. Weingroff, *Jefferson Davis Memorial Highway*, U.S. Department of Transportation Federal Highway Administration, at <https://www.fhwa.dot.gov/infrastructure/jdavis.cfm> (visited December 7, 2015); see also R. F. Weingroff, *From Names to Numbers: The Origins of the U.S. Numbered Highway System*, American Association of State Highway and Transportation Officials Quarterly Magazine 1997, Vol. 76.

⁷³ R. F. Weingroff, *Jefferson Davis Memorial...*

⁷⁴ The Federal Highway Act of 1956 can be found at 23 U.S.C. § 1 sqq.

⁷⁵ See, e.g., Georgia Constitution, Article IX, Section 2 – Home Rule for Counties and Municipalities.

leaders. In 2014, some citizens expressed concern that these street names were fomenting and reinforcing racial discord, so they petitioned the City Council, through the planning department, to change the 1963 law⁷⁶.

Following public consultation, the Alexandria City Council voted to abolish the 1963 law for all new street names and reaffirmed that existing street names could be changed “by adoption of an ordinance of the city council”⁷⁷. Thus, if a group in Alexandria wants to rename its portion of the 468 miles of roadways in the eleven former Confederate states that bear the name of Jefferson Davis – the former President of the Confederate States of America – it would need to submit an application to the city planning department who would refer the matter to the city council for public consideration and a vote, usually within 30-60 days of receiving the application⁷⁸. Street renaming applications typically require:

- 1) a cost estimate for the proposed change;
- 2) a guarantee that the applicant will bear these costs; and
- 3) the names, addresses, and signatures of a majority or supermajority of the residents and businesses located on the street to which the renaming applies⁷⁹.

The legal criteria used by county commissioners and city councils to assess street renaming applications vary widely from no stated criteria to a cryptic statement in the Wilmington, North Carolina City Code that “in some cases, the street with a name of historical significance should retain the disputed name”⁸⁰.

However, the states of Tennessee and South Carolina – two former Confederate states – are exceptions to the general rule that local governments in the United States govern street naming and renaming. In Tennessee, no public street in the state named in honor of Confederate military personnel “may be renamed or rededicated” unless the local government seeks a waiver from the Tennessee Historic Commission⁸¹. South Carolina’s street renaming law is even more restrictive, as no public street named for “a historic figure or historic event may be renamed or rededicated” unless two-thirds of each branch of the state General Assembly vote to amend the state law⁸². The state legislatures of Tennessee and

⁷⁶ D. Hansen, *Alexandria Council Repeals Confederate Street-Naming Law*, Old Town Alexandria Patch, January 28, 2014.

⁷⁷ Alexandria, Virginia – Code of Ordinances, Chapter 2, Article C, Section 5-2-66.

⁷⁸ *Ibidem*; D. Darlin, J. B. Merrill, *Honors for Confederates, for Thousands of Miles*, New York Times, June 26, 2015.

⁷⁹ The City of Wilmington and New Hanover County in the state of North Carolina require signatures from 51% of residents and businesses on the street that is to be renamed. See New Hanover County & the City of Wilmington, North Carolina, *Addressing Standards & Procedures Manual for New Hanover County & the City of Wilmington*, North Carolina, August 6, 2002, Section 2.7-8; The city of Atlanta, Georgia requires signatures from 75% of the residents and businesses. See Atlanta, Georgia – Code of Ordinances, Section 138.8.

⁸⁰ *Addressing Standards & Procedures...*, Section 2.8.

⁸¹ Tenn. Code Ann. § 4-1-412(a)(2); § 4-1-412(d).

⁸² S.C. Code Ann. § 10-1-165.

South Carolina, therefore, have chosen to protect streets honoring the Confederacy by removing local authority over historic street renaming and making the renaming process extremely cumbersome.

4.3. COMPARATIVE ANALYSIS OF LAWS FOR CONTROVERSIAL STREET RENAMING

The laws for controversial street renaming in South Africa and the United States, contain striking similarities. Street naming and renaming in South Africa and the United States are under the exclusive purview of provinces/states and their local governments; the national/federal government has no authority. Furthermore, with the exception of the states of Tennessee and South Carolina, the application procedures for renaming streets in both countries are relatively simple: submission of an application and report to the local or provincial/state authority stating the reasons for the name change, the proposed new name, the financial costs involved if the name were changed, and the results of significant public consultation. Provincial/state and local governments in both countries also wield wide discretion about whether to rename a controversial street or not. South African provinces and local governments favor renaming when a street name is considered “offensive”, though one wonders where the outer boundaries of such a standard lie as different people can take offense at different names for different reasons. In the United States, criteria for renaming controversial streets are often not delineated. But if they are, they usually reinforce the discretion of the local authority, unless that local authority is in Tennessee or South Carolina where the state decides whether or not to rename a street honoring the Confederacy.

However, there is a salient difference between laws in South Africa and the United States with respect to renaming controversial streets that has powerful practical consequences. In the United States, the person or entity proposing the street renaming must bear the financial costs of the change; whereas in South Africa, the costs for renaming a street are drawn from the coffers of the relevant provincial or local authority. This financial requirement in the U.S. may pose a significant barrier to those wanting to change an offensive street name, particularly in the former Confederate states where thousands of miles of roadway venerate Confederate heroes but the black population often composes a sizable portion of the poor⁸³. While the laws of provincial and local governments in South Africa are more egalitarian with respect to the financial costs of street renaming, their budgets are likely more limited; and chronic paucity of government funds fused with more pressing civic priorities (e.g., potable water, sanitation) may prove the

⁸³ See D. Darlin, J. B. Merrill, *Honors for Confederates...*; for poverty rates see S. Macartney, A. Bishaw, *Poverty Rates for Selected Detailed Race and Hispanic Groups by State and Place: 2007–2011*, U.S. Census Bureau, American Community Survey Briefs, February 2013.

most effective deterrent to budgeting for renaming controversial streets⁸⁴. In general, however, South Africa's commitment of public funds to renaming "offensive" streets suggests that, on the whole, it is probably easier to rename a street honoring an apartheid leader than it is to change a street name dedicated to the Confederacy.

5. CONCLUSION

Monuments and honorific street names, like the people and purposes they represent, tell tangible, multi-layered, nuanced stories about history, memory, identity, status, and community⁸⁵. The focus of this article has been to tell the related story of the legal frameworks that two representative governments, South Africa and the United States, have erected to preserve or discard these stories from the public sphere. This legal activity preceded the current rash of public activities and discussion to do with the permanence and placement of public symbols; contextualizing the law and recognizing its purpose and variety should be an important reference point and element of public debate.

Although the legal frameworks of South Africa and the United States diverge in the strength of legal standards used to protect controversial monuments and streets; the range of monuments and streets covered by the law; and the financial implications of removing monuments or renaming streets, they share several important similarities – a decentralized government structure for heritage preservation; a requirement for robust public participation in heritage decisions; and most importantly, a codified ethos recognizing that heritage, even controversial heritage, has the unique capacity to promote healing, inclusivity, and understanding within our communities while guiding us into an unknown future. The clearest product of this ethos is that while neither country prohibits the removal of controversial monuments or renaming controversial streets, their laws tend to discourage these actions. It will be interesting to see if current transatlantic debates about the role(s) of controversial cultural heritage in civic life translate into modification of the legal landscape in South Africa, the United States, and other countries⁸⁶.

⁸⁴ See N. Schoeman, *Fiscal Performance and Sustainability of Local Government in South Africa – An Empirical Analysis*, Working Paper 201, January 2011; 3SMedia, *Challenges in South Africa's Smaller Municipalities*, Infrastructure News and Service Delivery, March 11, 2013, at www.infrastructurenews.ws.

⁸⁵ R. Schein, *Acknowledging and Addressing Sites of Segregation*, Forum Journal 20051, Vol. 34, No. 19, p. 38.

⁸⁶ See, e.g., R. Fausset, *South Carolina Faces the High Cost of Curating History's Dustbin*, New York Times, December 26, 2015; *The Guardian view on Cecil Rhodes's legacy: the empire*

LAWS REGARDING CONTROVERSIAL CULTURAL HERITAGE IN SOUTH AFRICA AND THE UNITED STATES: PUBLIC MONUMENTS AND STREET NAMES

Summary

Targeting cultural heritage to buttress new political and social aims is an ancient, and unfortunately, omnipresent practice among authoritarian regimes. Pharaohs' excised the names of predecessors (and carved their own) on Egyptian obelisk cartouches; King Edward I of England captured and transported the Stone of Scone – Scotland's coronation stone – to Westminster Abbey in 1296; Chairman Mao's 'Great Leap Forward' led to the wholesale destruction of Chinese feudal culture in the mid-20th century; the Nazis methodically bombed and bulldozed over 90% of Warsaw's historic Old Town; and the Islamic State (ISIS) recently demolished the tomb of the biblical prophet, Jonah, in Iraq. Calculated removal of cultural heritage, however, is also a modern widespread concern in representative governments like South Africa and the United States. This is particularly true when historic monuments and street names highlight controversial chapters of the past, like slavery and racial inequality. Monuments and street names that some associate with slavery and racial inequality are significant threads that delineate and reinforce a distinct cultural narrative of identity and importance across many urban tapestries in South Africa and the United States. But the laws for protecting or removing controversial monuments and street names in these two countries has received little attention. This article will, therefore, examine and compare the legal frameworks for protecting or removing controversial historic monuments and renaming controversial streets in South Africa and the United States.

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REGULACJE PRAWNE DOTYCZĄCE KONTROWERSYJNEGO DZIEDZICTWA KULTUROWEGO W RPA I USA: POMNIKI HISTORYCZNE I NAZWY ULIC

Streszczenie

Działania wymierzone w dziedzictwo kulturowe z zamiarem wsparcia nowych politycznych i społecznych celów w świecie antycznym i niestety obecnie było i jest powszechną praktyką reżimów autorytarnych. Faraonowie usuwali imiona swych poprzedników (i dłutowali własne) na egipskich obeliskach; król Edward I zabrał i przetransportował kamień ze Scone – szkocki kamień koronacyjny – do Opactwa Westminsterskiego w 1296; maoistowski Wielki Skok Naprzód doprowadził do zniszczenia całej chińskiej struktury feudalnej w połowie XX wieku. Naziści systematycznie bombardowali i zrównali z ziemią ponad 90% warszawskiego Starego Miasta; ISIS ostatnio zniszczyło grobowiec biblijnego proroka Jonasza w Iraku. Niszczenie dziedzictwa kulturalnego z premedytacją dotyczy także legitymowanych rządów, jak na przykład w RPA czy USA. Ma to znaczenie głównie w odniesieniu do zabytków i nazw ulic kojarzących się z kontrowersyjną przeszłością, jak niewolnictwo i nierówność rasowa. Zabytki i nazwy ulic, które łączą się z niewolnictwem i nierównością rasową, to poważne kwestie wytyczające i wzmacniające odrębną narrację kulturową, mające znaczenie na wielu płaszczyznach miejskich w RPA i USA. Ale prawu chroniącemu bądź niwelującemu kontrowersyjne zabytki i nazwy ulic w obu krajach poświęcono dotychczas mało uwagi. Niniejszy artykuł bada i konfrontuje ze sobą ramy prawne ochrony lub niwelacji kontrowersyjnych zabytków i zmieniania kontrowersyjnych nazw ulic w RPA i USA.

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SŁOWA KLUCZOWE

pomniki, nazwy ulic, dziedzictwo kulturowe, apartheid, niewolnictwo, nierówności rasowe

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