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# Legislative change as entrepreneurial planning: a critique of recent planning legislation in the Republic of Ireland

**Abstract.** In the planning literature relatively little attention has been given to investigating the nature of legislative change in the planning domain. Utilising a political economy approach, this paper analyses recent planning legislative change in the Republic of Ireland. The paper argues that changes in planning legislation can be interpreted within a broader agenda of entrepreneurial planning within the Irish State. In critiquing recent change, the paper highlights three key issues: (1) the state, through legislation, facilitates development capital over the interests of the general population; (2) entrepreneurial planning approaches can be traced to formal legislative change; (3) recent legislative change has been designed specifically to reduce democracy in the planning process. The findings support the assertion that planning legislation facilitates predominantly the elite interest groups in society over those of the ‘common good’.

## Introduction: The State, Legislation and Democracy

*‘In all well-balanced governments there is nothing which should be more jealously maintained than the spirit of obedience to law, more especially in small matters; for transgression creeps in unperceived and at last ruins the state, just as the constant recurrence of small expenses in time eats up a fortune.’*

(Aristotle, Politics, Book V, Section 8, 31-34)

In the planning literature, relatively little attention has been devoted to reflecting on the origins and nature of the state and the role of planning. However, some notable exceptions do exist and these are largely Marxist political economy interpretations (Harvey, 1989a). In particular, the Marxist approach questions the neutrality of the modern state given its historic origins in assuaging and reinforcing dominant class relations (Paul, 1917). Assuming, as Marxists do, that these dominant class relations have existed since the formation of the state under various modes of production, then it follows that Marxist political economy perceives state functions to reflect the dominant class interests in society. In the modern state, Marxist thinkers contest traditional perceptions of planning as a regulatory function which serves the ‘common good’ and of planners as ‘guardians of the public interest’ (Harvey, 1989a; MacLaran and McGuirk, 2003). Rather, planning is seen to be a state intervention mechanism which smoothes the way for the continuation of the capitalist mode of production by creating ‘a landscape which reduces locational contradictions, enhances economic efficiency and social compliance’ (MacLaran and McGuirk, 2003, 80).

There are, of course, other conceptions of the function of planning but they have a tendency to ignore the origins and role of the state. In this regard, Healey’s notion of communicative or collaborative planning has become the dominant discourse in planning theory in recent years. The idea, embedded in pluralist notions of the state, elevates the planner’s role to that of key stakeholder in the planning process whose function is to ‘...listen to people’s stories and assist in forging a consensus among differing viewpoints. Rather than providing technocratic leadership, the planner is an experiential learner, at

most providing information to participants but primarily being sensitive to points of convergence' (Fainstein, 2000, 454). From this viewpoint, the function of planning is seen to be a diverse and collaborative practice of 'shaping places' through consensus-building between various stakeholders. From a Marxist perspective, however, social inequality and diversity are primarily expressions of underlying structural economic inequality brought about by the persistent domination of class interests over time. By viewing the political and economic spheres of the state as fundamentally 'separable, even if they are often related' (MacLaran and McGuirk, 2003, 85), collaborative planning theory effectively ignores the class basis of political and economic power. Although Healey (2003) rejects such a stance, she has not been able to silence her most vocal critics convincingly (see Twedwr-Jones and Allmendinger, 1998; Twedwr-Jones and Thomas, 1998).

Like the state, law has not always existed; its origins lie in the class conflicts arising with the growth of private property in tribal societies. In the literature, a great deal of debate has arisen about this issue as a result of the confusion between state law and tribal custom; the two of which are not equivalent. Within the tribal or clan system there was no state to *enforce* decrees: social administration was conducted by the tribal members in the common council; enforcement was not possible. Jenks (1900), a distinguished legal historian, has corroborated this view by asserting that 'It is the absence of force to enforce decrees...which is one of the weaknesses of tribal society'. This distinction has led Paul (1915, 107) to conclude that 'The tribal Custom has its roots in primitive communism. Law has its roots in private property. The former presupposes equality and has no method of enforcing its decrees; the latter rises because of class inequalities and therefore needs an engine of force to ensure obedience'. From this vantage point, the law is seen as a class-based social institution which is dependent upon the state's monopoly of legitimate violence for enforcement. Thus, in the modern state, legislation (and in particular that with respect to private property) is thought to reinforce the interests of the propertied class. Yet, at different periods in history legislation can be more or less favourable to propertied interests depending on the extent to which the general population has been successful or otherwise at redistributing the social product more equally. Crucially though, the power structure in society and the exploitative nature of the economic mode of production is rarely threatened.

It was not only Marx who was concerned with the class conflicts arising out of private ownership. In one of the key foundational texts for modern political theory – *Politics* – Aristotle was also concerned with conflicts arising from private ownership of property. Although he did not state it explicitly, he was essentially broaching the question of class conflict in ancient state systems. He felt that if in a perfect democracy there were extremes of rich and poor, the poor would use their democratic right to initiate land reform and confiscate property from the rich. He considered this to be unjust because he felt that it was effectively a tyranny of the majority. In democratic states, he saw two ways of dealing with the potential problem: the first option was to reduce inequality so that the poor would not be inclined to initiate land reform; the second option was to reduce democracy so that the poor would not have the power to initiate land reform (Chomsky, 2003). Both methods suggested by Aristotle were essentially differing means of assuaging class conflict in early state systems and it is the second option which has most relevance for recent changes in planning legislation. Recent legislative change can

be viewed as a means of reducing democracy in the planning process. In other words, relations of power are altered whereby the general public's political power is reduced in the planning process through legislative reform which favours the consolidation of private power to a much greater extent.

Within the foregoing context, the current paper looks beyond pluralist interpretations of the role of planning within the state. Using a Marxist political economy interpretation, this paper makes three key contributions to the existing literature. First, through analysis of legislative change, the paper demonstrates the manner in which the state - and by extension planning - primarily facilitates development capital over the interests of the general population. Second, existing literature on entrepreneurial planning highlights the shift in planning practice towards increased co-operation between development interests and local authority planning. However, few studies have attempted to document the rise of entrepreneurial planning through examination of formal changes in planning legislation. This paper fills that particular gap. Finally, the paper demonstrates how recent legislative change in the Republic of Ireland has been designed specifically to reduce public participation in the planning process. This, we argue, is a clear attempt to reduce the democratic nature of the planning process, thereby consolidating and prioritising the interests of private capital over those of the general population.

## **Marxist Political Economy and the State**

### *Marxist Political Economy*

The Marxist political economy perspective of the state is grounded in an assumption that the economic and political spheres are inextricably linked (Yiftachel, 1995; Sandercock, 1998; MacLaran and McGuirk, 2003).<sup>1</sup> Given the origins and role of the state mentioned already, Marxist political economy offers the most penetrating and enlightening perspective from which to analyse the role of the state in advanced capitalist societies.

Marx's materialist interpretation of the state perceives the state to emerge organically out of competing individual and community interests. The state can therefore be seen as a product of society at a particular time and is needed to moderate between conflicting economic interests (Scott & Roweis, 1977; Harvey, 2001):

*'This power arising out of society, but placing itself above it and increasingly alienating itself from it, is the state'* (Engels, 1941:155 cited in Harvey, 2001:269).

The state is viewed by Marxists as an instrument of class domination, representing the interests of the privileged in society. Marx and Engels (1970, 20 as cited in Harvey, 2001, 274) describe the capitalist state as 'the form of organization which the bourgeois

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<sup>1</sup> Alternative conceptions of the state include pluralist, managerialist and reformist perspectives. Kirk (1980) and Sandercock (1998) offer excellent reviews of such interpretations, as well as their inherent weaknesses. It is important to point out that the Marxist political economy perspective does not render these alternative theories of the state irrelevant but rather considers them as a 'nested hierarchy of explanations' (MacLaran and McGuirk, 2003, 75). Nonetheless, the Marxist approach does attempt to discredit the idea that the state operates in the public interest and instead emphasises that class interests consistently dominate in practice (Sandercock, 1998; Watson & Gibson, 1995).

necessarily adopt for internal and external purposes for the mutual guarantee of their property and interests'. While conventional constitutional theorists perceive the state as the guardian of public interest, Marxists view the state as the 'executive arm of the bourgeoisie' (Harvey, 2001, 118) and the 'organ of the ruling class' (Edel, 1981, 28).

Marxist writers stress that the state's core role is to guarantee and legitimise existing capitalist social and property relations in order to mediate class conflict and facilitate the continued social and economic domination by capital (Scott and Roweis, 1977; MacLaran and McGuirk, 2003). As such, the state must out of necessity perform 'certain basic minimum tasks in support of a capitalist mode of production' (Harvey, 2001, 269). Scott and Roweis (1977, 1102) warn that without the presence of an agency capable of maintaining social balance, capitalist society would rapidly disintegrate. However, Harvey (2001, 277) warns that 'bourgeois democracy can survive only with the consent of the majority of the governed while it must at the same time express a distinctive ruling interest'. Harvey (*Ibid*) identifies two strategies whereby allegiance of the working class can be achieved whilst simultaneously safeguarding the interests of the privileged in society.

The first strategy is to employ an ideology that represents dominant interests as the 'illusory general interest' by universalising the ruling class ideas as the only 'universally valid ones':

*'To represent its (ruling class) interests as the common interest of all members of society...it (state) has to give its ideas the form of universality and represent them as the only rational, universally valid ones'* (Marx and Engels, 1970,65-66 as cited in Harvey, 2001, 271).

The second strategy to gain consent is to give the appearance of neutrality and autonomy from dominant class interests in the state's operations. Examples of this tactic in practice can be seen in the public provision of certain goods (e.g. social housing, minimum wage, education, public transport etc), which are 'necessary prerequisites' for capitalist production, but often lie beyond the logic of individual capitalists to provide themselves at a profit (Sandercock, 1998; Harvey, 2001; MacLaran & McGuirk, 2003). In return for such concessions, the state receives 'an allegiance of the subordinate class' and an ideology of the 'common good' is established which disguises the inherent interests of the capitalist state as a facilitator of the capitalist system (Sandercock, 1998; Harvey, 2001, 277; MacLaran and McGuirk, 2003).

In analysing the role of planning from a Marxist political economy perspective, it is of crucial importance to remember that 'buildings are a commodity like any other and their production contributes to the capital accumulation process' (Kirk, 1980:119). The conferring of wealth upon private individuals through public planning decisions means that planning acts as a distributor of material well-being (Harvey, 1973; Watson & Gibson, 1995; Knox, 2005). In the same way that the state emerged out of an inherent need to mediate class conflict; planning evolved in response to the manner in which variances in the social system became reflected in the built environment (Scott and Roweis, 1977; MacLaran and McGuirk, 2003). As planning is a function of the state, our understanding of the state influences our perception of planning. Writers from a Marxist political economy perspective therefore regard planners primarily as 'state agents' who serve capital interests, rather than any notion of the 'common good'. This perception highlights the inherent appeal of concepts such as the 'common good' and 'public

interest' in politics, as such terms provide an apparent logic and justification to policies and decisions that have the underlying objective of bolstering private accumulation (Scott and Roweis, 1977; Sandercock, 1998; MacLaran and McGuirk, 2003, 78). The appearance of rationally and technically derived urban policy thus serves not only to favour private interests but also diverts negative attention away from the actions of capitalists themselves, as the public tend to express dissatisfaction with the state and its adopted policies, which are postulated as being conducive to the 'common good'. Kirk (1980:84) outlines that 'since the state expresses at the political level the combined economic and political interests of the dominant classes, then planning cannot be an instrument of social change, but only one of domination, integration and conflict regulation'.

Central to capitalism and capital accumulation is the control of production by a capitalist class and the carrying out of production by waged labour (Edel, 1981). The generation of profit from the exploitation of labour defines the class struggle between capitalists (the ruling class) and the workers (the working class) (Scott and Roweis, 1977; Edel, 1981).

Marx (cited in Harvey, 2001, 238) repeatedly asserts that the historical mission of the ruling class is 'accumulation for accumulation's sake, production for production's sake'. However, Harvey (1975) and various others are keen to point out that the continuous drive for expansion and accumulation of the ruling class is not due to greed but rather the need to compete with other capitalists to retain their privileged position and avoid class struggle (Scott and Roweis, 1977; Edel, 1981; Harvey, 1989a; Harvey, 2001).

Under Marx's theory of capital accumulation, it is accepted that accumulation depends upon the existence of surplus labour, the means of production and a market (Scott and Roweis, 1977; Harvey, 1975; Edel, 1981). If one or more of these elements fail, a crisis will inevitably occur. Essentially, the continuous need for expansion and drive for accumulation causes capitalists to maximise profits by reducing the wages of the working class. However, the reduction of wages results in a reduction in the purchasing power of the masses and this in turn reduces the market demand to which capitalists supply; over-production and a crisis of accumulation occurs. Many writers have highlighted that as capitalism creates the conditions necessary for its own existence, it too creates the barriers and as such, crises are considered endemic to the capital accumulation process (Scott and Roweis, 1977; Harvey, 1975 as cited in Harvey, 2001, 239; Edel, 1981).

However, Harvey (1981, 2001) points out that these crises have an important function as they force an order and rationality into the system. Crises have the potential to generate tragic human consequences and social reaction, but this can be avoided by 'recreating the appropriate conditions for the renewed accumulation of capital to take place', thus sustaining the capitalist system (Harvey, 2001, 241). Each crisis essentially shifts the accumulation process to a 'new and higher place' which is characterised by technological advances (due to lower costs), reduced labour costs (due to unemployment) and an increase in the demand for goods and investment (due to pent up demand) (Harvey, 2001). These elements combine to reinstate an environment for capital accumulation, thus facilitating the continuation of the capitalist system. The capitalist accumulation process (with its endemic crises) is therefore considered by Marxists as the

means whereby the capitalist class reproduces both itself and its domination over labour (Scott and Roweis, 1977; Edel, 1981).

### *The state as facilitator*

Evidence of the state functioning as a facilitator of capitalist interests became particularly evident in New York during the fiscal crisis of 1975 (see Knox, 2005). In a similar manner, the rise of neo-liberal forms of governance throughout the UK and Ireland in the 1980s emerged with the promotion of a New Right philosophy that emphasised the advantages of market orientated urban policies (Brindley et al. 1989; Thornley, 1991; Rydin, 1998). This New Right political ideology, as introduced by Reagan in the US and Thatcher's new conservative government in the UK, represented a new economic liberalism led by neo-classical economists such as Friedrich von Hayek and Milton Friedman who regarded unregulated markets as being the superior way upon which to organise society.

Such an ideological shift was largely realised by the use of populist messages promoting notions of individualism and privatisation. In addition, the inefficiencies of the existing planning system at local government level were identified as being the core reason for the 'inner city problem' and economic stagnation of the 1980s in the UK (Thornley, 1991). Despite the rise of Left Wing opposition and the eventual establishment of the 'Third Way' by the New Labour government of the 1990s, Thatcher's ideology has had a long lasting resonance on the political strategies and urban policies of advanced capitalist societies throughout the world.

The rise of neoliberal forms of urban governance is epitomised by local and central governments becoming increasingly entrepreneurial in the pursuit of urban development. In particular, private-led regeneration projects and the development of quasi-public redevelopment authorities, as well as public private partnerships have provided selected private investors with responsibilities traditionally vested in the public sector (Squires, 1996:271; Drudy, 1999; Drudy & Punch, 2000; McGuirk & MacLaran, 2001; Kelly & MacLaran, 2004). Furthermore, interventionist policies have become increasingly involved in improving the profitability surface of inner city areas which would be traditionally perceived as being 'no-go' areas for investors via the provision of a wide range of fiscal incentives (see Williams & MacLaran, 1996; McGuirk and MacLaran, 2001). These market-led planning initiatives have taken various forms, including 'trend planning', 'leverage planning', 'public investment planning' and 'private management planning' (Brindley et al, 1989). However, common to all these approaches is the inherent focus on private-sector development activity and market forces, with some being stimulated by public sector finance or resources. Peck and Tickell (1994) associate such trends with the 'creeping enfeeblement' of local government. In an Irish context, McGuirk (2001) establishes a link between the 'enfeeblement' of local government and the emergence of public private partnerships, appointed quangos, private sector alliances and entrepreneurial initiatives dominated by property led regeneration .

The justification for such market orientated policies has generally been that such schemes are more efficient in terms of their delivery and output, and ultimately bring with them 'trickle-down' benefits to local communities. However, to date the real beneficiaries of such entrepreneurial approaches have largely been private interests (who

tend to view the city primarily in terms of its exchange value) rather than the public at large, with the latter holding the city's use value as a place to live, work and play in high regard (Logan and Molotch, 1987 as cited in Squires, 1996, 271). Indeed, local communities have borne most of the costs incurred by such schemes with gentrification, polarisation and a wide range of other social issues being commonly associated with such strategies (Drudy, 1999; Drudy & Punch, 2000; MacLaran & Rafter, 2003; Kelly & MacLaran, 2004; Knox, 2005). The effect of increasingly neoliberal forms of governance and entrepreneurial planning is that broader social, cultural and environmental objectives tend to be diluted and residualised as they become sidelined by a central agenda of competition and growth (Imrie and Thomas, 1995; McGuirk, 2001, 438).

The above demonstrates that the Marxist political economy perspective offers a penetrating perspective of the urban planning process and as such, offers a useful position from which to analyse relatively recent legislative changes to the Irish planning system. As this is the perspective from which the remainder of the paper is derived, it is important to provide a more detailed analysis of the theoretical foundations of the Marxist political economy perspective.

### **Urban Processes under Capitalism and the Rise of Entrepreneurialism**

Marxists view urban areas as a 'domain within which the process of capital accumulation takes place' (Harvey, 1985 as cited in MacLaran and McGuirk, 2003, 79) and as such, a robust relationship is considered to exist between the development of cities and the capital accumulation process (Kirk, 1980, 79). Harvey (1987, 1989, 2001) links the theory of capital accumulation to the urbanization process by identifying that crises of over accumulation in capitalist society are preceded by investment of capital in the built environment in an attempt to absorb surplus capital or profit generated from the capitalist mode of production. The rapid accumulation of profit that accrues in the capitalist mode of production leads to a switch of investment from the primary to tertiary sector (Harvey, 1981). This shift occurs as property is a form of capital and the built environment provides capitalists with opportunities to generate additional profits (Kirk, 1980; Edel, 1981). Essentially, the urban landscape represents a 'profitability surface' (MacLaran, 1993) and the investment of surplus capital and competition can account for varying patterns of urban development (Edel, 1981; Knox, 2005). Such a phenomenon is readily identifiable in the urban environments of virtually all advanced capitalist societies.

Scott (2006) succinctly demonstrates the manner in which different phases of capitalism are associated with particular forms of urban development. For instance, nineteenth century capitalism can be directly related to the rise of the classical factory town, whilst the era of Fordist mass production in the twentieth century is associated with the development of sprawling urban metropolises throughout the United States. A number of academics have attempted to classify the economic order underpinning many of today's advanced capitalist societies, the result of which has led to an array of terms including 'postindustrial society' (Bell, 1973), 'flexible accumulation' (Harvey, 1987) and 'postfordism' (Albetsen, 1988). All of the aforementioned terms broadly relate to the idea that the economic order now governing many of today's advanced capitalist societies is characterised by a proliferation of small firms who operate in extended networks to produce increasingly specialized products to cater for increasingly



individualistic demands. In addition, the labour markets in this 'new economy' are considered to be extremely fluid and competitive (Scott, *Ibid*). The manifestation of this new economic order in the urban environment is readily identifiable from the inherent tendency of such industries to 'assume geographic expression the forms of specialised locational clusters' which generate comparative advantages in a region (Scott, *Ibid*: 3). Moreover, the 'new economy' has emerged hand-in-hand with deregulated flows of international capital thereby 'ramping up' competition between cities nationally and internationally for capital investment.

### *The Rise of Entrepreneurialism*

The aforementioned phases of capitalism illustrate that an identifiable shift from managerialism and Fordism to entrepreneurialism and flexible accumulation has occurred throughout the world's advanced capitalist societies as post-war capital accumulation has become increasingly globalised (Harvey, 1987, 1989a, 1989b; Squires, 1996; Knox, 2005; Brenner, 2006). Scott (2006, 2) outlines that in modern capitalist societies, cities are forced to compete with one another as each 'urban community' is concerned with securing its own collective interests in a world of finite resources. In this era of intensified 'global interspatial competition', many consider that the role of the nation has shifted somewhat given the increasing emphasis on the accumulation of capital at the sub-national level (Harvey, 1989; 2001; Knox, 2005; Brenner, 2006). Brenner (2006, 261) refers to this general shift from the national to the supranational and local as 'the rescaling of the urbanization process' whilst others refer to it as a 'hollowing out' of the nation state. Squires (1996, 269) points out that in this increasingly competitive economic climate 'cities must work more closely with private industry...to establish more effectively their comparative advantages'. Similarly, Harvey (1985) identifies that planners have undergone an ideological shift from a position of advocacy to business rationality due to increased competition for capital between locations.

With the emergence of increasingly mobile flows of capital, urban centres (as nodes of capital accumulation) find themselves embedded in a framework of 'zero-sum' inter-urban competition for resources, jobs and capital (Harvey, 1987, 1989). As a result, local boosterism (Harvey, 1989a, 1989b, 2001; Knox, 2005), entrepreneurial governance, 'trend planning' (Brindley et al, 1989) and 'growth machine politics' (Molotoch, 1976) have emerged in an attempt to secure new locational advantages to attract international capital investment (Harvey, 1989; Bartley and Treadwell Shine, 2003; Knox 2005; Brenner, 2006). Brenner (2006, 264) refers to the creation of such comparative advantages as 'enhancing the territorially specific productive capacities of economic spaces' and states that such advantages can be created by 'deregulatory political strategies'. Such strategies demonstrate the continued influence of roll-back neoliberalism (Peck and Tickell, 2002, 384) from the Thatcherist era.

Harvey (1989b) highlights that this capitalist development logic, which is governed by competition, leads to greater polarisation in the distribution of real income as mobile flows of private capital demand higher incentives to secure investment, which would otherwise be invested in the provision of public services. MacLaran and McGuirk (2003) echo such sentiments with McGuirk's (1994) research highlighting that there is a growing alignment of the state's activities with the needs of private capital and profit

maximization due to economic restructuring and large-scale movements of capital on a global scale. Essentially, urban policies have become preoccupied with creating a favourable 'business climate' for investors with significant investments being made in the provision of physical infrastructure and consumer-related social aspects of the city. The result of such 'boosterist' strategies has generally been the widespread adoption of a consumption orientated development logic that promotes the mass production of downtown shopping districts, riverside regenerations schemes and sports stadia to imitate successful examples elsewhere (Knox, 2005; Peck, 2005; Scott, 2006). The ultimate effect, however, is the manufacturing and repackaging of 'mercantile cities' that lack unique identities and are becoming increasingly similar, with the phenomenon of 'placelessness' and 'anywhereseville' becoming increasingly prevalent throughout many advanced capitalist societies (Knox, 2005).

## **Irish Planning Legislation**

Harvey (2001, 268) points out that 'theory remains an abstraction until it is put to work'. This section of the paper summarises the legislative framework within which urban planning takes place in the Republic of Ireland, in order to provide the background for our attempt to put the above theories to work contained in section 5.

### **Legislative Context, 1963 – 1999**

Although the 1934 Town and Regional Planning Act gave local authorities a discretionary power to engage in spatial planning, the processes involved were cumbersome and unsatisfactory in operation. Consequently, the Irish planning system is recognised to date from the commencement of the 1963 Local Government (Planning and Development) Act on 1 October 1964.

Introducing the Act as a Bill to the Dáil (lower house of the Irish parliament), the Minister for Local Government gave a detailed statement of its aims and content. The main objectives he formally outlined have been analysed in *Twenty Years of Planning* (Grist, 1983:8). However, a close reading of his lengthy speech (officially recorded as taking some two hours to deliver) reveals the following insight into the legislative purpose : "Property values must be conserved and where possible enhanced" [Dáil Debates, Vol. 197, Col. 1762, 22 November 1962].

The 1963 Act was amended by eight subsequent planning acts between 1976 and 1999. In general terms, these remedied various deficiencies that had become evident in the course of operating the system, such as the lacuna in the provisions relating to the adoption of draft development plans and the need for a non-political appeals authority. An Bord Pleanála (generally referred to as 'the Board') was established in 1976 and reconstituted into its present independent form in 1983 (Grist, 1999, 87).

It is worth noting that the original development control system contained a general statutory right of appeal against all planning decisions. Section 26(5)(a) of the 1963 Act read as follows : "Any person may, at any time before the expiration of the appropriate period, appeal to the Minister against a decision of a planning authority".

The categories of possible appellants given identical rights were:

- owners and occupiers wishing to develop their property;

- owners and occupiers of property affected by neighbouring development proposals; and
- the public at large.

The development industry always resented this third party right of appeal, complaining about delays, uncertainties, vexatious appeals and financial implications (Grist, 1983, 32). A number of statutory amendments between 1976 and 1992 made adjustments reasonable to the balancing of developers' and the public's rights, for example a timeframe for appeals was introduced in the 1992 Planning Act, setting the Board a four month objective within which to issue its decision. However, with the 2000 Planning and Development Act, the scales have been weighed in favour of development interests.

### **Legislative Change in the 2000 Planning and Development Act**

A comprehensive review of the planning system began in August 1997 and the 2000 Act both consolidated and amended the previous code. During the period of drafting and parliamentary scrutiny, the Irish economy was growing strongly and the Act reflects an overall desire to streamline and expedite the planning process in response to pressures from the construction industry. The remainder of this section outlines the statutory framework for a number of the new procedures which can be identified as supporting the interests of development capital.

#### *Strategic Development Zones*

Strategic Development Zones (SDZs) are essentially an adaptation of the UK's Simplified Planning Zones (SPZs), which were introduced during Thatcher's neo-liberal regimes in the 1980's. SDZs were openly introduced to facilitate specified development of economic or social importance to the State. On the proposal of the Minister for the Environment, the Government is empowered to designate a site for the establishment of an SDZ, the establishing order indicates the type(s) of development appropriate in the zone. Thereafter, the relevant development agency or the local authority has two years to prepare a draft planning scheme, which consists of a written statement and a plan indicating the manner in which it is intended the site be developed. The detail required is greater than in a development plan. A scheme must include proposals in relation to the overall design of the zone, including maximum heights and roads layout, but it does not come down to the level of specifying locations or plans for individual buildings. It is put on public display for at minimum six weeks, during which time submissions can be made. When the draft scheme is adopted by the elected representatives, any person who made a submission can appeal the decision to the Board within four weeks of the date of the decision to adopt the scheme [sections 165 to 171].

Two key features of SDZs are the following :

- Once a scheme is approved by the Board, the relevant planning authority is obliged to grant planning permission for applications that are in accordance with it and there is no right of appeal against the planning authority's decision, even in respect of conditions (or the absence of appropriate conditions); and

- planning authorities are given powers of compulsory purchase for the purposes of securing or facilitating the provision of the lands within a designated SDZ for development.

These features raise serious concerns regarding the rights of third parties and the rights to an oral hearing and are discussed in significant detail later in the paper.

### *Pre-Application Consultations*

Prospective developers have always wanted to have pre-application discussions with the planning authority in order to advance their chances of success but, under the 1963 Act, there was no obligation to accede to such requests for meetings. The 2000 Act made formal provisions for consultations in section 247, which commences as follows:

*“A person who has an interest in land and who intends to make a planning application may, with the agreement of the planning authority concerned (which shall not be unreasonably withheld), enter into consultations with the planning authority in order to discuss any proposed development in relation to the land and the planning authority may give advice to that person regarding the proposed application”.*

Later in the same section, it is acknowledged that the carrying out of such consultations does not fetter the planning authority in its subsequent consideration of any planning application.

The legislation does not impose a requirement on the planning authority to make staff available, because this would have open-ended resource implications. However, when considered together with the Ministerial Guidelines on Development Management (Grist and Macken, 2003, Para 2:4.2.14), it is clear there is strong pressure from central government for public servants to be allocated the role of adviser to private development interests. The Guidelines give a full chapter to the pre-application stage of the planning process and go so far as to contain the suggestion that senior planning staff and representatives from all relevant departments should attend in the case of large-scale or complex developments, to “save the applicant time in arranging a series of consultations”(page 21).

### *Third Party Rights*

The general statutory right of appeal available to third parties from 1963 onwards was removed in March 2002, when section 37 of the 2000 Act came into force. It limits the possibility of appeal to the applicant and “any person who made submissions or observations in writing in relation to the planning application to the planning authority in accordance with the permission regulations and on payment of the appropriate fee”.

The 2001 Planning and Development Regulations set a fee of EUR20 for making observations at local level. Prior to the enactment of the 2000 Act, third parties had a general right to make submissions on an application, free of charge, in which could be taken into account at the evaluation stage.

Observations must be submitted within five weeks of receipt of the planning application. To ensure the public is aware of current development proposals, all applications must be publicised by a notice in a newspaper circulating in the area and a

notice on the site. In addition, planning authorities are required to publish weekly lists of the applications received during the previous week. No decision can be made on any application within five weeks of its receipt, in order to allow time for public participation.

Section 37(6) contains an exception to the above limitation on third party appeals. If the development for which permission was granted would differ materially from that for which permission was sought by reason of one or more conditions, an adjoining landowner who considers the value of his land would be reduced or his enjoyment of his property seriously affected can apply to the Board for leave to appeal the decision. Where the Board is satisfied that the neighbouring landowner would be injured in this manner by the altered development, it will admit the appeal. Successful applications for leave to appeal are rare, however, as the legislative barrier was deliberately set high to avoid use of section 37(6) as an alternative to the making of local submissions.

### *Housing Strategies*

Part V of the 1999 Planning Bill (enacted the following year as the 2000 Planning and Development Act) contained a provision designed to address the shortage of housing supply throughout the country. A new requirement was imposed on planning authorities to prepare housing strategies, which would identify the total housing demand in their functional areas and would be incorporated into development plans, providing rigour and transparency in forecasting in the subsequent zoning of land. Housing demand was divided into three sub-groups - private, social (the traditional category of persons on the housing list) and affordable (a new category of persons whose income was inadequate to obtain a sufficient mortgage to buy a newly-built house on the rising open market).

The purpose of Part V was to provide both affordable and public housing in an integrated manner. As introduced, implementation was to be achieved through the development control system, by attachment of a condition to planning permission requiring a developer to agree to provide up to 20% of a housing development site for social and affordable housing at existing use rather than market value. During the Bill's passage through the Oireachtas (Irish Houses of Parliament), Part V was enlarged to give developers the choice of meeting the new obligation by the provision of land, serviced sites or purpose-built houses but on the same basis regarding the cost of the land involved and the location of the land/units within the boundary of the development site.

### **Legislative Change in the 2002 Planning and Development Act**

Following a review of the operation of the housing strategy mechanism, an amending piece of legislation was introduced in 2002, the primary purpose of which was to allow developers comply with Part V by two additional options - provision of land/sites/units at a different location within the functional area of the planning authority or payment of a specified sum of money, which would be used by the local authority for housing purposes (social or affordable).

## **Legislative Change in the 2006 Planning and Development (Strategic Infrastructure) Act**

By the beginning of the 21<sup>st</sup> century, almost all major planning applications were being decided on appeal by An Bord Pleanála. The main purpose of the 2006 Act was to introduce a procedure which could bypass what had become merely a preliminary stage at local level.

### *Applications to the Board for Strategic Infrastructure*

The application for permission for strategic infrastructure (SI) is made under sections 37A to 37J of the 2000 Act as amended. The 2006 Act inserted a Seventh Schedule into the 2000 Act, setting out some 28 classes of development that potentially can constitute strategic infrastructure. These are grouped under three headings relating to energy, transport and environmental infrastructure and follow closely the classes of development which are subject to environmental impact assessment. A promoter of a project listed in the Seventh Schedule does not automatically apply for planning permission to An Bord Pleanála but, instead, consults the Board which decides if the development when carried out would satisfy one of the three defining criteria – be of strategic economic or social importance to the State or region, contribute substantially to the objectives of the National Spatial Strategy or the relevant Regional Planning Guidelines or have a significant effect on more than one planning authority. If the Board declines to accept jurisdiction, it so notifies the prospective applicant and the application is then made to the local planning authority in the normal way and may be subject to appeal.

A statutory public inspection period of not less than six weeks follows the receipt of an application by the Board, during which submissions and observations can be made. The Board has an objective of deciding such applications within 18 weeks from the closing date for submissions but, as with appeals, this is not an absolute time limit and a longer period can be taken where necessary. The decision is issued in final form only and is not appealable to any other authority although, like all administrative decisions, it may be subject to judicial review.

### *Powers to Assist the Promoters of Strategic Infrastructure Projects*

The 2006 Act gave the Board a significant range of new powers to hold meetings and discussions with the developers of strategic infrastructure before and after an application is submitted and after the decision has been made. Under all previous legislation, contact with the Board was by written submission only, except where the Board exercised its discretion to have an oral hearing, at which all parties had equal right of audience. Equality of esteem continues to apply to standard planning appeals. In contrast, the 2006 Act allows for a variety of contacts to take place in private with the promoters of strategic infrastructure projects, such as pre-application meetings, at which advice can be given to the applicant regarding the procedures involved and the considerations which may have a bearing on the Board's decision, and post-application meetings in order to resolve issues with the applicant or where it appears "expedient in order to determine the application". Such post-application meetings may also be used

instead of an oral hearing. After the decision had been made, alterations to the conditions of a permission can be sought and allowed if the Board determines the alteration would not constitute a material alteration of the development and there is no statutory obligation on the Board to even inform persons who made submissions on the original planning application.

The strategic infrastructure application procedure has not been set out in either the 2006 Act or the supporting Regulations [Statutory Instrument Number 685 of 2006] with anything approaching the precision governing the standard planning application. An Bord Pleanála has been given wide discretion with regard to the procedures it adopts and it has been establishing its own protocols and guidelines to fill the vacuum. These reassuringly continue the Board's tradition of openness and indicate that there will be balanced access to the decision-making process (O'Connor, 2009). However, it must be emphasised that protocols do not have the permanence of legislative provisions, which must be subject to parliamentary scrutiny if their alteration is proposed, and could be changed in the future by a differently constituted Board. It is also notable that, in creating the new application process, the Legislature did not see fit to give time to considering statutory rights of anyone other than the developers of strategic infrastructure

### *Statutory Considerations*

Section 26 of the 2006 Act introduces a requirement for the Board, in respect of all its functions, to have regard to “the national interest and any effect the performance of its functions may have on issues of strategic economic or social importance to the State”. The term “national interest” is not defined. Extensive matters relating to spatial planning were identified for Board consideration in the 2000 Act and these continue to require attention, for example, development plans, sites of European conservation importance, etc.

### *Compulsory Acquisition of Land*

Section 39 of the 2006 Act removed the traditional right of landowners to a public hearing of their case where their land is the subject of a compulsory purchase order, instead giving the Board absolute discretion as to whether the matter is dealt with by written submissions or an oral hearing.

## **Legislative Change as Entrepreneurialism**

In October 1998, the president of the Construction Industry Federation, Joe Tiernan, said at the Federation's annual conference that revised legislation should contain a presumption in favour of development. This section examines four aspects of the Irish planning system which were amended between 2000 and 2006 in order to facilitate entrepreneurial or developer-led planning.

### *Pro-development planning environments (1) – Strategic Development Zones*

The introduction of Strategic Development Zones (SDZs) under Part IX of the 2000 Act can be considered to be representative of a deregulatory entrepreneurial planning mechanism that has the capacity to create comparative advantages and favourable conditions for private investors at the sub-national level in Ireland. Macken (1999, 150) points out that the “power to designate SDZs is an example of the Government’s desire to retain the power to intervene in the planning process in the interests of national development”.

Flynn (2002,101) has analysed the provisions governing the designation, implementation and operation of Strategic Development Zones and comments that such a provision reflects an overall desire of the Legislature to ‘streamline’ and ‘fast track’ the planning process in order to address the perceived delays in the delivery of housing and key infrastructural developments.

During the passing of the Bill, Part IX was amended to include the designation of sites for residential development and the first three sites were designated for such purposes. As mentioned previously, buildings are a commodity which facilitates the accumulation of private capital (Kirk, 1980). It is suggested here that SDZs demonstrate the facilitation by the state’s legal apparatus of the desire of private interests to secure local economic investment and property development, by creating what can only be described as an inherently pro-development planning environment. This creates a comparative advantage for investors, particularly those in the property development sector, over individuals. The 2000 Act in general, and SDZs in particular, are considered here as being representative of a planning system that has become increasingly “embedded in the logic of the capitalist spatial development in which competition seems to operate not as a beneficial hidden, but as an external coercive law” (Harvey, 1989, 13).

#### *Pro-development planning environments (2) ‘Corporatist Participation’ and pre-application consultations*

Upon initial inspection, the provisions contained in the 2000 Act for pre-application consultations appears innocent, given the rational objective of informing an applicant of the “procedures involved in considering a planning application...and the relevant objectives of the development plan which may have a bearing on the decision of the planning authority” (S.247(2)). However, research carried out by McGuirk (1995) in Dublin would suggest that a considerable degree of caution is warranted regarding the above provision.

McGuirk (1995) found that pre-application consultations were the most pertinent means of development interests’ informal leverage on planning policy. In particular, pre-application consultations between planners and developers can be explicitly accommodative of development interests at the expense of others and are used by developers not only to influence individual projects, but also to voice their demands with regards to policy formulation (*Ibid*). McGuirk (1995, 67) found that 61 per cent of planners agreed that forms of negotiation and bargaining take place during such discussions whereby planners “ask for 3x expecting 2x”. The facilitation of these meetings by the Legislature assists ‘corporate participation’, whereby reciprocal relationships and a level of understanding based on unwritten rules develop between planners and developers (Simmie and French, 1989 as cited in McGuirk, 1995, 67).



The foregoing suggests that a ‘permanent liaison’ (Simmie and French, 1989) between planning departments and corporatist interests can develop via the s.247 provision, thus ensuring that development interests “are in-built in the decision making process” (McGuirk, 1995, 69). It goes without saying that such liaisons reduce the potential of the public to engage in any form of meaningful participation as preliminary agreements can be made between planners and developers before any public consultation stages. As observed by Grist (2008, 3) in respect of the strategic infrastructure application process:

*“Apart from concerns about the natural predisposition to favour plans one has participated in developing, there is the danger that provisional agreements can be reached unconsciously in pre-application discussions on projects, even by careful and highly ethical officials who have no intention of prejudicing the subsequent decision-making process. These are very real issues, which also arise in the context of “pre-planning” consultations held at local level under s.247 of the 2000 Planning and Development Act”.*

These bargaining processes and the emergence of developer-planner liaisons are representative of entrepreneurial planning and have evolved from planners’ marginalisation and reliance on developers to ‘make things happen’ in the urban environment. Developers are seen as essential for creating the conditions necessary for further investment of global capital flows (McGuirk and MacLaran, 2003). Essentially, the public sector’s role is to “prepare the ground for capital” and the introduction of pre-application consultations is considered here as one of many means of doing so (Squires, 1996, 275). From the above application of McGuirk’s (1995) research into the pre-application consultation procedures, the introduction of pre-application consultations may be understood as one of many ‘hidden mechanisms’ (Harvey, 1973), whereby private development interests take precedence over community well-being in the ongoing competition for global flows of capital.

### *Pro-development planning environments (3) – Fast tracking planning applications*

The presence of entrepreneurialism and the facilitation of private development interests can also be observed in the 2006 Planning and Development (Strategic Infrastructure) Act. In August 2001, planning permission was granted to Enterprise Energy Ireland Ltd. for an onshore gas terminal at Bellanaboy, Co. Mayo. The decision was appealed by third parties and, after two oral hearings and several requests for further information, the development was refused by the Board in April 2003, by which stage EEI was owned by the multinational corporation Shell. Although the timeframe involved was unexceptional for a project of this size and complexity, within two months the Government was indicating its intention to introduce what it described as a “streamlined planning process for infrastructure projects of national significance”, [statement issued on 27 June 2003 by Noel Ahern, Minister for the Marine and Natural Resources on the occasion of a visit to the Dooish exploration site off County Donegal]. The grounds for further amendment of the planning system, less than three years after the major review and consolidation exercise of the 2000 Act, were said to be planning delays. The linkage between the refusal of the Shell project and the strategic infrastructure legislation is further demonstrated by the fact that, when a revised application was made by the multi-national

oil company later in the same year, the urgency dissipated from the Government's perspective and it was February 2006 before the Planning and Development (Strategic Infrastructure) Bill was actually published.

The application process begins with pre-application consultations with the Strategic Infrastructure Division of the Board to provide developers with advice as to whether the development meets the s.37A conditions. At these consultations, the procedures involved in the application process, as well as considerations that may have a bearing on the Board's decision, can be discussed by the promoters with Board staff (but not Board Members, who are the decision makers). The Strategic Infrastructure Division then decides whether the application can be considered to qualify as a strategic infrastructure application. If it qualifies, the application is made directly to the Board, by-passing local authority appraisal altogether.

The 2006 Act arose from concerns about delays in the delivery of projects of strategic importance and the consequent cost increases imposed on developers, as such applications were almost inevitably appealed to the Board following the local decision (Grist, 2008). Although O'Connor (2009, 11) argues otherwise, there is a general consensus that the primary aim of the 2006 Planning and Development Act was to create a fast-track process for major projects and to limit their exposure to public objections.

#### *Pro-development planning environments (4) – Changed Role of An Bord Pleanála*

There has been a series of criticisms of the legislation which deserve attention here, not least as they largely demonstrate a favourable bias towards the interests of private developers rather than any real concern regarding the delivery of projects of national importance.

In the first instance, Grist (2008, 7) highlights that the 2006 Act has seen the role of the Board shift from a decision-maker of proposed developments, to a facilitator of strategic infrastructure development (much of which is privately promoted). This facilitative role has emerged as the Board can provide advice and modify applications which may serve to improve the chances of obtaining permission. The Board can also assist in the post application process by altering the terms of the development if requested to do so (i.e. certain conditions that the applicant is unhappy with).

The second issue of concern relates to the power of the Board to hold meetings with any of the relevant parties during the course of consideration of the formal application. Grist (2008) points out that s.37 applications have manoeuvred third parties into the 'position of outsider' rather than an equal party given the scale of meetings and face to face contact that take place in private between the developer and the Board and the 'minimalist' statutory provisions for public consultation. Although O'Connor (2009) explains that the reporting inspector at pre-application consultation stage has no involvement in the formal evaluation of the application, Grist (2008, 9) points out that there is a fear that "provisional agreements can be reached unconsciously" at meetings. This and many other aspects of the Act demonstrate how "low a priority was accorded to....transparency" during the drafting stage of the legislation (Grist, 2008, 9).

The final aspect of the 2006 Act concerns the Board's power to materially contravene a development plan in evaluating a s.37 application, for reasons relating to the 'national interest'. It is submitted that the term 'national interest' rather than the

'common good' has been introduced by the legislation to provide broader scope and justification for granting permission for an application that materially contravenes the development plan. However, it must be acknowledged that O' Connor (2009) refutes such claims, asserting that the term 'national interest' does not differ significantly from 'public interest' or 'common good', terms which have been used in the National Monuments Act 2004 and the Planning and Development Acts (1963-2000) respectively.

The above analysis demonstrates the manner in which the 2006 Act has shifted the role of the Board from decision maker to a facilitator of development and has increased the privileged position of private development interests relative to the general public with regard to participation and transparency in the s.37 Strategic Infrastructure application process. It is thus considered warranted that the aforementioned aspects of 2006 Act be considered as being representative of an entrepreneurial planning ethos, which is a characterising feature of advanced capitalist societies.

*Pro-development planning environments (5) – housing strategies – a social ransom for survival?*

Part V of the Planning and Development Act 2000 (as amended) utilises planning legislation as a social policy tool by permitting local authorities to impose a condition on a grant of permission demanding up to 20 per cent of a developer's land at existing use value for the provision of social and affordable housing (Conroy, 2007). The provision was developed in response to the chronic shortages of affordable housing during the 'boom' years of the Celtic Tiger, wherein dramatic house price inflation was experienced nationwide.

Part V of the Act was highly contested by development interests from its inception. The initial requirement to cede up to 20% of the site was relaxed to allow developers obtain some financial return from site development (serviced sites option) and from their construction activities (housing units option). However, further conflict from private development interests arose in the practical implementation of Part V with regard to determining the 'existing use value' of the land. Many inner city residential schemes consisted of small infill sites in valuable town centre locations where it proved difficult to transfer just one or two completed units to local authorities for the provision of social and affordable housing. Furthermore, in highly sought after areas where residential property prices were at a premium, there was a strong desire from development interests to retain the full 100% of the scheme to maximise sales and to ensure that the social and affordable element of the development would not discourage prospective buyers from investing in such schemes (many of which were marketed towards working professionals of a certain social standing). Continued pressure from such interests coupled with a series of implementation problems (due to the poor drafting of the legislation) led to a series of amendments in 2002.

The amending Act of 2002 relates to the manner in which developers can meet the required percentage of land for social and affordable housing to be transferred to a local authority. Essentially, six alternative means of satisfying the planning authorities' social and affordable housing requirement are provided for, ranging from the original transfer of land or houses within the site, to the transfer of other land or houses within the same

functional area of the local authority, and to payment of a specified sum of money to the local authority (Conroy, 2007). Such provisions run counter to the logic of Part V, as the legislature has facilitated a means whereby developers may avoid providing social and affordable housing in locations where it is actually needed and the secondary objective of Part V – the avoidance of undue segregation in the provision of social housing – has been negated.

Part V is largely representative of government intervention in a period of rapid accumulation of private capital during the country's period of economic expansion. The social tool that is Part V is considered here as a means of restraining class conflict and restoring the public's confidence in the intentions of the state. The potential conflict referred to here is the dissatisfaction of the general public with the lack of affordable and social housing in a period of excessive residential development which saw enormous profits accruing to private developers. Part V can therefore be interpreted as the 'ransom' used by private developers and local authorities to give the impression that something was being done in order to avoid such conflict. Essentially, the Part V provision was and continues to be the bargaining tool that private capital now accepts as being a necessary prerequisite to their continued accumulation of capital through the built environment. This bears resemblance to the state strategies previously discussed, whereby state actions that appear to run counter to the logic of the capitalist system are formulated to provide the appearance of neutrality and autonomy from dominant class interests (Harvey, 2001). Although Part V transfers can be considered as being the compromise that private capital now accepts as being necessary to avoid class conflict, the flexibility afforded by the amending Act in 2002 demonstrates that when the profitability of private projects are potentially undermined, the interests of private capital must reign supreme. As Kirk (1980,122) highlights, there is an inherent contradiction in the capitalist state whereby capitalism must "continue to function, whilst being forced to make concessions to the working class, though not so far reaching that they would change the basic power relations in society".

## **Reducing Democracy**

### *Diminished Rights to an Oral Hearing*

In an analysis of the 2000 Act from a Marxist political economy perspective, attention must be drawn to what Grist (2008) refers to as the 'innocuous looking' s.39 of the 2006 Strategic Infrastructure Act. Section 39 of the 2006 Act amends s. 218 of the principal Act and provides that individual landowners no longer have the right to an automatic oral hearing where their property is proposed for compulsory acquisition for local authority purposes, or perhaps more worryingly, privately funded strategic infrastructure developments. Instead, the Legislature has facilitated the making of such decisions in private, although submissions can be made by affected parties.

Although private property rights are considered an essential prerequisite to the functioning of the capitalist system, rather ironically, the diminution of property rights under the 2006 Act can be interpreted as being facilitative of large scale capital accumulation rather than any prospect of social reform and a divergence from capitalism.

Any reduction to the rights of personal property ownership is normally considered to be representative of social reform away from capitalism. However, in this instance an inherent contradiction exists whereby the provision has enhanced the position of large-scale private developers relative to individual landowners. Thus, where there is a conflict between property interests, the legislation appears to favour the more economically powerful stakeholders (or corporate interests). In effect, the s.39 provision has reduced the individual citizen's ability to effectively defend their personal property rights, in order to improve efficiency in delivery of privately funded large-scale infrastructure projects. This facilitates the accumulation of capital on a much grander scale. As such, it is submitted that the reduced right of the public to defend their personal property interests in the face of compulsory purchase orders which are privately funded provides the conditions necessary for further capital accumulation by powerful development interests.

### *Curtailement of Public Participation*

Planning processes can often be used in the exclusion of various groups from meaningful participation in decision making, which contributes to their marginalisation and repression (Yiftachel, 1995). Analysts of the 2000 Act have commented that there has been "sorry series of successive limitations...on the rights...of third parties" (Grist, 2008:7). There are various segments of the Act which require attention in this regard, the most pertinent of which are now discussed.

A comprehensive review of the manner in which the 2000 Act has curtailed third party planning appeals has been provided by Grist (2001). Of particular significance is her observation that pressure from the Construction Industry Federation to the Minister regarding the delays in processing appeals to An Board Pleanála was a key factor in the restriction of third party rights to appeal in the 2000 Act. The period of unprecedented economic growth and development which occurred in the 1990s led to large increases in the number of appeals made to the Board and the "complaints of the construction industry led to a deafening crescendo" resulting in a limitation on third party rights of appeal in the 1999 Bill (Grist, 2001, 83). It is worth noting that neither the Explanatory Memorandum nor the Minister's Second Reading Statement to the Seanad or the Dáil made reference to a desire to reduce the number of third party appeals and instead argued that the new legislation strengthened the local authorities' position as the central decision-maker in development management. Our analysis suggests otherwise.

The 2000 Act imposed an obligation on third party appellants to have first made a submission to the local authority before an appeal could be made to the Board and introduced a fee for making observations or submissions on a planning application. It must be acknowledged that the property rights of adjoining landowners were protected by the leave to appeal mechanism.

The above provisions have been widely criticised as preventing the disadvantaged from public participation in the planning process and further alienating the already ill positioned relative to private developers (Grist, 2001). A comprehensive understanding of the true nature, intent and implications of the above provisions could be obtained should s.37(1) of the Act be subject to 'coalition analysis' (Harvey, 1973).

'Coalition analysis' assumes that each person brings a coalition of certain resources which can be used in the bargaining process (e.g. money, education, contacts

etc.) (Harvey, 1973). Many aspects of planning can be seen as a weighted decision game wherein those with the most resources win. As Harvey (1973, 75) explains, “this situation is common in urban politics and explains our expectation that the more powerful community may be able to dominate the location decisions to its own advantage”.

From an initial inspection, it is obvious that the introduction of a fee for making local submissions, together with a statutory obligation to do so prior to appealing a decision (for which there is also a more substantial fee) can be considered as a ‘hidden mechanism’ which benefits the more privileged and well positioned people in society rather than the general public (Harvey, 1973). The fee is likely to act as a disincentive to many third party participants, as not all groups have equal economic means and resources. Here we see the pluralist assumptions upon which planning is founded in the legislation, whereby equality of resources and access to the decision making between differing interest groups is assumed (McGuirk, 1995). As McGuirk (1995, 73) points out, “common pluralist assumptions fail to recognise that the economic power base extends to affect the control of and access to the political power base”. In the case of the 2000 Act, this ‘failure’ acts to serve private development interests and facilitate the accumulation of private capital.

Further coalition analysis, coupled with observations from McGuirk’s (1995) research in Dublin, also reveals another (perhaps less obvious) barrier to third party participation imposed by the Act. As mentioned previously, s.37(1) of the legislation provides a statutory obligation on third parties to make a formal submission to a local authority on an application before an appeal to the Board can be made. McGuirk (1995:73) found that 39 per cent of planners recognised the importance of engaging professionals if attempting to oppose a development proposal and 93 per cent of community groups had used planning professionals to assist them in their dealings with planning departments. As one community group member explained “planners just sleep if (our input) is not in their language. They perk up once they hear professional language” (C32 as cited in McGuirk, 1995, 73). As such, the statutory obligation to make a formal submission on an application is likely to seriously curtail the involvement of third parties in the appeal process, as many will be discouraged from participating for issues surrounding economic resources, expertise/education and an increasingly impermeable bureaucratic and complex appeal process. Indeed, research carried out by Ellis of third party appellants demonstrates that, even before the imposition of the heightened restrictions on third party appeals by the 2000 Act, the majority of third party appellants are drawn from the more affluent and high status social groups (Ellis, 2001, 66). The barriers imposed by the 2000 Act can be referred to as ‘governance effects’ which have exacerbated existing cultural (i.e. education, skills, contacts, efficacy) and structural (i.e. segregation, domination, marginalization etc) barriers to participation (Albrechts, 2002).

The issue of the curtailment of third party participation by the 2000 Act is also evident in Part IX of the Act. As discussed above, Part IX of the Act introduces the concept of Strategic Development Zones (SDZs). It is worth reiterating that no appeal lies to the Board in respect of an application within an SDZ and the only opportunity for participation is during the public display period and the four weeks after the decision to adopt a scheme is made. Planning authorities are obliged to grant permission for a development that is in accordance with the adopted schemes. SDZs therefore create a ‘rule of law’ (Allmendinger, 1996) to reduce the discretionary nature of planning

decisions, a feature which is often criticised by private development interests. It is submitted that this 'rule of law' and obligation to grant permission for applications that are in accordance with the adopted scheme represent an attempt to satisfy the interests of private developers, who have long complained about the delays and time constraints inherent in the Irish planning system, at the expense of the democratic process (Grist, 1983).

Part IX of the Act dramatically limits the rights of third parties, as once a scheme is adopted, opportunities for appeals for individual projects are essentially lost. However, the RTPI in their response to the introduction of Simplified Planning Zones (SPZs) in the UK highlighted that "it is only when a specific development is proposed that the public realise how it can affect them and therefore be moved to object" (RTPI, 1984 as cited in Allmendinger, 1996, 9). Such delimitations on the rights of third parties are welcomed by developers and industrialists as they increase the efficiency and profitability of projects, whilst simultaneously reducing the risks that are inherent in the property development process. SDZs are thus seen by many as being representative of the wider objectives of the 2000 Act which are "intent on placing planning and development on a higher level than the local" (Flynn, 2002, 101).

Judicial review is the legal procedure by which, in common law countries, the legality of an administrative action can be tested before the courts. As the words imply, judicial review is not an appeal from a decision but a review of the manner in which the decision was made. Connolly (2000) and Dodd (2004) have analysed the 2000 Act with regard to access to the courts and the judicial review process. Connolly (2000, 62) outlines that the legislation seeks to 'limit the potential losses to developers arising from delays in development being carried out which arise from court challenges to planning permissions'. With regard to the judicial review process generally, Dodd (2004) has analysed the stricter 'locus standi' that has been introduced by the 2000 Act, which requires an applicant to show 'substantial interest' in the matter. The term 'substantial interest' replaces that of 'sufficient interest' used in the previous legislation and is representative of a 'higher threshold requirement' for access to the Courts (Dodd, 2004, 9). As in the case of the new appeal process explained previously, Dodd (2004) highlights that in addition to having a 'substantial interest' in the matter, the applicant must also have participated in the process leading to the decision by making submissions/observations on the application. It is important to note that this requirement to have made a submission is separate to having a 'substantial interest' and therefore one does not automatically lead to the other (Dodd, 2004). It is submitted that the rationale behind this higher threshold and requirement for participation in the application stage serves to limit the Court's discretion on the right to judicial review in order to reduce time constraints to developers (Dodd, 2004).

From the above analysis of the curtailment of public participation introduced by the 2000 Act, it is submitted that the Act has become increasingly facilitative of development interests by reducing the democratic nature of public participation which generally takes the form of 'negative objecting' (McGuirk, 1995). These reductions are undoubtedly reducing the delays and costs imposed on developers by the general public and are likely to facilitate the accumulation of increased profits accruing from development projects. In doing so, the benefits accruing to developers and the costs borne

by community interests are likely to be exacerbated as “participation without redistribution of power is an empty and frustrating process for the powerless” (Arnstein, 1969, 216)

## **Conclusion**

The foregoing analysis leads to three broad conclusions. First, the Marxist political economy interpretation assumes that the state is primarily a class-based social institution which exists to maintain existing class relations and regulate class conflict in a manner which preserves the basic power structure in society. By focussing on legislative change in one area of state responsibility – the planning process – we have elucidated the inherent bias of recent changes towards favouring private capital. While we concede that much legislation reflects a groping towards common notions of justice, some is inherently class-based and reflects disproportionately the interests of private power over the concerns of the general public. Thus, we argue that in the political economic realm primarily, the state is far from being a neutral institution.

Second, it is well-documented that planning has become increasingly entrepreneurial in nature over the last two decades (Harvey, 1989a; MacLaran and McGuirk, 2003). However, much of the literature describes how the planning system has become increasingly facilitative toward private capital in practice but has failed to link these changes to formal legislative change. In this regard, the foregoing analysis has demonstrated the gradual ‘entrepreneurial shift’ in the legal framework of planning and development over the last decade.

Finally, a fundamental but somewhat subtle shift can be identified in the democratic nature of recent legislative change. Our analysis has documented a curtailment in the nature and extent of public participation in the planning process as a result of changes in planning legislation. From the viewpoint of Aristotelian democratic theory, these changes can be viewed as a deliberate reduction in the democratic nature of planning so that decision-making power can be consolidated to an even greater extent within the hands of private power. Moreover, from a political economy perspective it is an example of the state interfering in the planning process to assist the capitalist class in achieving smoother and more efficient circulation of capital in the urban environment. Thus, within the process of legislative change, the state reflects outwardly its origin as a mechanism of class domination. Indeed, the foregoing analysis points also to the fact that legislative change is far removed from notions such as the ‘common good’ if we take that concept to mean a groping towards some form of social justice or relative equality of outcome in society. Rather, notions such as the ‘common good’ have been replaced with that of the ‘national interest’ in recent legislation. Yet in recent years, the ‘national interest’ has come to represent ‘Ireland Incorporated’ rather than the interests of the general population indicating more explicitly in legislative terms that the interests of the key political economic forces within Irish society are to be prioritised in the decision-making arena.

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