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Interdependencies, barriers, and directions of change

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# The Legal, Administrative, and Governance Frameworks of Spatial Policy, Planning, and Land Use: Interdependencies, Barriers, and Directions of Change

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**Abstract:** The article provides an overview of the legal and administrative aspects of spatial governance and planning and of the related challenges. The legal dimension of spatial planning, administrative spatial planning traditions, as well as different frameworks and conditions for the governance of territorial regions are briefly introduced. On this basis, the various contributions that compose the special issue are framed and presented to the readers. In conclusion, a number of directions for further research are identified. Overall, the article serves as an editorial introduction and the various issues it touches upon are further specified in the individual contributions the compose the special issue.



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## 1. Introduction

Spatial planning research presents numerous overlaps with several other disciplines due to the heterogeneity and interdisciplinarity of its practices [1]. One key variable determining how spatial planning works in a specific context concerns the relation between spatial planning and the legal system that allows it to function. Exploring this relationship is a relevant research challenge that concerns issues related to the enactment and implementation of spatial development strategies, land-use planning, regulation tools, and all other devices and administrative decisions that influence space. Moreover, spatial planning is a path-dependent activity [2] that is developed and consolidated through time due to several different elements such as the mentioned legal system, the administrative tradition that characterizes a country, and the so-called spatial planning tradition. Finally, spatial planning practices are constantly subject to the influence of previously developed solutions. Instead of leading to convergence, however, policy mobility episodes increase the overall variety, borrowing arrangements that need to be tailored to the new context to function within new conditions [3,4]. For these reasons, the practice of spatial planning is extremely heterogeneous worldwide, embedded as it is in geographical and historical conditions that characterize each place [5]. Additionally, spatial planning systems are difficult to analyze and compare.

Against these multiple complexities, this Special Issue gathers contributions concerning a broad range of research issues. These include the economic and legal aspects of spatial planning and urbanization processes; the implementation pitfalls that may characterize strategies and instruments and the costs of malfunctioning spatial planning tools; the instruments dedicated to steering and regulating land, and the role of propriety rights

in land use policy, etc. The collected papers approach these issues from different perspectives and concern different areas of the world. It is worthwhile to analyze the cases that they present and then try to position them in the context of broader theoretical and practical formulations.

To open this Special Issue, the following sections further characterize outline the conceptual issues introduced above. These issues include the legal dimension of spatial planning, the role of administrative and spatial planning traditions, and the different frameworks and conditions that influence territorial governance. After that, the various articles that compose the Special Issue are introduced as a helpful guide for the readers. Finally, the contribution is rounded off by the proposal of a preliminary agenda intended to guide other scholars interested in developing further research on these matters.

## 2. The Legal Dimension of Spatial Planning

The relationship between spatial planning and law has been repeatedly addressed in the literature. Several thematic directions are distinguished. Among others, Buite-laar [6] addresses the problem of flexibility in planning, reducing the objectives of planning regulations to minimize future risks. Plans that are binding acts and plans with a more strategic function pursue this goal differently. The choice of a specific spatial planning formula over others determines (and is determined by) how the role of law and, more in general, of propriety rights [7] is understood in a given country. In regulatory planning systems, legal certainty is critical; in discretionary systems, flexibility is key [8,9]. Thus, one can distinguish between plan-based and development-based systems, conformative, performative, neo-performative systems, or even state-led and market-led systems [10–12]. While each configuration grants many specific benefits, none is exempt from risks. Overly regulatory plans may result in a development lock. On the other hand, overly flexible planning may result in excessive discretionality and the prevalence of the market's interest to the expense of the public good. Moroni et al. [13] rightly emphasize that the law does not guarantee a specific effect per se; it can only contribute to its achievement when it manages to fit and interpret the particular contextual conditions within which it is enforced. Moreover, as these conditions continuously vary, any law should be capable of considering further socio-economic, territorial, and institutional challenges and trends that emerge and manifest over time [14].

When considering the pitfalls of plan-based and development-based systems—and any configuration positioned in between these two ideal extremes of the spectrum—it is important to note that no legal framework on its own can guarantee that the goals of spatial planning are achieved [12]. It is impossible to present universal regulations that can be adopted successfully by every country, which is why the role of administrative and spatial planning cultures and traditions plays a crucial role in the equation. Consequently, positive results in achieving spatial planning goals are often achieved by balancing regulatory and strategic or development-led planning activities that depend on actual needs [15]. For instance, especially in countries characterized by a high level of spatial chaos, a transitional, a more regulatory formula may be required to grant a minimum level of legal certainty and, in turn, grant control over development outcomes. At the same time, systems should be flexible and reflexive enough to incorporate changing socio-economic and territorial conditions into spatial planning continuously. It would allow one to accommodate and balance the various instances of public and private actors that, altogether, contribute to shaping development trends [16].

## 3. Administrative Spatial Planning Traditions

The way spatial planning operates is intertwined with the particular administrative cultures and traditions that characterize different countries and regions [17]. Following the work of Hesse and Sharpe [18], which distinguish northern European, Anglo-Saxon, and Napoleonic countries based on the degree of local autonomy, Lidström [19] divided the northern European group into two categories: Scandinavian welfare democracies and

Middle European countries, characterized by different local government systems. Taking a different path, Goldsmith [20] classified the basic types of local government systems. Differences were distinguished between a so-called patronage model, primarily concerning southern European countries, where local politicians aim to ensure that the interests of their community are well promoted and defended at higher levels of government, and a welfare state model, concerning northern European countries, where efficient services' delivery has shaped local government over time. Finally, Loughlin and Peters [21] proposed a more complex analysis, which defines four different 'state traditions' based on different aspects of state and political features (political and administrative culture, state organization, state-society relationship, etc.). These aspects determine the conditions within which democracy is understood and practiced. When it comes to spatial planning systems, fewer classifications have been produced over time [22]. The first examples concern the already introduced relationship between planning and law and produce rather schematic classifications of the legal and administrative systems within which planning operates [23–25]. In contrast, following a metaphor adopted by Reimer et al. [26], the legal system represents the main corridor along which planning practice can move. From the end of the 1990s, various contributors argued that spatial planning practices are also shaped by equally important socio-economic, territorial, and cultural conditions [27]. As a consequence of this acknowledgment, many more nuanced classifications were produced that consider additional variables. Following Loughlin and Peters' [21] approach to the analysis of public administration systems, the EU Compendium of Spatial Planning Systems and Policies [28] used several different criteria to define four 'spatial planning traditions', a term that emphasizes how spatial planning is deeply embedded in the complex historical conditions of a place. It was used to help distinguish planning systems, together with six other variables. These variables were: (i) the scope of the system in terms of policy topics covered; (ii) the extent of national and regional planning; (iii) the locus of power or relative competencies between central and local government; (iv) the relative roles of public and private sectors; (v) the maturity of the system or how well it is established in government and public life; and (vi) the apparent distance between expressed goals for spatial development and outcomes. Based on these criteria, four major spatial planning traditions were proposed and then updated in 2007, including countries that had entered the EU as it expanded eastwards [29].

The most recent comparative analysis of the spatial planning systems that characterize the European continent—the ESPON COMPASS research project [1]—accounts for even higher heterogeneity. The conceptualization of spatial governance and planning systems as 'institutional technologies', through which public authorities allocate rights for land use and development [30] was used by Berisha et al. [31] to reflect on the capacity of public control of spatial development embedded in each system. In particular, their analysis points out the lower capacity of public control intrinsic in the traditional 'conformative' models operating in southern European countries, especially in comparison to the 'performative' models that characterize Anglo-Saxon countries [10]. However, it also shows that, whereas most northwestern and eastern European countries have been progressively moving towards 'neo-performative' [18], the results achieved as a consequence of this shift are highly variable. It confirms their dependence on the actual contextual conditions within which each system is embedded.

#### 4. Different Frameworks and Conditions for the Governance of Territorial Regions

An additional variable that influences the configuration and effectiveness of spatial planning is the particular administrative-territorial organization within which it develops and functions. Modern administrative-territorial units are highly heterogeneous in terms of their names and territorial scope (federal states, regions, provinces, districts, prefectures, counties, municipalities, etc.). Similarly, actual socio-economic and territorial phenomena vary from country to country. Hence, a question arises on whether and how administrative

boundaries are compatible with geographical and functional phenomena and how this affects spatial governance and planning.

A practical approach to the conceptualization of the above dilemma within a broader conceptual–theoretical framework is the economic region theory of K. Dziewoński [32] that distinguishes between three classical interpretations of a region: (i) the subject region as a cognitive object; (ii) the statistical region as a tool of research; and (iii) the administrative region as a tool of action. Whereas statistical regions often overlap with administrative ones because the organization of statistical services directly refers to the system of state power, these two regions rarely fully overlap with the first type. It leads to differences in how they are included and studied. Additionally, there is a mismatch between cognitive results and application expectations. A notable example here is the functional areas of cities, which objectively exist but are not statistically defined and often lack territorial boundaries with established authorities. Only a few examples of specific objective regions exist, e.g., daily urban systems [33] and urban functional areas [34], which are subject to “objective” delimitation that overlaps with units of territorial administration. It usually applies to the largest and most complex urban agglomerations, i.e., metropolitan areas, which have been provided with administrative status in many European countries (France, Italy, Portugal, and Spain). However, even when an attempt has been undertaken to establish more or less institutionalized metropolitan areas to govern functional urban phenomena, the mismatch remains, as the boundaries of the created administrative units may not include the entire commuting zone (e.g., Barcelona, Lyon, and Milan) or, on the contrary, concern territories that by far exceed the actual functional relations (e.g., Turin and other Italian metropolitan cities) [35].

This incompatibility between functional and administrative areas has severe implications for spatial governance and planning, as the latter should cover as much as possible of a homogeneous socio-economic area that is functionally interconnected [36]. This principle seems to be entirely fulfilled in the case of national and, to a relatively large extent, local spatial planning systems. The former covers entire countries (although even here, one may have doubts due to the growing role of cross-border links). The latter covers local communities such as villages, settlements, and neighborhoods. In contrast, significant discrepancies seem to exist at the intermediate levels, including regions, provinces, or metropolitan areas.

The implications of this mismatch for territorial governance and planning effectiveness are highly relevant; for example, the mismatch between places of residence, work, and public services in general, even under conditions of increasing digitalization, causes excessive mobility and transport intensity. This problem is increasingly recognized, mainly through the concept of functional urban areas (FUAs) [37]. Over time, this problem has led to experimental variable forms of inter-municipal cooperation, with groups of local authorities joining forces concerning selected issues, often in the form of flexible planning activities (as opposed to more ‘rigid’ zoning, regulatory planning). However, the results of these actions have often been ineffective [38], and in some cases, even lead to the escalation of old socio-historical conflicts [39].

In summary, the question is whether the higher stability of an administrative-territorial division positively influences spatial planning, and subsequently, the rationality and efficiency of spatial development. Or, on the contrary, is further flexibility needed to give an account of territorial complexity in the planning activity and allow for a continuous shift in spatial configurations and instruments guided by the issues to be addressed? The above problem is still unsatisfactorily addressed both within the theoretical and practice discourse. This situation is likely to worsen with the aftermath of the COVID-19 pandemic and the challenges that the pandemic will bring along with it.

## 5. Exploring Practices from Europe and Beyond: A Roadmap for the Reader

Positioned within the above debate, this Special Issue discusses the implications of legal, administrative, and governance frameworks for spatial planning activities. At the

same time, the various contributions that have been collected touch upon other possible inferences that arise from these implications in selected countries worldwide. In their article, Solly et al. [40] deal with sustainable urbanization and, particularly, sustainable land-use practices in European cities and regions. They provide a solid basis to compare and discuss the instruments and practices used in different contexts to steer and regulate land use. Zaborowski [41], on the other hand, argues that the urban planning system is strongly influenced not only by the regulations themselves but also by the way they are interpreted, which varies across countries. Additionally, Górna and Górny [42] adopt a comparative approach in their study, discussing the relationship between the legal framework underpinning spatial planning and the practice of urban agriculture in the two equatorial cities of Singapore and Kigali. In their contribution, De Olde and Oosterlynck [43] point out that contemporary assessments of urban growth management strategies often take the form of quantitative measures of land values and housing prices. In this regard, they argue that these evaluations must also be extended to analyze the policy formulation and implementation process, as it is in phases when the institutions and discourses in which growth management strategies are embedded, are (trans)formed. Myga-Piątek et al. [44] reflect on the differences that emerge when comparing administrative metropolitan areas concerning geography and landscape. Once more, they underline how in most cases, the mismatch between socio-economic and territorial phenomena and the authorities that are deputed to tackle them may hamper the effectiveness of spatial planning.

The objective of the study by Śleszyński et al. [45] was to demonstrate geographical (interregional and functional) regularities related to the economic (financial) effects of adopting local plans. They also aimed to identify the financial effects of implementing local plans in municipalities, i.e., their size, the structure of income (revenue) and expenditure relating to municipal budgets, and the population living in municipalities. Their contribution shows that boroughs often do not obtain adequate revenues from spatial development, and the inappropriate policies of local governments cause heavy burdens that threaten to upset their financial balance. Additionally, Chen et al. [46] examine the relationships between the legal system, spatial planning, and economy. In particular, using panel data from Chinese cities from 2014 to 2017, their analysis indicates that legal provisions can favor the increase in financial credit and foreign investment, in turn determining an increase in housing prices. Similarly, Lityński and Hołuj [47] draw attention to the role of financial instruments, which can play a decisive role in stimulating the creation of compact spatial structures. In this group, attention should be paid to indirect instruments, such as tax exemptions or reliefs for new locations of compact housing. Local self-governments should receive compensation from the state budget for the reduction in income resulting from such tax exemptions or reliefs. Liu et al. [48] highlight that local governments' green management behavior can help promote the implementation of new development concepts from a knowledge management perspective. They argue that the effects of knowledge spillover have a significant impact in the later stage of green governance processes, leading to learning and knowledge synergies and cooperation value-added income, in turn promoting local government green governance into a positive-peer state. Chang and Chen [49] present directions to optimally shape the relationship between economic development and environmental protection while exploring possible solutions to make Chinese urbanization processes more sustainable. Similarly, the results of Meng et al. [50] indicate that innovation-oriented land-use transformation in four dimensions—human capital, physical capital, urban functions, and administration—is conducive to reducing industrial emissions in the region, but not the spillover effect. Finally, the contribution by Sun et al. [51] explores the issue of path-dependency and the impact of historical events on spatial processes, with a particular focus on the development of the Beijing green belt and its legacy.



## 6. The Legal, Administrative, and Governance Frameworks of Spatial Policy, Planning, and Land Use: Towards a Research Agenda (GC, PŚ, MN)

The issues outlined in the introduction and addressed in the contributions included in this Special Issue highlight how spatial planning activities continue to face serious challenges that have not yet been satisfactorily addressed. Specifically, from the papers included, a scarce correlation emerges between the legal regulations that allow and shape spatial planning activities and the socio-economic and territorial challenges that those activities should tackle. It is often a consequence of the path-dependent influence of the traditional administrative and spatial planning configuration, which presents an inertial resistance to change that is hard to overcome. A similar situation concerns the mismatch mentioned above between ‘objective’ and ‘territorial’ units, with the system of judicial–territorial administration that does not always coincide with the boundaries of the fundamental administrative division of a country, in turn leading to an overall deterioration of the conditions within which all actors involved in spatial development operate.

Several overarching research questions and challenges arise here. How can one reconcile economic efficiency with quality of life? How can one effectively protect the values of the natural and human environment? How can one counteract economic polarization and social inequalities? How can one reconcile individual land-use rights with the common good? Finally, perhaps the most crucial question that must be asked in the face of all the highlighted complexity is: how should different spatial planning functions—regulation, steering, development, and communication—coexist within the overall systems and what should their multiple relations be to allow for an unambiguous, effective, and over-regulated planning action?

All these questions are posed in a situation where our knowledge of spatial planning systems is still insufficient. While a good deal of research that focuses on western Europe, North America, and Southeast Asia exists, knowledge about Latin America and especially Africa and the Middle East is still fragmented and is virtually nonexistent relating to territories whose status is contested due to the presence of territorial conflicts. Considering this, we conclude this introductory contribution by proposing a preliminary research agenda that draws from our editors’ experience and the thoughts that have emerged in the composition of this Special Issue. It consists of a list of research tasks that scholars may decide to address in their future studies on the matter. As such, it is undoubtedly incomplete and biased by our approach and perspective; still, we hope that it will encourage more in-depth analysis:

- To explore how different types of legal cultures and traditions around the world have an impact on the way spatial planning is understood and practiced.
- To investigate how the relation between law and planning—and its manifestation through the processes that assign development and land-use rights—evolves through time as a consequence of the evolution of the framework conditions, but also bound by path-dependency.
- To discuss whether spatial planning, intended as a framework deputed to allow a more or less coercive public control over spatial development, is actually needed and whether in its absence societies may develop alternative models of self-regulation.
- To reflect whether, in a world where the public sector is less and less capable of planning in isolation, and where there is a growing influence of private actors in decision making, spatial planning is actually representative of and acting towards the common good, or is increasingly an activity favoring specific elites over other groups.
- To analyze and compare the trigger, the functioning, and the outcomes of non-statutory planning activities, i.e., all these activities that develop outside any dedicated legal framework—for instance, voluntary strategic planning, ad hoc inter-municipal cooperation, and other grassroots practices.
- To explore the contamination between different contexts due to the circulation of models and practices, more or less favored by international organizations, and to understand the benefits and the pitfalls hidden along the way.

- To give an account of the emerging attempts to reach a cooperative agreement between functional phenomena and the more or less formal institutions deputed to manage them, their results, and their potential for generalization and diffusion.

To add further complexity to the picture, these questions also need to be contextualized within the ongoing COVID-19 pandemic, its socio-economic and territorial implications, and the challenges that will emerge in its aftermath. Whereas at first, the pandemic may have been seen as a solid motivation to rebuild the world [52], thus prompting policy- and decision-makers to consider new opportunities for spatial planning and its action, through time, as the pandemic unfolded in all its complexity, these initial discussions proved somewhat naïve and illusionary. Additional research will undoubtedly be required to understand how new post-pandemic spatial behaviors will influence spatial development and planning.

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