

**Instruments for the Recovery of Value Increments in Latin America:
Weak Implementation, Ambiguous Interpretation**

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Abstract

The private appropriation of land value increments is often cited as a central factor in the literature on problems of Latin American urbanization. Researchers have been in agreement for at least 20 years on the necessity and suitability of establishing instruments through which the public sector can recover land value increments resulting from its own activities in urban areas. Despite this agreement, however, the implementation of value capture instruments has not been improved with any consistency, and the nature of their future use remains an open question.

Given this history, I have set out in this paper to evaluate the theoretical and practical evolution of value capture in Latin America and to contribute to an examination of current opportunities and limitations for the development of value capture in a regional context.

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Introduction

The private appropriation of land value increments is often cited as a central factor in the literature on problems of Latin American urbanization. Researchers have been in agreement for at least 20 years on the necessity and suitability of establishing instruments through which the public sector can recover land value increments resulting from its own activities in urban areas.¹ Despite this agreement, however, the implementation of value capture instruments has not been improved with any consistency, and the nature of their future use remains an open question.

Given this history, I have set out in this paper to evaluate the theoretical and practical evolution of value capture in Latin America and to contribute to an examination of current opportunities and limitations for the development of value capture in a regional context.

The essential reference points for this paper are a series of preliminary reports on the topic in 12 Latin American countries² that seek to gather and systematize the essential data to evaluate the process comprising the conception, institutionalization, regulation, and implementation of instruments for the recovery of land value increments in the region, identifying difficulties at each phase of the process and the manner in which competing goals are mediated in that process.

Caveats

The scope of this report should be made explicit from the start. The recovery of value increments described in this paper refers to increases in the value of real property generated by State activities and to the development of instruments to capture those value increments generated by any State activities such as investment in public works and land-use regulation.³

The recovery of value increments referred to throughout this report refers to the definition above unless otherwise specified, and the instruments discussed in the report

¹ See, for example, the debates that took place at the 1978 First Seminar on Urban Land Problems (*Seminário sobre Problemas Fundiários Urbanos*) in São Paulo, and the studies on land valorization published since that time.

² These countries are Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Nicaragua, Paraguay, Peru, El Salvador, and Venezuela. The project will include essays by a network of Latin American researchers in the area of urban land markets focusing on value capture in these individual countries.

³ This more limited definition contrasts with a more universal definition proposed by Henry George, according to which all value associated with urban land, without regard to the nature of the agents directly involved in its valorization process, is socially produced and should therefore be returned to society.

are those designed with the intention or capacity to capture, in whole or in part, that specific portion of urban property valorization. Other practices through which society may recover socially produced land value increments, such as inheritance taxes, are treated only secondarily in this report, specifically only when they must be discussed in order to elaborate on or contextualize the primary argument.

This report should be seen as a first effort to systematize the large volume of information being considered and also as the preliminary product of an ongoing evaluation.⁴ Although this analysis is intended to be relevant to the Latin American experience in general, it should be understood that the primary reference is to the Brazilian experience. Thus the report reflects the Brazilian case in the specific aspects of the problem that have been selected for consideration and the way in which they have been organized and presented.

Weak Implementation, Ambiguous Interpretation

This evaluation recognizes and focuses on certain characteristics that are common to the reports from different countries. These characteristics are grouped into two conceptual categories that allow us to examine the trajectory of value capture and the instruments designed for this purpose in the region. The two conceptual categories are weak implementation and ambiguous interpretation.

The active recovery of value increments is not common in the history of Latin American urbanization, and an overview of this approach to revenue collection in the region clearly reveals the weakness of the instruments directly and indirectly associated with it, and of their implementation.

Ambiguities in interpretation are evidenced by the divergent and sometimes paradoxical findings presented in different papers on value capture. For example, although value capture is highly relevant at the present economic and historical conjuncture, it is not commonly found on government agendas. While the greatest obstacles to its implementation are political, more attention is paid to technical difficulties. Value capture is considered a “progressive” revenue source, but instruments for its application are conservative. It has been adopted by both liberal and interventionist sectors and both autocratic and democratic governments.

These characteristics merit special attention in the context of the macroeconomic and sociopolitical transformations in the region since the 1980s that have influenced the functioning of urban land markets⁵ and altered the conditions for the development of

⁴ The essays on value capture in individual countries are still in the process of being developed and/or coordinated, and their evaluation will constitute a part of the author’s as yet unfinished doctoral thesis.

⁵ The essays being produced in association with the Lincoln Institute of Land Policy project on the functioning of urban land markets in Latin America offer an overview of these transformations affecting urban land markets. Research for this paper has greatly benefited not only from the preliminary work focusing specifically on value capture, but from all the debates and essays produced in the context of the project.

value capture theory and instruments for its implementation.

1. The Current Context

The Relevance of Value Capture in the Current Context

Cities today are slowly being pressured to assume greater control—in a broad sense—for their own growth and development. This is central to the general economic restructuring and the redefinition of central government roles and responsibilities. Increased local power, and the transfer of regulatory authority over urban growth to local governments, also entails greater local responsibility. In recent years, this has presented new challenges leading to new priorities for local government action. Among these new priorities are increased local tax collection and improved planning and management capacity, all of which have become obligatory items on the agenda for local governments.

This process, which is taking place worldwide, is influenced by certain additional factors in Latin America: macro-stabilization (adjustment) programs and the consequences of those programs; and the still recent restoration of democracy in many Latin American countries. In this context, the capacity for action of public administrative institutions in the region has been conditioned by strong economic, social, and political pressures, notwithstanding national and local particularities. Such pressures give rise to institutional reforms permitting more efficient public sector action both in terms of regulatory capacity and in competent management of the tax system.

In Latin American cities, these reforms have led to improvements in the traditional forms of public sector activity and to alternative forms of public sector activity to promote two converging priorities: the promotion of urban development to make cities newly attractive and competitive or to restore their former attractiveness and competitiveness; and the ability to serve accumulated social needs that are particularly salient in the wake of recent crises.

The satisfaction of at least some of these unfulfilled social needs can no longer be postponed, because of the democratization process underway and because they engender diseconomies on such a scale so as to impede urban development. It is no longer possible to ignore certain of the most common, perverse and unwelcome diseconomies produced by the property market, such as the proliferation of urban spaces that go unused or are used inappropriately, or the existence of large occupied areas lacking basic infrastructure alongside other areas where existing infrastructure goes unused. These physical characteristics produce social pathologies, urban violence, and the loss of social control.

With reference to urban land policy in particular, these problems are expressed in the lack of opportunities for access to land and housing by the low income population and in the urgent need to provide basic urban infrastructure in large areas lacking minimal conditions for habitation.

Given these deficiencies, efforts toward more effective control over property

mechanisms carry more weight. This may be due to an understanding that property mechanisms are also responsible for the generation, reproduction, and worsening of the problems discussed above, or more pragmatically, due to the recognition that the property market has the potential to generate the revenues necessary to confront current urban problems.

To a greater or lesser extent in different Latin America countries, initiatives are underway for the updating and modernization of property cadastres, the reform of property tax collection systems, and reconfigured administrative and fiscal apparatuses with reference to real property in the urban context. In a number of cases, additional reforms have been undertaken with regard to legal and regulatory systems, particularly concerning the uses of urban land.

These reforms, undertaken on the recommendation of and with the assistance of the World Bank, the Inter-American Development Bank, and other international institutions such as the United Nations, also include mechanisms for the capture of urban land value increments. As methods of recovering expenditures on public improvements, these mechanisms may also facilitate the search for new sources of financing for urban investment, the development of infrastructure, and the provision of services. In addition, they may be useful in defining frameworks for more efficient land use.

The social recovery of land value increments that would otherwise be privately appropriated strengthens the autonomy of local governments and helps to regulate the market, guaranteeing the just distribution of already generated benefits and generating additional resources. In the developed countries, there has been a growing interest in regulatory and fiscal instruments and mechanisms that have the goals outlined above.

Government actions in different parts of Latin America have operated along these lines and integrated schemes for the capture of land value increments into recent initiatives, from large projects such as the renewal of downtown areas, to the development of areas with strong potential for real property valorization, to recovering the costs of urban improvements such as street paving and improved public transportation. At the conceptual core of these policies is the opportunity for the public sector to appropriate land value increments largely generated by public sector activities.

Additional Challenges and Difficulties: Redistributive Goals

In Latin America the redistributive function is another factor in the design of instruments whose goal is the improved distribution of benefits and losses deriving from urban development in general and the functioning of the real property market in particular. The redistributive function is particularly important in an environment of great income and wealth disparities. The concentration of social needs in certain urban areas reveals marked socio-spatial segregation,⁶ injecting a spatial factor to the redistributive function.

⁶ Such processes are distinguished both by their form and their intensity, as observed in certain key countries. See Jaramillo y Cuervo (1992).

In order to pursue these goals simultaneously and to do so in coordination with prioritized development activities, it would be necessary to add a redistributive focus with targeted and achievable socio-spatial goals to the financial instruments associated with urban development. In fact, when the need for socio-spatial considerations is imposed as a condition of development, certain socio-spatial and redistributionist goals may be achieved even by governments not operating on inherently redistributive principles.

The focus discussed above can also take on the connotation, with varying emphases and depending on the underlying political project, of compensating the social sectors historically excluded from the benefits of urban development. However, the social recovery of that portion of value increments deriving from public investment does not by itself guarantee the amelioration of accumulated socio-spatial inequality. There is a need for additional measures specifically targeted at investment in areas and social sectors where the recovery of expenditures by itself does not (and perhaps cannot by itself) suffice—measures such as the provision of urban infrastructure where it is lacking, and the construction of low income housing.

In any case, the public generation and appropriation of value increments, in its most limited sense, does not by itself include all the elements necessary to a thorough consideration of value capture in Latin America. The use to which appropriated value increments are put, and in a broader sense the use of all tax revenues, must be considered in order to identify and evaluate the full spectrum of related phenomena.

However, the conceptual difficulties are not limited to considering the use of these recovered resources. The public generation and appropriation of value increments, based upon the collection of differential value increments in different urban areas and the resulting development of differential income potentials, can also become perverse, and chronically so, under certain circumstances. This point should be carefully considered in the development of value capture mechanisms, particularly in the context of marked economic disparities. It is important to recognize that a value capture mechanism can also magnify socio-spatial disparities and exacerbate pre-existing patterns of socio-spatial segregation.

These considerations must be taken into account when evaluating the opportunities for and limitations to the monitoring and recovery of value increments generated in the real property market in Latin America, and an examination of these opportunities and limitations themselves many help to elucidate the above-mentioned weaknesses in implementation and ambiguities in interpretation of value capture mechanisms in the region. In order to describe these opportunities and limitations, certain essential aspects of the history of value capture mechanisms are outlined in the next section (2. Historical and Institutional Context), in particular, the difficult relationship and transition between the instruments' conception and implementation.

2. The Historical and Institutional Context

The Conceptual Tradition and Initial Legal Forms

An historical overview of the evolving use of value capture instruments in Latin America reveals the recurrent problem of weak implementation. In fact, there are few concrete examples of value capture instruments in use, despite rapid and generalized urbanization and a public sector generally lacking sufficient financial resources to meet the demands posed by growing cities. (Jaramillo, 1992) This is not to say, however, that an association between land valorization and the provision of public infrastructure and services is alien to the culture of the region. On the contrary, this association seems to be widespread, with origins that can be traced back to the days of Spanish and Portuguese colonization.⁷

The implementation of instruments for the recovery of value increments is now specifically recognized in the great majority of countries both in legislation and by tax agencies. It is frequently mentioned in constitutional texts, municipal legislation, and revenue codes, providing for taxes, fees, and assessments specifically intended to recover, in whole or in part, land value increments resulting from investment in public works.⁸

The nature of references to value capture and its implementation in constitutional and legislative language indicates that it is seen primarily as a means of financing urban infrastructure. There is little recognition of its role in recovering privately appropriated value increments stemming from public investment or that private parties appropriate value increments that rightly pertain to society.⁹ Even within these attenuated parameters, however, implementation of value capture instruments is quite rare (with the notable exception of Colombia), notwithstanding the diversity of political and socioeconomic situations and orientations found in the region.

In Peru, where an Assessment for Improvements (*Contribución de Mejoras*) was introduced in 1985 (Calderón, 1996), and in some other countries, the lack of a legal tradition for value capture instruments could partly explain the near or total absence of

⁷ In Mexico, the first property valuations for the purpose of raising resources to finance public works were conducted in 1607. (Perlo, 1996) In Brazil, the history of the concept dates to a legal code called the *Ordenações Filipinas*, established in sixteenth century Portugal, which stated that “public works should be paid for by their beneficiaries,” and was implemented anew starting in 1605 through land taxes called *fintas* for the construction of walls, bridges, and roads. (Gadret, 1956)

⁸ Examples range from the case of Colombia, whose traditional Assessment on Valorization (*Contribución de Valorización*) is internationally recognized, to the situation in El Salvador, which despite having no specific land tax, clearly the property tax most widely used throughout the region, has very well defined legal and fiscal instruments called “Special Assessments” intended to capture benefits to property owners deriving from public works projects. (Lungo, 1996)

⁹ This critical point, related to the obstacles imposed by the importance of land as the basis of wealth in Latin American societies and to the strength of property rights in the region, will be discussed below.

their implementation. This explanation is complicated, however, by other cases such as Venezuela and Brazil, where such instruments have not been implemented although legal traditions for value capture do exist.

In Brazil an Assessment for Improvements (*Contribuição de Melhoria*) has been stipulated in legislation since the constitution of 1934, but interminable controversies, debates, and legal reformulations concerning the law have continued since then and up to the present. Although some mechanisms based on the law have been implemented sporadically, specialists continue to assert that the instrument as defined in the constitution has never really been applied. (Gadret, 1956; Pessoa, 1981) At the same time, a number of informal and *ad hoc* government schemes illustrate the State's intention to recover value increments, or more specifically to use property valorization resulting from public investment as a source of financing for public works. The same motivation is evident in various attempts to institutionalize taxes, fees, and assessments for that purpose. Both of these tendencies are illustrated below.

The Development of Informal Schemes

The prospect of property valorization may be said to be part of an informal scheme when it is used, to cite one example, as a bargaining chip by the State in its relationship with businesses licensed to provide public services. The potential valorization of areas to be serviced may be used in negotiations, for example, when authorities condition the expansion of public service networks to areas of potential valorization or increased revenue collection on the improvement of services in other areas less attractive to licensed service providers. One good illustration of this dynamic is the evolution of urban transportation services in Rio de Janeiro during the last quarter of the nineteenth century and the first decades of the twentieth, which was closely related to the process of property valorization.¹⁰ (Abreu, 1987)

The Establishment of New Taxes

The establishment of the Paving Fee (*Taxa de Calçamento*) in São Paulo in the 1920s was an attempt to more systematically apply the idea that landowners should assume economic responsibility for public improvements that resulted in the valorization of their properties. However, this tax on properties contiguous to public improvements generated a strong negative reaction on the part of property owners. After a long and widely publicized legal process, the tax was ruled unconstitutional and in 1933 the city government was ordered to fully reimburse property owners for taxes theretofore collected under the law. (Gadret, 1956) However, the continued intention of the State to

¹⁰ In some cases, for example in building the Vila Isabel neighborhood in 1873, the property owner and developer (*Barão de Drummond*) was also licensed to operate trolley service in the neighborhood. In other instances, for example when the city limits were expanded to incorporate the seashore, including the beaches of *Copacabana*, *Ipanema*, and *Leblón*, the work of urban development—and the appropriation of value increments—amounted to a debt paid by property owners to the Botanical Garden Railroad Company, whose name was later naturalized to *Companhia Ferro-Carril do Jardim Botânico* (Abreu, 1987). In both cases, the development process was driven by the valorization of urbanized properties and the resulting densification of affected neighborhoods.

collect a tax of this nature was made clear in the following year with the promulgation of the 1934 constitution, which explicitly established the constitutionality of value capture through the Assessment for Improvements (*Contribuição de Melhorias*).¹¹ In following years, this Assessment was codified in state and municipal regulatory language throughout the country. Surprisingly, however, the official legitimation and codification of this concept did not necessarily mean that it would be put into practice.

This seems to have been the case in a number of Latin American countries. With the advent of urbanization, the use of different value capture mechanisms has generally entailed either frustrated attempts to apply formal and legally constituted instruments or alternative and sometimes arbitrary schemes that functioned only marginally and in very specific cases, sometimes involving negotiation with land owners.

There is a clear lack of consistency in the recovery of value increments and in the use of mechanisms to recover resources invested in public works. To be perfectly frank, mechanisms of this nature are generally *not* applied.¹²

Below I will present a summary of how the concept of value capture has been perceived by society and how it has been appropriated historically by different social sectors. This perception and appropriation, and the movement from the former to the latter at different historical moments and by different social actors, contribute to an understanding of the bases upon which different justifications and motivations for a definition (or non-definition) of value capture and the application (or non-application) of corresponding instruments have been constructed.

Ethical Concerns and the Institutionalization of Value Capture Instruments

In a general sense, the concept of value capture in the region, expressed explicitly or implicitly in several Latin American constitutions and in legal definitions of the concept, seems to stem from the idea that a public project that improves the city in a general sense also provides specific advantages to the owners of the properties most directly benefiting from the project. Thus the basic principle of equity justifies the payment of compensation by those private beneficiaries to the community at large. If these benefits to landowners lead to property valorization, that valorization is not the product of any individual effort. It is unearned, and should be recovered by society. The ethical principle behind this conclusion is that individuals should be compensated in proportion to their personal efforts, and therefore that portion of property valorization that results from other than personal effort is undeserved. It is ethically justifiable to expect that those who have received a special benefit exceeding the general benefit should return that additional benefit to society.

¹¹ The constitution states in Article 124 that “If the valorization of the property is proven to be the result of public works, the government that has carried out those works will be authorized to apply an assessment for improvements on those benefiting from those public works.” (Gadret, 1956)

¹² Sometimes this general tendency takes on irrational local characteristics, in Santiago, Chile for example, where extended legal and financial negotiations regarding the expropriation of affected areas made the recent construction of the Américo Vespucio urban beltway extremely difficult. (Sabatini, 1996)

Taking the concept described above as the ethical basis for the recovery of value increments, it is nonetheless necessary to examine the instruments that mediate between the concept and the actual appropriation of value increments, in order to better appreciate the ambiguities that permeate the process. We will examine several different types of instruments in order to illustrate how they implement the concept of value capture.

The Assessment for Improvements¹³

To begin with, certain conceptual variants may be derived from the basic concept described above. At first glance they may seem similar but on closer examination they differ, and they have been institutionalized as different forms of revenue-collecting mechanisms. In each case, however, the basic principle is that society in general should be responsible for generalized benefits, but the costs of benefits accruing to only certain parties should be defrayed by those benefiting parties.

It follows from this principle that private parties enjoying special benefits should reimburse society for State investments in improvements if those improvements lead to the valorization of their properties. Alternatively, benefiting private parties should pay for those work projects themselves, even if the projects are necessary to the larger community and not merely to those parties particularly benefiting from them. This opens the door to some latent ambiguity and differing interpretations with regard to the goals for which these instruments are applied.

It is clear that differing conceptual frameworks could lead to fundamental differences in the design of revenue collection mechanisms, including the very basis for collection, and can generate obstacles to their implementation. Even in Colombia, where the use of the Assessment for Valorization has a significant history, a number of judicial decisions have limited the total value of the assessment to the estimated cost of the associated public works project. (Jaramillo, 1996) In Brazil, the value of the Assessment for Improvement was set at and limited to the value of the corresponding valorization or the cost of the public works project, but this formula has been altered by every constitutional amendment process since (Lima, 1996), and is currently the subject of considerable legal controversy. These changes are not limited to technical aspects, and may affect elements inherent to the conceptual bases of revenue instruments in ways described above.

Normative Decisions

The value capture principle described above has been adopted by the State and used to justify extra-budgetary revenue collection mechanisms, but is primarily used to recover that portion of valorization (or simply the costs) generated as a result of public works

¹³ In this context, the assessment for improvements is not strictly speaking considered an instrument, but a kind of revenue mechanism complementing taxes and fees.

expenditures.¹⁴ As defined, though, the concept of value capture is liable to be integrated into regulations governing administrative decisions on land use in urban development. This extension of the concept would be justified to the extent that the authorization for a more intensive use of urban land or the conversion of land to urban use on the part of the State is largely dependent on investment in infrastructural projects to prepare land for urban uses or to incorporate land into urban service networks. Thus the financing of urban development activities could be understood on the basis of a longer term perspective involving present or future expenditures.

In practice, however, each of the modalities for recovering value increments is normally treated differently, and the great majority of specific instruments for this purpose privilege the role of public works projects in generating revenues. This presents an obstacle to the application of instruments to recover valorization generated by administrative decisions of the part of the State, and an obstacle to the recovery of this significant portion of value increments generated in the urbanization process. This is an important aspect of the question since it reinforces the following obstacles to government initiatives: the contingent nature of informal schemes and the tremendous difficulty of introducing new taxes.

Tax policy in Latin America has not traditionally been applied to valorization generated by new categories or density of land use. Specific initiatives in recent years, such as taxing buildings above a certain height in Buenos Aires (Clichevsky, 1996), have not been applied.¹⁵ When the question is officially recognized, it generally appears only indirectly in the regulatory system, for example in certain rules concerning land development and subdivision, when a parcel of land in a development or subdivision is required to be reserved for public use. This occurs in Brazil (Law 6766/79), in Venezuela (Lovera, 1996), and in Paraguay (Abramo, 1996). In these cases, however, the implicit goal is not actually to recover land value increments for the community, but to reserve a certain portion of newly developed land for the installation of local public infrastructure.

Again, Colombia has taken the lead in establishing a systematic and specific manner to recover a portion of land value increments with a proposal for a new instrument called Municipal Participation in Urban Value Increments (*Participación Municipal en las Plusvalías Urbanas*) to complement the existing system. (Jaramillo, 1996) This instrument extends the recovery of value increments to include those resulting from governmental urban development activities such as establishing new categories of land use or changed rules on land use density. This proposed law, still under evaluation, would allow for payment for value increments either in cash or in kind, with a portion

¹⁴ In instruments designed for this purpose, the reference to a causal relationship between a public works project and valorization is typically explicit, even when the revenues to be collected are limited to the cost of the public works project.

¹⁵ The same difficulties bedevil the idea of selling land in the *Solo Criado* (Newly Created land) project by the government in Brazil. This point is discussed below.

of the affected land.¹⁶

When this possibility is evaluated from a broader perspective, one observes the necessity to consider the acquisition of land as an alternative way for the State to appropriate land value increments generated by its own activities. However, the fact that the State as the owner of a certain portion of affected land can appropriate value increments accruing to those lands suggests a number of questions that go beyond the narrower focus of this report. Thus we shall examine only those questions that are most closely related to the topic of value capture, and only to the extent that they contribute to our primary focus.

Expropriation and Recovery of Value Increments

In countries where property rights are guaranteed, the most far-reaching prerogative available to the State in order to limit this exclusive right in favor of the general and inclusive good is the power of eminent domain, an important tool for acquiring lands necessary for public purposes by transferring them to public ownership and compensating their owners.¹⁷ The concept of value capture may also be construed to include the expropriation of areas necessary for the establishment of urban improvements (public infrastructure and facilities) and expropriations with other goals such as the demarcation of territory set aside for urban expansion or the regularization of illegal urban subdivisions.¹⁸

In any case, the power of the State to expropriate value increments that would otherwise be appropriated by private actors is conditioned by its ability to determine or negotiate the level of compensation to be paid for the expropriated property.¹⁹ In this sense, the mechanism is a mirror image of more traditional value capture instruments. With traditional value capture instruments, the cost of the public works project may be fixed as the maximum total tax to be collected, possibly negating the notion of value capture (Clichevsky, 1996; Jaramillo, 1996), and when lands contiguous to sites of public investment are expropriated, the incorporation of projected value increments into the compensation may have the same effect. In both cases, though, other possible benefits

¹⁶ The explicitly stipulated payment of the assessment on valorization with a portion of the affected land is more commonly used in cases of subdivision into individual lots, for example in Land Adjustment (*Reajuste de Tierras*) and in other forms of organized urbanization not yet widely practiced in the region. (Dowall y Blackburn, 1991)

¹⁷ Other mechanisms not discussed here include the termination of property rights due to structural transformations of the political system, and the mechanisms employed by the State in such circumstances, such as the nationalization, confiscation, or expropriation of property without compensation.

¹⁸ Cases such as these will not be further discussed in this report, and they are mentioned here simply in support of the principal argument. Other relevant questions will also be omitted, for example the circumstances under which the State may incorporate certain properties as public land.

¹⁹ In France, for example, the value of real property is estimated based on its use one year before expropriation in order to preclude or minimize the incorporation of value added in anticipation of the public works project. (Granelle, 1981)

to society or other public sector objectives motivate State action, and the recovery of a portion of value increments may be only a secondary objective.

Despite the fact that it is widely practiced in the region, the expropriation of property for public use and/or for other socially desirable ends does not always have a clear connection to value capture activities. The expropriation process is frequently used merely as a formal tool in order to simplify the purchase of private lands by the public sector, as exemplified by current expropriations of private lands in México. (Duhau, 1991) It is even argued that when lands necessary for the execution of public works projects are expropriated, “expropriation works to the detriment of the public sector, which ends up paying twice for the urban infrastructure that it is constructing.” (Pessoa, 1981)

In addition, it should be noted that determining the level of compensation to be paid may involve extended legal negotiations, with a significant negative impact on the timeframe for completion of the public works project.²⁰ Alternatively, government bodies may sacrifice all of their bargaining power in negotiations over the value of the property to be expropriated in order to accelerate the initiation of public works projects.²¹ In addition, if the purpose of the expropriation is to establish territorial reserves for future development or non-prioritized public works projects, it is possible that previously established levels of compensation may be insufficient and the project will not go forward.²²

Despite the potential for problems like those mentioned above, in some situations negotiations may be favorable to the public sector, and at times the instrument may be used to attain explicitly redistributive goals. In the case of expropriation in order to regularize low income settlements, for example, the existing use of the land provides the local government with greater bargaining power, and even if the land is physically situated within an area of more valuable properties, the government has the option of assigning a cadastral valuation inferior to that in the surrounding area. This reinforces the government’s bargaining position by making it unlikely that the property owner will receive any greater compensation for the land. Melgaço (1994) documents this dynamic in a discussion of favela regularization in Contagem, Brazil.²³

In some cases, a public sector body has the prerogative of unilaterally determining the

²⁰ Delays to the Chilean highway project described above were due to this problem. (See footnote 13)

²¹ This occurred recently in relation to the construction of a highway project known as the *Linha Amarela* in Rio de Janeiro, where the government itself confirmed that compensation payments for expropriated land were up to three times their market value.

²² This occurred with regard to the expropriation of integrated farming communities (*núcleos agrarios*) in México, which sometimes “prefer to sell their land themselves, aware as they are that with urban growth they will be able to get prices more attractive than the compensation offered for expropriation.” (Duhau, 1991)

²³ The advantage of this procedure would be limited by the relationship, both inside and outside the area being negotiated, between land value per square meter and population density.

level of payment for compensation. In Nicaragua, the 1981 Law on the Expropriation of Unused Urban Land (*Ley de Expropiaciones de Areas Urbanas Baldías*) was established by the revolutionary government. The law set fixed levels of compensation based on out-of-date cadastral values. Lands expropriated under the Sandinista Urban Reform program were distributed without charge to the low-income population or used for the construction of plazas and parks based on the idea that urban land was social property, “not a commodity but a resource for the satisfaction of human needs.” (Morales, 1996)²⁴ Under the new Nicaraguan government in the 1990s, however, not only did the law on expropriation fall into disuse, but compensation was paid at updated market values for lands that had previously been expropriated and nationalized, including, that is, the value increments generated between the time of expropriation or nationalization and the date of compensation. (Morales, 1996)

Venezuela presents the most specific case of expropriation of areas adjoining public works projects. Its 1946/1958 Law on Expropriations for Public or Social Use (*Ley de Expropiation por Causa de Utilidad Pública o Social*) contemplates the expropriation of lands surrounding a projected public works project. Under the law, the State has expropriated land contiguous to a number of highway projects and transferred their ownership to other State entities for the construction of low-income housing. (Lovera, 1996) It is interesting to note that in this case the law on expropriation refers explicitly to the collection of 75 percent of the value increments generated on contiguous properties through the Assessment on Valorization (*Contribución de Valorization*) in order to help pay for public works projects executed in the area.

This case is evidence of a little described function of the instruments most directly associated with the recovery of public investments, a mechanism that complements the taxation and regulatory system based on property ownership. In the case of Venezuela, for example, this mechanism may have played a role in facilitating the expropriations, thus increasing the bargaining power of the public sector.²⁵

3. Obstacles to Value Capture in Latin America: A Framework for Evaluation

Property Rights and the Role of Real Property

The context in which these instruments evolve or are defined is strongly influenced by the role of property in the formation and the cultural and socioeconomic development of Latin American societies. Latin American constitutions and civil codes clearly define the exclusive nature of property rights and explicitly guarantee those rights to title holders. They also establish that the exercise of those property rights is subject to

²⁴ Morales and Lungo (1991) describe the contradictions inherent in Sandinista urban policy, based on assigning “zero value” to urban land.

²⁵ A similar role is attributed to a value capture, or “betterment” instrument applied in England between 1909 and 1947. Although its use was infrequent, it was helpful to local governments in negotiating real property acquisitions. (Hagman and Misczynski, 1978, p.xl)

government regulation, which may include specific legislative limitations to the use of property in order to assure its social function. It is the State's responsibility to apply legislatively authorized regulations so that the holders of property rights exercise those rights in the public interest.

The design of regulations is subject to the recurrent issue of the extent to which the State can encroach on property rights in the public interest without detracting from property values and negatively affecting property owners. The scope of acceptable legal, technical, and political action by the State that limits and even calls into question property rights is the subject of heated debate.²⁶

Although today's greater social complexity tends to generate ever more legal restrictions on property rights, neoliberal initiatives serve to counteract this tendency. In some countries, initiatives to strengthen private property rights have been consolidated in constitutional amendments and/or in the civil code. This occurred in Chile in 1980 (Sabatini, 1996) and in Argentina in 1994. (Clichevsky, 1996)

The stubborn defense of property rights has its origins in the historical paternalism of Latin America's hegemonic social classes, but its conceptual underpinnings nevertheless extend essentially intact beyond the ranks of the dominant classes to encompass all social sectors. To better understand the persistence of this phenomenon and the cultural meaning of property, these concepts must be situated in the conspicuously unstable economic and sociopolitical contexts of the region, where the maintenance of property in fact sustains a diverse set of social groups.

Land, the material basis of real property, is the only economic alternative widely recognized in the region as resistant to economic turbulence and/or disturbances such as inflation, and the only alternative capable of offering any individual the economic security that can compensate for a lack of structural social guarantees. As a pillar of the social and economic order, real property is also considered relatively immune to political change. In addition, the stability of land as an economic asset and the possibility of its valorization as a consequence of urbanization is widely understood, and access to that valorization is generally considered an extension of the right to property.

Thus the private appropriation of land value increments is seen in the culture as a "natural" consequence of property ownership and the preferred form of investment in the region is still real property, even in Chile where unemployment has fallen and economic growth has been strong for more than ten years. (Sabatini, 1996)

²⁶ One example is the well known case of the *Rua da Quitanda* (Quitanda Street) in Rio de Janeiro in the 1940s. In this case, a *retilo* (a strip of land, or setback, where construction was prohibited) was ordered, since the widening of the street required the demolition of existing buildings. However, the municipality was ordered to compensate the owner of a building on the Rua da Quitanda because he was considered to have suffered economic damages due to the establishment of the *retilo*. It turned out that due to the street widening project, and with reference to the same legislative clause that allowed for the *retilo*, the building that had previously been limited to three stories could now be expanded to a height of at least ten stories!

Based on the above understandings, even the weak implementation of value capture instruments is in some sense surprising. One wonders how these mechanisms can be officially recognized and occasionally implemented at all, given the tenuous state of their conceptual prerequisites. Under what circumstances is their adoption possible? What advances and obstacles characterize their development and adoption, in a broader context where the hegemony of the landowning sector and the scope of property rights have historically been questioned owing to the multiple motivations of the different parties involved and the struggle among different social forces?

The promulgation of new laws and regulations has often indicated the fragmentation of hegemonic class interests. In the urban context, new characteristics or limitations on property rights are established through laws that regulate property subdivision and the commercialization of individual lots, expropriation, landlord-renter relations, laws regulating the preservation of the historical and artistic heritage, and other factors. In Brazil the development of instruments for financing urban development was strongly promoted by private construction firms specializing in public works projects, a field of activity that was consolidated beginning in the 1930s, when the State assumed a large part of the responsibility for urbanization, contracting private firms for the construction of large scale projects, especially roads. At key moments, construction companies played an important role in the design of the Assessment for Improvements (*Contribuição de Melhoria*) by sponsoring seminars and technical debates on the instrument, but also through its powerful influence over a group of representatives in the national congress that came to be known as “the street and highway group” (*a bancada rodoviária*).

While the non-implementation of value capture instruments attests to the remaining political strength of the landowning sector, the use of these mechanisms and other conceptually similar but technically different procedures, such as community paving projects, demonstrates that landowners may sometimes also be motivated to invest in State projects that result in the valorization of their properties.²⁷ This approach of the land-owning sector, which today is growing and has come to support the new mechanisms, should nevertheless be qualified. It is understandable more as a specific strategy carried out in order to overcome conjunctural difficulties, or as a reaction to a loss of political power relative to emerging subsectors of the overall dominant sector, than as a sign of progress or modernization of land holders’ ideas on the scope of property rights.

Motivation due to self interest on the part of landowners may be a possible solution, now that alternatives are exhausted and in the context of a weak State. It would be a solution that was exceptional to the more general rule under which urbanization generates property value increments that are routinely appropriated by private parties.²⁸

²⁷ In Brazil there is a history of this kind of strategy being employed since the second half of the nineteenth century, for example the financing of stations on State rail lines by the owners of contiguous properties.

²⁸ In truth, a more rigorous understanding of this problem should also take into account (and in certain cases prioritize) the failures of the State with regard to value capture.

In general, the idea that it would be unjust for some to benefit more than others from public investment, and that the State should recover for society the special benefits accruing to some, is relegated to the strictly rhetorical category of laws honored in the breach. The practical reality is that the State is unable to implement mechanisms for a systematic recovery of value increments.

The Chronic Incapacity of the State

Proposals to recover expenditures on public works projects receive greater attention as the State reveals its incapacity to respond adequately to the necessities generated by increasing urbanization. The incapacity of the State in Latin America, understood here as a manifestation of the social structures from which it springs, is reflected in the weak implementation of urban planning and policy. The inadequacy of State action is reinforced by a kind of feedback mechanism, and certain problems of urbanization become chronic.

This problem, which combines aspects of regulatory and fiscal activities, is sorted out below into more-specific elements within these two categories.²⁹

Regulatory Activities

The accelerated urbanization of Latin America³⁰ and the expansion of its cities, which have functioned as seats of economic and political power since the colonial era, began as a relatively spontaneous phenomenon, incorporating new areas into the urban system based on the economic activities and ambitions of land owners rather than predetermined criteria or administrative incentives.

As urban systems became more complex, their growth came under the control of government, and legislative bodies undertook to establish regulatory oversight of urban development. However, as urban populations grew exponentially, local governments were unable to exercise effective oversight and control over an orderly urban expansion process.

When it was clear that local governments were not in effective control, a certain complacency set in. Since the legal means to participate in urbanization were beyond the reach of a significant portion of the population, they proceeded to consolidate their living situations outside of legal norms. Official passivity is substantially overcome only when irregular settlements generate social tension or extraordinary economic losses, for example when favela dwellers are removed from areas with a particularly significant potential for valorization.

²⁹ Although these elements are somewhat crudely drawn, broadly speaking they represent typical forms of State action that are expressed with different particularities in the historical development of specific countries.

³⁰ For a broadly inclusive overview of Latin American urbanization, some common characteristics found in different parts of the region, and several interpretations of the phenomenon, see Jaramillo (1992).

At the same time, the regulatory system continued to develop in ways that often ignored reality.³¹ This further reduced the already limited regulatory and coercive power exercised by authorities over social practices, increasing the distance between rhetoric and reality and augmenting the State's regulatory incapacity.

The limited application and effectiveness of numerous regulations is not alien to our culture. We have many laws that are not actually applied due to their incompatibility with reality, as mentioned above, and due to a perverse logic by which regulations are introduced not to actually regulate social practices, but to obscure them. (Holston, 1991) Another similar and well-known strategy is to intentionally leave certain regulatory instruments poorly defined over long periods of time so that urban problems, some of them formally discussed in general legislation, are left effectively unaddressed. (Pessoa, 1981)

While some aspects of urban development are left unresolved, others suffer from overlapping or diffuse lines of regulatory and/or enforcement authority. In these cases, official actions often seem to legitimate existing realities based on social and market pressures rather than to represent goal-based planning or pre-established regulations.

Taxation

The culture of taxation in general and of land taxes in particular is weak in Latin America, both among the population and among authorities.³² As a tax on wealth, property taxes are rejected by the population in keeping with the dominant culture that privileges inherited wealth and with the conception of property rights as indicated above.

There is also a general disinterest in property taxes on the part of authorities, given that these taxes have historically represented only a small part of tax revenues. The general population also rejects the idea of property taxes because they do not know where they go or what they are used for. Unlike user fees, they are unrelated to any identifiable provision of services, and unlike assessments, no specific benefit accrues to those who pay them.

Property tax levels are very low, based as they are on obsolete cadastral data and inefficient assessment rolls, lowering tax revenues. In addition, although local authorities are responsible for collecting property taxes, they do not seem interested in improving collection, due to the political costs that would represent. Instead they opt for government borrowing or count on the intergovernmental transfers that either strengthen local finances or just keep them afloat.

Remedies to some specific aspects of this problem, such as the decision by a new

³¹ One notable example of this irreality was the attempted mandating of a fixed 12% annual interest rate in the 1988 Brazilian constitution, which only delayed the real regulation of the national financial system.

³² The qualitative topics discussed in this subsection refer to the general characteristics of land taxation in Latin America, while the quantitative data refer to the specific case of Brazil as documented in Smolka and Furtado, 1996.

government to update the cadastre, are used more frequently to strengthen financial resources in the immediate sense than as measures to rectify or improve tax collection procedures. The population's lack of confidence in these measures is reinforced by their arbitrariness or casuistry and by the weak coercive power of authorities, who are frequently not well informed themselves regarding the extent of the tax base, all of which increases the possibilities for tax evasion or delinquency.

The risks associated with tax noncompliance are limited by the low fines imposed, by repeated tax amnesties, and by authorities' willingness to negotiate with tax delinquents. To be truthful, these practices are not limited to property taxes; they are common to the tax system as a whole.³³

To summarize, the chronic incapacity of the State is characterized by regulatory, fiscal, and coercive weaknesses. This is in line with a pattern of urban growth in which a large part of the population participates outside the formal urbanization process. Given the illegality of this population's living situation, their inclusion in programs for infrastructural and public service investment tends to be deferred, if not precluded. In many countries, public investment for infrastructure is concentrated in the highest income areas, while the provision of public services in informal settlements is often delayed and, ultimately, only minimal. (Geisse and Sabatini, 1979) As a result, Latin American cities are characterized by the stark contrast of well developed areas with infrastructure comparable in many respects to that of cities in wealthy countries, and areas where the most basic elements of urban development are lacking.

Due to this weakness, keeping certain areas empty in anticipation of future valorization is a profitable business practice. The urban panorama has come to include infrastructurally undeveloped but populated areas next to unpopulated but infrastructurally developed areas. (Furtado, 1993) Even if only legally occupied areas are considered, investment in urban services and infrastructure is highly concentrated in a few higher-income communities. Furthermore, additional public services tend to be made available in areas already benefiting from basic infrastructural development (Vetter and Massena, 1981) or in vacant or very sparsely populated areas marked out for high-income residential expansion.

4. Weaknesses of the Official Mechanisms

Operational Difficulties: Technical and Political Problems

Support for the legitimacy and political desirability of value capture instruments in Latin America is as ambiguous as support for the idea of value capture itself. The absence of appropriate political conditions or the lack of political will are the most frequently cited explanations for the disparity between value capture's presence in

³³ It is estimated that for every unit of value collected as taxes in Brazil another equivalent unit of value is evaded, and in the Latin American region it is common to be told that "only fools pay taxes." (Lovera, 1996)

legislation and its scant implementation.³⁴

Technical, administrative, legal, and cultural factors that are frequently referenced to call into question the use of value capture instruments may in fact reflect the *political* considerations underlying such questions as who pays, how much they pay, and when they pay for benefits received.

Support for value capture is hard to classify and debates around the issue are not necessarily associated with liberal periods; they may also emerge or reemerge during times of more authoritarian rule. In Brazil, for example, debate emerged over the *Solo Criado* (Newly Created Land) instrument, which imposed a fee on the right to build, during the military dictatorship, a time when urban planning was intentionally depoliticized. (Brazileiro, 1981) During the same period, Law 6766/79 on urban subdivision was substituted for a previous law in effect since 1937. One of the changes mandated by Law 6766/79 was a requirement that at least 35 percent of urban land undergoing subdivision be reserved for public use. These two examples illustrate the salience of the topic on the Brazilian urban policy agenda during that period.

With reference to the recovery of value increments associated with public investment, the different answers proposed to the recurring question of how to determine the impact of public investment on the price of affected properties illustrate varying political solutions to a problem not easily resolved from a purely economic standpoint.

Correspondence between the level of State investment in a public works project and the valorization of lands benefiting from that project is neither immediate nor direct. Nor, in fact, is a resulting valorization inevitable.³⁵ Jaramillo (1996, p.5) provides a good illustration of this point:

[A] major urban transportation corridor may have a positive effect on contiguous properties because they become more accessible. However, it may also equalize the accessibility of all the properties in the city and diminish that part of the price that derives from these differences (and which generally justifies such projects). Nearby properties may be affected to a much greater or lesser extent. In some cases the public improvement may greatly increase income potential, for example in residential areas that are converted to commercial use. However, the price of contiguous properties may be negatively affected if the improvement inhibits an already existing use that generates higher income, such as the loss of a high-end commercial area due to the construction of a transportation corridor.

³⁴ Even in Colombia, where the Assessment on Value Increments has a pre-existing history of implementation, growing political resistance is seen as one of the primary obstacles to applying the instrument and as a factor in the current retreat from doing so. (Jaramillo, 1996)

³⁵ Jaramillo (1994) examines the relationship between these two elements from a Marxist point of view. Jones, Giménez and Ward (1994) suggest that valorization resulting from public policy is uncertain and unpredictable.

Projects involving real property are ever more complex and it is increasingly difficult to identify that portion of valorization attributable to regulation and other State activities. (Brown and Smolka, 1997) Each of the proposed answers to this question seems arbitrary to a greater or lesser degree. The most common answer is incorporated into most of the existing traditional instruments: total collections on the assessment are limited to the cost of the public works project. Other solutions range from an intentional underestimate of the expected increase in the value of affected properties to separate negotiations with individual property owners or property developers, and the compromise solution of establishing a fixed percentage of the expected valorization.

Establishing a timeframe for collecting payments is another problem. In the case of valorization resulting from administrative decisions, such as in the new instrument proposed for Colombia, collection can be postponed until the property is sold, a practice defended by Shoup (1994), or more generally, until a positive cash-flow makes payment possible, as recommended by Hagman and Misczynski (1978). In the case of public works, however, this approach is impractical since funds are needed in advance in order to execute the project, and the situation is further complicated by the fact that estimated future benefits may not in fact materialize or may not materialize until the project is fully executed. (Jones, Jiménez and Ward, 1994)

Obstacles to technical-administrative capacity for value capture include obsolete cadastral records, the lack of systematized information on real property price evolution, inadequate collection mechanisms, the lack of trained human resources, and other problems. Nevertheless, these obstacles are common not only to the administration of value capture instruments, but to all property-based taxes (Smolka, 1991), and in most countries they do not seriously hinder the collection of property, property transfer, or other taxes. Still, determining the extent of the tax base, setting rates, establishing progressivity and exemptions, and setting the payment calendar are among the tasks, problems, and deficiencies that will be executed, solved, or ameliorated on the basis of political decisions.

The Use of Non-normative Value Capture Practices

Since the political legitimacy of official mechanisms is ambiguous and there are certain difficulties in translating them into action, they are implemented to only a limited extent and alternative forms of public policy execution are common. These alternative forms do not strictly follow either the mandates of explicitly formulated value capture legislation or the traditional definition of value capture,³⁶ and may thus be categorized as “non-normative value capture practices.”

Poorly defined legislation has created a space for creative interpretation that at times has even been recognized and utilized by the judicial system. (Carvalho, 1991) Sometimes

³⁶ When all legal prerequisites have been met for the utilization of official instruments, the State’s failure to implement those instruments may also be considered non-normative. In a discussion of the failure of “Betterment” policy in England between 1909 and 1914, Hagman and Misczynski conclude that “if you want to recapture windfalls, make sure your system is mandatory.” (1978, p.xl)

there is a lack of coherence among different levels of authority, among the different bodies having legal jurisdiction, and among different sectors involved in regulating urban policy. (Pessoa, 1981) All of these inconsistencies help create a space for the use of non-normative practices.

Alternative practices may be very similar to traditional instruments or may be diametrically opposed to the principles and objectives behind legally constituted mechanisms. They may be used in order to deal with new situations as yet imperfectly described in legislation or to intentionally exploit ambiguities in the legislation as written, to “slip through the cracks,” as it were. Non-normativity in value capture may be inadvertent if value increments are recovered as a side effect of an urban development and/or fiscal instrument designed with completely different goals in mind, or if value increments are not recovered despite the application of a duly constituted value capture mechanism.

In the case of Brazil we can observe several practices by official bodies that are not in keeping with the letter of the law. Community Paving is probably the most common mechanism in the country for recovering public investment. It has been used in many cities in the interior to incorporate new urban areas. The legal basis for Community Paving is constitutional language allowing in general terms for municipal governments to levy the Assessment for Improvements (*Contribuição de Melhoria*). Nevertheless, Community Paving has been applied in differing ways that distort or mischaracterize one or more of the regulations regarding the Assessment for Improvements. Among these arbitrary and non-normative practices are those where the initiative for the public works project originated in the community itself and was prioritized only if it met with the consent of landowners as expressed in a formal petition or letter of commitment. In general, project execution would begin only after being partially or fully paid for by the benefiting community, and not infrequently payment was made by means of promissory notes issued by the very contractor that would be executing the project. (Lima, 1996) An implementation of Community Paving differing in any of these ways from the procedure prescribed by law is not in keeping with constitutionally established parameters for the application of the Assessment.

Practices frequently vary from one place to another on the basis of local political agreements that complement or supplant existing legislation in the name of pragmatism. For example, the declaration of *retiros de frente* (strips of land where construction is prohibited because it would front on a public space), have generated legal disputes and demands for compensation by property owners whose land was officially subject to expropriation. In Rio de Janeiro, the traditional way to minimize these legal disputes is to issue construction permits for projects that harmonize with the newly established frontage, i.e., without establishing occupied areas contiguous to the project or the required frontage setback. In São Paulo construction is currently permitted in the area of the setback with the proviso that buildings in that area will not be eligible for subsequent compensation by local authorities.

Another non-normative practice is used to sidestep specific aspects of regulatory legislation. Exceptional variances are established, usually by means of executive

decrees, but some legal “exceptions” have become the norm, more common than strict adherence to written regulations. In Rio de Janeiro, for example, it is common to see additional floors being added to the roofs of already-approved buildings. This irregularity can be legally arranged by building owners making what the local government calls a “payment of the value increment,” a phrase used specifically to refer to this post-approval manner of regularizing building additions.

The questionable interpretation of laws and legal terminology is another frequently used mechanism. One example was the new meaning given to the term “*desfavelamento*,” the dismantling of informal settlements, during the Workers Party (*Partido dos Trabalhadores* – PT) government in São Paulo. (Bonduki, 1996) The term had previously been identified with the removal of favela dwellers to housing developments on the city’s periphery, but came to mean the removal—or rather the transfer—of the population to housing developments in direct proximity to the favelas, facilitating the use of Coordinated Operations (*Operações Interligadas*) for redistributionist purposes.³⁷

These are just a few examples of the way certain mechanisms associated directly or indirectly with value capture can be utilized. They reveal another side of the problem posed by obstacles and limitations to value capture by opening the way to a kind of research based on what is really done in practice despite all existing difficulties.

The use of alternative and non-normative practices in Brazil, frequently arrived at through elaborate rationalizations, is a way of meeting an immediate need for pragmatic solutions to legal problems, if not opportunism pure and simple. These practices, which have and continue to spread throughout the region, are used in the interest of different social and political sectors. Found to be useful at all stages of urban planning, policy formulation, and execution, they add an additional element to the historical-institutional framework that contextualizes the recovery of value increments in Latin America.

Objections from a Redistributionist Perspective

Traditional value capture instruments are sometimes hard to defend as mechanisms to improve the distribution of benefits generated by public policy and make it more just. In fact, their application is sometimes questioned by those in political circles oriented toward social justice and the redistribution of the wealth. This ambiguous support and certain objections that are raised help explain, for example, why the Assessment on Improvements was not applied during the 1989–1992 period of Workers Party (PT) government in São Paulo, despite its presence in the guidelines leading to the Strategic Plan (*Plan Director*) developed by the PT administration. (Rolnik et al., 1990) The following two concerns help explain the obstacles to the use of these instruments by political forces that seek to redistribute the wealth:

First, the successful application of the mechanism depends on the ability of value increment beneficiaries to pay the assessment. This can lead to pragmatic decisions to

³⁷ This instrument will be described more fully in the following section.

apply the mechanism first and foremost in environments where successful cost recovery is most likely to succeed. Indeed, several studies in Bogotá indicate that the implementation of the Assessment on Value Increments was concentrated in areas occupied by the highest income population. (Geisse and Sabatini, 1979)

From a governmental point of view, this tendency may be based on an expectation that value capture will generate less protest if it is aimed at privileged social sectors. Another factor is that besides the likelihood of cost recovery, these areas and their associated social sectors have greater potential to generate additional social benefits, for example greater attractiveness to investors and/or the consequent increase in the collection of other taxes.

If value increments are successfully recovered as described above, they are likely to be favored as a source of urban financing and may lead to a reorientation of priorities in establishing urban services and infrastructure, opting for those projects that guarantee at least a return equal to expenditures. This limitation, in which it is no different from other urban policy instruments, is even more salient in the current context of municipal governments under pressure due to insufficient revenue and seeking to improve competitiveness. Given these factors, the use of value capture could reinforce the exclusion of broad social sectors and exacerbate the marked socio-spatial segregation of Latin American cities. (Smolka, 1996)

Secondly, value capture can generate foreseen and undesirable impacts on urban land use and population density. If property in some parts of the city is more rapidly valorized and the relative position of different sectors with regard to urban services and infrastructure is altered, residents may be motivated or even compelled to move to more favored areas. Adequate control of these impacts would require significant interaction between agencies dedicated to urban planning and fiscal policy, a form of interaction not yet common in the region. (Perló, 1996; Lungo, 1996; Calderón, 1996)

On the other hand, this same interaction can also be used for other purposes. In Colombia, various top-down urban renewal projects have been carried out using the Assessment on Valorization as a tool for the removal of low income groups. (Jaramillo, 1996) In Paraguay the use of an obligatory mortgage on property as a guarantee for expenditures on paving projects had the same result, sharpening patterns of socio-spatial segregation that had been relatively moderate up until that time. (Abramo, 1996)

As can be observed, there are several objections to the official instruments developed for the recovery of value increments in Latin America, objections that also stem from the various ways in which the mechanisms can be politically appropriated in an environment where socio-spatial inequality is the dominant characteristic.

5. Opportunities and Limits: An Assessment Based on the Brazilian Experience

New Political Actors, New Strategies for Action

The development of value capture instruments can be interpreted in the context of certain changes that have been taking place in the region since the 1980s.

There have been important changes in the rules of the political game. There has been an apparent convergence of different sociopolitical orientations with regard to the utility of valorization as a way to finance urban development and with regard to its political and economic advisability and its social justifications. However, this convergence should be examined carefully in order to understand how valorization is politically appropriated by different political sectors.³⁸

Progressive forces finally came to government, but their power was limited and not universally supported. The actual potential for implementing their proposals was subject to the larger political context in which they worked. In addition, landowners' loss of power to new actors and new popular movements was counteracted by the consolidation of other hegemonic sectors in processes affecting real property. We will see the general outline of how these changes have unfolded and the strategies pursued by those agents involved in the negotiation of value capture.

Landowners are the traditional holders of political and economic power in processes concerning real property and they have traditionally appropriated the largest part of property valorization. Now, however, they seem more willing to cede a portion of their value increments. This concession by the landowning sector is a response to the presence of new actors in the urban property dynamic.

Other social actors are defending low-income housing rights and the “urban rights” of the low-income population. Non-governmental Organizations (NGOs), the Church, and local government technical groups support organized popular resistance to top-down solutions previously considered legitimate and frequently codified in legislation. The example above concerning the transfer of favela populations in Brazil is typical in that various actors, including international agencies, were involved. In contrast to earlier practices regarding population transfers, the judicial branch now demands definitive alternatives for uprooted populations (Bonduki, 1996) or even promotes negotiations for the continued occupation of targeted areas by their current populations, counterposing their needs to previously sacrosanct property rights. (Carvalho, 1991)

³⁸ Martim Smolka, in *Revisitando as Avaliações sobre o Mercado de Terras na América Latina—As Aparências Enganam!* (1994), presents a more detailed discussion on the different theoretical matrices and their respective political-ideological expressions that motivate public policy where there is little apparent consensus. The discussion here concentrates on aspects that may help to explain how the consensus that does exist is manifested in value capture activities.

The nature of funding for real estate investment is also changing, increasingly dominated by domestic and international finance capital. There is a notable funneling of capital from those sources to real estate development, increasing the overall volume of resources available to the sector. Brazilian pension funds, for example, which sink about 25 percent of their assets into real estate, made investments in the sector totaling about US\$10 billion between 1977 and 1992. (Melo, 1996)

Seeing the possibility of significant new investments, the civil construction sector is mobilizing itself to promote its interests as opposed to the traditional rights of landowners. At the present time, the association of civil construction companies in Rio de Janeiro is openly calling for the immediate drafting of regulations for and the immediate implementation of *Solo Criado*, the instrument that imposed a fee on the right to build, approved in the Municipal Strategic Plan of 1991 but never put into practice. (Boletim Sinduscon, Jan. 1997) In Santiago the Builders Association (*Cámara de Construcción*) publicly recommended to the Chilean government the use of an expeditious instrument to facilitate land expropriations and promote urban renewal projects in downtown areas. (Sabatini, 1996)

New urban policy instruments have been issued or are in the process of being issued in cooperation with property owners. In São Paulo, for example, there are Coordinated Operations (*Operações Interligadas*), which allow for specific changes to the zoning legislation with compensatory benefits directed to the construction of low-income housing (Bonduki, 1996), and Certificates of Additional Construction Potential (*Certificados de Potencial Adicional Construtivo*), which are negotiable land titles issued by the municipality that allow denser construction to go forward within certain defined areas, generating resources for public works projects in the same areas. (Villça, 1993)

The property owning sector has several converging motivations to support the use of new instruments and the issuance of regulations that promote value capture. First of all, they may be interested in liberalizing the market and in supporting these new mechanisms to facilitate its functioning, mechanisms that are generally applied only after some initial step is taken by the property owner or developer. If no such step has been taken, financial compensation is delayed until it is, either through a property transfer or through the development of projects in the area in question.

Secondly, the instruments provide more agility to real property processes and ameliorate the relative rigidity resulting from the action of the State in its regulatory role. Traditional procedures are modified as described below:

Specific changes to municipal zoning legislation are much easier in Brazil than in the United States, where changing a zoning law is a complex process that includes consultation with the population. Nobody here will choose to buy construction rights on other land since there is always the possibility of obtaining favorable changes in legislation through politicians that they know personally, even if the time frame may be fairly long. (Azevedo Neto, 1977)

These practices may not always be the most convenient, however, either because greater political difficulties arise or because things work too slowly. Nonetheless, the solution is not generally to universalize the application of existing regulations. On the contrary, the application of regulations is negotiated and the results of those negotiations are institutionalized, for example in the application of regulations concerning construction rights and the possible purchase of those rights.

While these formulas may promote the recovery of value increments by the public sector, it must be observed that to a certain extent they simply redirect resources that would have already been available to property owners and developers. This understanding is based on the recognition that there have always been ways to get around the restrictions on property development, either by exchanging favors or other forms of corruption, and that through these solutions, a portion of value increments was directly or indirectly ceded and, as a rule, not returned to society.

The Use of Value Capture from a Progressive Perspective

Judging by the way that progressive administrations respond to these pressures, they seem more prone to negotiation than one might expect based on the political-ideological orientations of their parties. While this may appear to reflect a convergence of goals by different political orientations, however, it must be considered in the light of the limited possibilities that progressive governments have to actually implement programs that they might prefer.

For example, the implementation of urban policy is largely dependent on its approval by the legislative branch, where these administrations rarely have a majority. This limits their room for maneuver,³⁹ and governments faced with such limitations may be led to prioritize the outcomes most achievable through negotiation with other forces. The results of these negotiations may be limited to streamlining and other reforms, which are often subject to criticism by the most radical elements within governing parties.

Progressive parties justify this approach in a number of ways. First, they say that they are trying to make the most of the historical moment, setting precedents and putting new ideas on the public agenda. At the same time, they must respond satisfactorily to the urgent demands of grass roots elements who are anxious for solutions to their long-standing demands. The inherent difficulty of transforming theory into practice, the ideal into the real, must also be considered (Smolka, 1994). Finally, officials may continue to work within the limits of the possible while measuring real advances in relation to the previously existing conditions.

An examination of the trajectory of the PT government in São Paulo from the point of view of property value increment recovery indicates a positive approach to such instruments within urban land policy formulation and practice.

³⁹ These administrations frequently have only a short time to develop policy, their reelection is by no means assured, and they rarely have the opportunity to select a successor.

As indicated above, the PT government did not promote the development of the Assessment for Improvements. The government justified this approach by pointing to the ambiguities discussed above and the risks they entailed, but also to the absence of needed agility and flexibility, an undesirable lack of legal clarity, and the absence of guarantees regarding the redistribution of resources acquired through the use of the mechanism.

As for instruments for raising extra-budgetary resources, the administration originally chose to utilize the Newly Created Land (*Solo Criado*) program, with which it would attempt “through a single (minimum) occupation rate for the city, sell the right to build up to the (maximum) occupation rate calculated in relation to existing road and service capacities. This means to reverse the logic of private appropriation of socially produced benefits.” (Rolnik et al., 1990) This idea was not new. It had been developed incrementally since the second half of the 1970s and renowned jurists considered it legally and constitutionally sound. (Carta do Embu, 1976) After intense criticism, debates, and impact studies, however, the municipal legislature failed to approve *Solo Criado* and the PT administration was forced to change gears.

The administration turned its attention back to the Coordinated Operations (*Operações Interligadas*), applied through the Law on *Desfavelamento* (*Lei do Desfavelamento*), the law on dismantling informal settlements that had been established by the previous administration. This instrument regulated the partial recovery of land valorization resulting from public works projects undertaken to accommodate private development projects, channeling all resources so gathered into low-income housing. The Workers Party had led the opposition to this instrument, which was designed to generate resources for the removal of favela dwellers from central areas, and was seen as just another way to channel benefits to private property developers and the elites while increasing socio-spatial segregation.

When the PT came to government, though, it was under pressure to generate alternative funding sources for its social policies. When the Newly Created Land project was defeated, a pragmatic line was adopted and the government proposed changes to the existing law. These changes were also rejected by the legislature, however, and lacking alternatives, the government decided to use the Coordinated Operations instrument. The then municipal superintendent of low-income housing has described in detail “how a negative instrument was transformed into a strategy to make a new housing policy possible.” (Bonduki, 1996)

Through the reinterpretation and creative use of the instrument, its original goals were modified. The previous mayor Jânio Quadros described his goals for the mechanism: “I request that immediate measures be taken, that studies be undertaken for a project to promote construction in certain areas where property owners offer low-income housing to the occupants of those same areas.” (Wilderode, 1996) Its use had shifted from areas with a high potential for valorization to focus on meeting the needs of inhabitants.

Coordinated Operations (*Operações Interligadas*) were frequently utilized during the PT government and were also applied by the subsequent conservative administration of

Paulo Maluf.⁴⁰ This instrument has been proposed in different versions in different parts of the country. The criteria by which its parameters of use (and approach to housing density) have varied range from the strictly technical, such as its correspondence to available infrastructure in Campinas (Semeghini, 1996), to the quite subjective, such as the promotion of “urban harmony” in Rio de Janeiro. (Compans and Oliveira, 1996) For progressives, the historical trajectory of the instrument illustrates the limits of pragmatism, of negotiated solutions, and even of the new interpretation of flexibilization, previously one of progressivism's foremost principles.

The Redistributive Criterion

The capacity of value capture as a redistributive mechanism is always an issue in its different interpretations and should be explicitly discussed. This discussion will doubtless contribute to clarifying certain ambiguities that arise.

The term “redistribution” refers to a newly configured distribution of wealth. Thus, any instrument that recovers socially produced value increments for society that would otherwise be appropriated privately is by definition redistributive. While the existence of a value capture tax affects the form in which this portion of the new wealth produced is appropriated, its use does not necessarily reproduce the manner in which that wealth has historically been distributed. In this complementary sense, the fact of redistribution significantly affects the pre-existing social distribution of the wealth that is produced.

We have seen that there is a need in Latin America to reverse or reduce existing socio-spatial inequality and we have seen that value capture instruments can be used to collect additional resources produced through real property mechanisms. If these resources can be channeled to areas and populations in need, then the instruments can be said to be effectively redistributionist.

Local governments of different political orientations have now come to use alternative mechanisms to channel value capture resources into funds established to meet social needs. This strategy was originally conceived on redistributive principles, and is put forward as an alternative both to taxes that cannot generally be channeled to specific funds, and to other instruments that require the redistribution of resources within the same geographical area in which they were collected, thus limiting the effective use of the redistributive criterion.

The redistributive effect of this practice, however, is nullified when the additional revenues generated by the new instrument simply lead to a compensatory redirection of pre-existing tax revenues. In this case, the instrument serves principally to relieve budgetary pressures by making resources previously committed to implementing social policies available for other purposes.

Existing diseconomies and/or potential or real political instability currently debilitate

⁴⁰ Of course the conservative administration first subjected the instrument to a period of “reinterpretation,” since it had been used by a “leftist” government.

property valorization and even cause devalorization. One positive outcome of value capture use is its effect in such situations, which in any case need to be resolved. Favelas within the most highly valorized urban areas are one clear example currently recognized as a problem by all social sectors. In terms of the urban landscape, they affect both new developments and new and pre-existing housing stock.⁴¹

On examining the various types of traditional value capture instruments, it is interesting to note that the instrument that did no more than pay for public improvements, possibly the least useful of the original instruments from a redistributionist point of view, may turn out to provide the best final results for redistributive urban policy if it is used to pay for public works, an expenditure with no clear social content, and thus remove that burden from the general budget.

Thus, *mutatis mutandis*, the same argument that challenges the redistributive content of instruments associated with funds established to meet social needs can be used to defend mechanisms established to recover value increments, but that have no specific redistributive characteristics. Such mechanisms in Brazil include geographically-targeted Urban Operations (*Operações Urbanas*) and resources deriving from the Certificates of Additional Construction Potential described above. Their acceptance obviously involves elements such as the level of priority and desirability to society of a public works project.

The use of such resource generating mechanisms may represent a victory, however, only because the general rule had been the execution of public works “with everyone's money for the benefit of a few.” The redistributive content depends on the availability of a greater portion of the general budget for allocation to projects intended to meet social needs, which in turn depends on democratic budgeting, another aspect of progressive policy entailing real and effective participation in the budgeting process.

The potential of basic land taxes must also be recognized for the important role that they can play in a redistributionist policy framework. (Smolka and Furtado, 1996) In addition to the fact that land taxes define the tax basis for the establishment of specific new instruments, it is possible that a significant portion of socially generated value increments may be recoverable through a methodology based on existing and traditional instruments. (Smolka, 1985)

These considerations justify the inclusion of the resource *target* as a third element to be considered in the process of *generating* and *socially appropriating* value increments, as was indicated at the beginning of this paper. In fact, the relationship between redistributive capacity and the concrete targeting of recovered resources is mediated by the society's resource allocation policies. The final measurement of redistributive effect is contingent on how the allocation of value capture resources affects the allocation of

⁴¹ The data indicate that property tax collections (the *Imposto Predial - IPTU*) in Rio de Janeiro will be lower in 1997 due to an average drop of 30 percent in the taxable value of 4,000 housing units in areas proximate to favelas. This devalorization is acknowledged to be a product of increased violence and drug trafficking.

resources in the general budget.

6. Tendencies and Perspectives

The following are some of the fundamental points to be considered for an understanding of value capture in Latin America and to help in formulating a value capture agenda in the region. These points are relevant to overcoming the many difficulties associated with value capture and to improving the suitability of value capture instruments, which suffer from ambiguous interpretation and weak implementation as described above.

The focus on these points reflects a priority on value capture's redistributive aspects and principles and the understanding that to evaluate value capture's place in Latin America today one must also frame the concept and its associated mechanisms on the basis of their socio-spatial consequences.

In this paper, I have focused on some of these points, others underlay the discussion, and a third group awaits further development. I recognize the enormity of the topic and hope that despite the limitations of this study it will serve to stimulate further work on a range of questions regarding Latin American urban structures and the functioning of the land market in the region.

- i. The generation and recovery of value increments in Latin America are clearly attracting more attention. This includes attention paid to related topics such as efforts to improve the property tax system. New instruments have also been considered and sometimes introduced to prepare governments to confront the current challenges of urban development. Nevertheless, there is a need for more clarity in describing the motivations behind this new interest and to locate it within a more inclusive perspective (local vs. global, specific vs. general, contingent vs. universal, conjunctural vs. structural, etc).
- ii. In some localities, new and flexible instruments designed for specific circumstances are beginning to be used, instruments that successfully increase revenue collection capacity, that open new spaces for negotiation, and that promote increased market freedom. Some more general instruments have also been put forward for systematic use, but their implementation in particular situations depends on the possibility of substantially altering existing legislation and political practices. In both cases, the adoption of clear, simple, and practical rules for implementation seems to be the most advisable course to take, both to eliminate non-normative practices and to avoid the frustration of reconfiguring unrealistic practices that are impossible to apply.
- iii. Certain characteristics of these new mechanisms differentiate them from traditional value capture instruments. Both the situationally specific and the universally applicable new instruments generally depend on an action or initiative on the part of the property owner for the levy to be applied. They are generally directed at new development and not at existing housing stock. Many of them are hybrid

mechanisms requiring interaction between the fiscal and regulatory systems. Because of these characteristics, the new mechanisms should primarily be considered as complementary to existing practices, filling new and existing gaps and reinforcing the application of traditional systems.

- iv. With regard to using value capture instruments as tools to control real property processes, they must not be so altered so as to lose sight of their reason for being, which is the unequal valorization resulting from actions by local government, particularly in the context of socio-spatial inequality. Otherwise, the proliferation of these instruments could exacerbate existing inequalities and possibly undermine the redistributive principles that defined their implementation. They could even impede valorization instead of stimulating it.
- v. In the current situation it is necessary to consider the potential of new mechanisms as complimentary instruments for obtaining resources to expedite the redistributive process. Local government should be empowered to explore the advantages and disadvantages of their implementation. This will require studies and simulations to determine their impact on tax collection and urban development, including their use in combination with traditional instruments, and the conformation of an initial trained staff with a basic complement of technical resources.
- vi. The basic complement of resources mentioned above is a necessary condition not only for new instruments but for urban policy as a whole. In the rush to find new sources of urban financing, traditional regulatory and tax instruments are often considered only secondarily, inverting the priorities of a fiscal and regulatory system that needs strengthening from the bottom up. Only a strong tax base can provide the fundamental elements for a more sophisticated overall mechanism, and the strengthening of the new system will also require more effective exploitation of the traditional system's unused potential.
- vii. Finally, with respect to the ambiguous understandings of value capture and value capture instruments, it should be noted that the use of a single instrument in pursuit of different goals or of different instruments in pursuit of a single goal is evidence that these instruments can not be uniquely identified with any particular political orientation. Even understanding that any use of these instruments is best understood in the specific social and historical context where it takes place, a more comprehensive evaluation of the instruments' temporal and spatial potential and limitations would benefit from an explicit account of the specific theoretical and practical criteria adopted and goals pursued.

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