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# VALUE CAPTURE and LAND POLICIES

Edited by Gregory K. Ingram and Yu-Hung Hong

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*Gregory K. Ingram and Yu-Hung Hong*

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# 2

# *Land Value Capture and Justice*

Susan S. Fainstein

> The wide-spreading social evils which everywhere oppress men amid an advancing civilization spring from a great primary wrong—the appropriation, as the exclusive property of some men, of the land on which and from which all must live. From this fundamental injustice flow all the injustices which distort and endanger modern development, which condemn the producer of wealth to poverty and pamper the non-producer in luxury, which rear the tenement house with the palace, plant the brothel behind the church, and compel us to build prisons as we open new schools.
> (George [1879] 1912, VII.I.20)

Henry George's argument for the single tax on land rested fundamentally on his conception of justice. He contended that increases in the value of land should accrue to society as a whole and not to individual owners, since it was the collectivity that created the value arising from the use of land. Like many classical economists ranging from David Ricardo to Karl Marx, he accepted the labor theory of value. Because the owner of a piece of land had not labored to produce its worth, his profit on selling the use of it constituted a pure rent and hence imposed an unfair burden on those whose activities had given it value. In present times, few theorists accept the labor theory of value. Nevertheless, we can retain the view that profit from land ownership should revert to the community, based on Rawlsian argument for justice or on Henri Lefebvre's concern with the "right to the city" (Lefebvre 1991).

According to John Rawls, humans in the "original position" behind a "veil of ignorance" will opt for a rough equality of material goods because they have

Thanks to Andrew Reovan for his able research assistance.

no knowledge of their future social position (Rawls 1999). His argument has been extremely influential because it is not derived from religion or natural law, but rather flows out of rationality as conceived by modern economists and public choice theorists. It seems to show that what people viscerally regard as just can in fact be based on rational thinking, not simply sentimentality. In my own book *The Just City* (Fainstein 2010), I present a theory of urban justice that, along with Rawls's principle of equity, also encompasses diversity and democracy. For the purposes of the discussion here, however, only the criterion of equity is considered. According to this criterion, in line with Rawls's argument, the benefits of urban land ownership should flow to all city users and further should be used to redress disadvantage.

Lefebvre's concept of the right to the city is broader than simply the condition of equity. It includes general participation in the power to create the city and to partake in the enjoyment of city life. It provides a further philosophical basis for adhering to George's view that urban land belongs to all inhabitants rather than simply individuals or corporations with ownership rights. It overcomes the objection to George's argument that without a labor theory of value there is no rationale for taking the return on land away from its individual owner. Essentially, Lefebvre asserts that the city is created as a collective good, and therefore urban land belongs to each member of the collectivity. Lefebvre's approach circumvents the individualism that forms the basis of modern economics and that underlies Rawls's formulation. Rationality, in this view, is not based on the calculations of single individuals or firms, but is judged in relation to what benefits the community as a whole and to what overcomes social exclusion.

George himself went beyond his argument for justice in contending that public ownership or confiscatory taxation of land value was more efficient than private possession.

> So far from the recognition of private property in land being necessary to the proper use of land, the contrary is the case. Treating land as private property stands in the way of its proper use. Were land treated as public property it would be used and improved as soon as there was need for its use or improvement, but being treated as private property, the individual owner is permitted to prevent others from using or improving what he cannot or will not use or improve himself. (George [1879] 1912, VIII.I.9)

In this discussion, he adopted the economist's view of efficiency. Since then, much of the discussion in the scholarly literature about value capture has focused on efficiency rather than justice. Thus, Dye and England (2009, 7), in a report written for the Lincoln Institute of Land Policy, begin by citing George's concern with social inequality and economic crisis, but then quickly move on to an efficiency discussion "in the light of modern economic theory." They categorically state that "a land tax is an efficient tax," since the quantity of land is fixed, and the burden of the tax falls only on landowners.[1] If the primary focus is on justice, however, the question of whether a tax on land alone is more efficient than a property tax, which applies to both land and improvements on it, becomes mostly irrelevant; the question instead becomes what most contributes to the thriving of city users. Moreover, the most efficient use of land is not obvious if we do not accept the economist's definition of efficiency and instead regard the objective of development to be quality of life for the broad public rather than Pareto optimality, which says nothing about distribution. How the government uses the proceeds from a land tax, of course, affects the extent to which the tax contributes to equity.

This chapter discusses the purposes of land value taxation and examines efforts to benefit the public through capturing increases in land value. It also analyzes the effectiveness of two approaches: (1) public or communal ownership of land with structures available only through leasehold; and (2) imposing requirements on developers and owners within specific project areas or in return for government assistance. My contention is that only through public ownership of land can George's equity ambition be fully realized, and then only under certain conditions. In other words, while public ownership offers the greatest potential for achieving equity through land development, it is not sufficient. Given the political obstacles to moving toward public ownership in most cities, the ideal solution will rarely be reached. Nonetheless, partial measures exist that can achieve some of the equity objectives of a confiscatory tax on increases in land value.

## *Issues in Capturing Value Through a Land Tax*

The idea of capturing increases in land value for the public assumes that it is possible to calculate land rent as opposed to return on investment in improvements. In countries such as the United States, however, where most land is owned freehold, the valuation of land separate from structures is complex.[2] For undeveloped land, the value can be determined by the price of similar vacant plots, if sales activity is happening in the vicinity. But since each site is to some extent unique and because sales activity may not be occurring, finding exact comparables is very difficult. For developed urban properties, the price of the land is usually folded into the price of the building(s) on it, and distinguishing between the two components is

1. As is discussed later in this chapter, the quantity of land is fixed in only the most literal sense. Also, for sitting tenants, the opportunity costs of moving may be such as to inhibit them from leaving if the landlord passes on some or all of the land tax increase. In other words, within a certain range, both supply and demand may be inelastic.

2. Based on the view that such a calculation is achievable, the Lincoln Institute of Land Policy has been working with Professor Morris Davis of the University of Wisconsin to provide separate land and house values in the United States from 1960 to 2011. See http://www.lincolninst.edu/subcenters/land-values/.

challenging.[3] Arguably, only when a property changes hands does an increase or decrease in land price become fully ascertainable, but even then sorting out the value of the investments in improvements versus locational advantages is problematic. In areas where there is price stability, determining the value of land versus structures requires calculating all the investments in improvements over a number of years plus inflation, then subtracting that total from the assessed value of the property. A number of factors can cause changes in value: the workings of the real estate cycle, shifts in the prestige of an area, investment in infrastructure, or the attainment of a critical mass of development. There may be no clear metric by which to measure the effects of these factors on land value until many years after the event. Moreover, although the supply of land is usually considered to be inelastic, the amount of potentially developable land is dependent on historical and spatial contexts, as well as changes in land use regulations and the creation of new infrastructure. In the cases of Amsterdam, Singapore, Boston, and New York, which are discussed in this chapter, large amounts of land were literally created through landfill.

In relation to equity, other issues exist. One of the ostensible purposes of land taxation is to promote the development of vacant areas. The goal is to prevent speculation in idle land—the process known as "flipping," whereby owners reap profits simply by holding on to their property until the time is right to sell. In theory, if it is too costly to hold on to land, owners will be pressed to build, since only through development can they reap a profit. It is unlikely, however, that the tax on undeveloped land in rapidly growing areas will be so high as to wholly discourage speculation. Thus, high taxation of undeveloped land, unless it is based on 100 percent of increased value, will not ensure contiguous development. Furthermore, there is an assumption that encouraging investment is always desirable: it reduces sprawl and maximizes efficiency in the use of infrastructure. But the consequences of promoting development can be negative in regard to the public good. Development can cause the withdrawal of land from agricultural uses, which may be more socially useful than having the land built upon, or it can be environmentally damaging. The establishment of tax abatements for farmland, agricultural zoning, greenbelts, and wetlands protection recognizes this deficiency, but where such regulation does not exist, farmers can be forced off their land because of high taxes, and forests can be destroyed, water supplies threatened, or flooding produced. For these reasons, taxing the unearned increment on undeveloped land is problematic in regard to attaining the objective of environmental sustainability, although it may succeed in obtaining enhanced public revenues that can potentially be used for equitable ends.

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3. Dye and England (2009) cite a number of cases in which land was taxed at a higher rate than buildings. They note, however, that the policy was discarded in South African cities because of "the belief that defensible and credible sales data for land in highly developed urban areas were increasingly difficult to find" (16), among other reasons. Mattson (2003, 90) notes that similar problems arose in Sweden, "where difficulties associated with the calculation of ground rent base persist and frequently lead to litigation."

Within cities, encouraging development or redevelopment so that land is brought to its "highest and best use" may force displacement. In a well-known body of work on urban gentrification, Neil Smith (1979, 1987) argues that a rent gap develops when the potential value of a property exceeds the amount realized through current use—in other words, when land values are not being fully realized because of the structure(s) on the land. Exploitation of the gap produces gentrification and displacement. The same phenomenon exists in the case of suburban teardowns: "Wealthy residents will locate in portions of central cities and inner-ring suburbs, and the most vulnerable residents will be pushed to less-expensive inner-ring and exurban areas—areas [that] are less desirable due to their less highly ranked school districts, their distance from employment centers and services, as well as their reliance on automobile transportation" (Charles 2010, 20). Within the United States, those with limited resources are increasingly squeezed by well-to-do suburbs and heightened values in the city center. Intensifying development without protecting low-income residents and less profitable businesses reinforces inequality.

In cases where either change of occupancy or replacement of structures is occurring, we can assume that the difference between past and present selling prices (taking account of inflation and cost of improvements) represents an increase in land value. Although, from a narrow efficiency perspective, highest and best use is desirable, promoting this outcome is based on an assumption of trickle-down economics. If, instead, the idea is enhancing the right to the city (Lefebvre 1991), equity in the possession of space, rather than its maximum development, becomes the aim. Encouraging development with the highest possible return results in the exclusion of low-income households, "marginal" businesses, and manufacturing from centrally located or easily accessible spaces and reinforces uneven development.

At the same time, a concern for equity makes confiscating the profit from pure rent desirable. Equity requires that gains in land value are distributed to the public and that the process is regulated in such a way that it does not result in the displacement of relatively low-income households or low-profit businesses. In particular, gains in value resulting from government action (subsidies to developers, the building of a park, improvement of schools, provision of transit, rezoning, etc.) are derived from the collectivity and therefore the benefits likewise should be enjoyed collectively.

In this respect, the history of such attempts in Great Britain is instructive.[4] Under the Housing and Town Planning Act of 1909, the government introduced the principle that those who benefited from town planning should be taxed at the rate of 50 percent on the resulting increase in value. This effort was abandoned in the 1920s by a Conservative government, although various other schemes were introduced and then suspended in subsequent years. The postwar Labour

4. The information in this section is drawn from Balchin, Kieve, and Bull (1988).

government in 1947 stipulated that all development rights be nationalized, resulting in an effective tax rate of 100 percent on the increases in value resulting from planning: “The Act should have enabled local authorities to have obtained land at a relatively low price, should have permitted them to undertake the ‘right’ amount of planning and should not have involved them in much compensation expenditure [to those whose property lost value as a result of a town plan]” (Balchin, Kieve, and Bull 1988, 288).[5] In response to complaints by developers, however, the Conservative government of the 1950s dismantled the act, and private development became increasingly speculative. In 1967 another Labour government introduced a 40 percent levy on net development value, but by 1970 this legislation was repealed by the new Conservative government. Once again, in 1975, a Labour government introduced a scheme for nationalizing land, whereby local authorities would purchase land at below-market prices based on use value; the land would then be leased to developers for 99 years. The Conservatives who swept into power in 1979 mostly abrogated the effort. In 1980 they ended entirely the attempt to tax the unearned increment and called for the selling off of publicly owned undeveloped land. The 1975 act was finally completely repealed in 1985: “Local authorities . . . had by then lost any initiative they might have had in the development process, being forced to pay market prices for land” (Balchin, Kieve, and Bull 1988, 294).

The various efforts to attain public ownership of land by Labour governments imply that, at least in the view of the left, public ownership of urban land with periodic increases in the rent paid by leaseholders is the most effective method by which to ensure equity and the most socially beneficial use of land. The repeated dismantling of legislation aimed at this outcome indicates, however, that in societies where private control of land is firmly embedded, resistance to limiting speculative profit is great and will be opposed politically. Nonetheless, we do have examples of cities where land markets are controlled by the state even when the broader economy operates according to capitalist principles.

In Amsterdam and Singapore, government owns most of the land and releases parcels for development only in accordance with specific plans. In these two cities, both public and private developers are responsible for construction, individuals may obtain title to housing units, and firms can own buildings, but the public sector retains land ownership. Leases, however, typically run for 50 to 99 years without any provision for growth in the land rent during the course of the lease, with the result that the public does not realize short- and medium-term gains from increases in land value. Although other cities could have been chosen as illustrations for this chapter (e.g., Stockholm or Helsinki instead of Amsterdam, and Hong Kong in place of Singapore), Amsterdam and Singapore are paradigmatic examples of places where public ownership exists within a capi-

5. As is discussed later in this chapter, this is exactly what occurred in Singapore.

talist political economy.[6] Amsterdam's use of land banking arose from a social democratic commitment to equity and good planning that has been sustained for almost a century. Singapore's development was based on an expert-driven, authoritarian decision-making process that blocked interventions by property owners and developers. In both cases, an ideological commitment to equity and diversity framed the policy-making process.

Although public ownership of land along with private development is rare in the United States, two examples discussed later in this chapter are New York's Battery Park City and redeveloped 42nd Street. Other, less general approaches to capturing land value also exist. Community land trusts are a variant of public acquisition, since they also depend on collective ownership and eliminate landlord profits. Land trust holdings, however, are rarely extensive enough to result in substantial value capture. Short of owning land, the public sector may capture gains in land value through a variety of devices. In addition to land or property taxes, these instruments include profit-sharing arrangements, linkage fees, tax increments based on increases in value within a specified area, and community benefits agreements.

## *Amsterdam*

The municipality of Amsterdam owns almost all (about 90 percent) of the land within its borders.[7] The leasehold system was introduced in 1895, under the aegis of a reform movement heavily influenced by the thought of Henry George. The government already had significant landholdings; it purchased the remainder at market prices. In 1901, under the National Housing Act, it was able to acquire land through compulsory purchase. All such land was pooled, and then distributed according to the desired function, eliminating price differentials based on location. Now, when the government decides that it wants new development, it releases the land, specifying what it should be used for: "Through conditions of the sale [or lease], a [Dutch] municipality can stipulate what has to be built, when, by whom, for whom, at what price, and so forth" (Faludi and van der Valk 1994, 29).[8] When making land available for development, the municipality charges a low rent if it is to be used for "social accommodations" (social housing,

6. The book *Leasing Public Land* (Bourassa and Hong 2003) presents 10 examples of places where public landholding prevails. Several of these cases involve countries either still under communist rule or in transition from communism. Hong Kong and various Swedish cities are also included.

7. Virtually all the privately owned land is in the old city center.

8. Much of the information on Amsterdam was obtained through interviews with Jacques van de Ven, a scholar formerly at the University of Amsterdam, and A. L. Hoornstra, adjunct director, and Keimpe Reitsma, financial adviser, of Ontwikkelingsbedrijf Gemeente Amsterdam (Development Corporation of Amsterdam).

**Figure 2.1**
Western "Garden Suburb" of Amsterdam: Postwar Social Housing

hospitals, cultural facilities, etc.). For profitable ventures (private housing, commercial development, etc.), a "residual rent" is calculated based on expected returns; the final price is determined through negotiation. Gains from increases in land values are now used to subsidize new projects, but in the past they were used to equalize residential land prices. Leases are recalculated after 50 years, based on current land values.

For many years, the effect of this policy framework was a land use pattern quite different from that characteristic of most capitalist cities. Because planning, rather than the market, determined land use, the usual sharp differentiation between desirable and undesirable parts of the city was absent. Social housing (see figure 2.1) was not isolated in particular neighborhoods, but was spread throughout. Most neighborhoods displayed substantial income heterogeneity, and middle-class households shared housing estates with poor and working-class families (Musterd and Ostendorf 2003; Terhorst and van de Ven 1997). Public transit made all parts of the city accessible. Combined with a strong national welfare state, the land use policies of Amsterdam caused it to be a highly egalitarian city, with no slums, ample public space, and an active civic culture (Fainstein

1997). The same outcome could not have been achieved by simply taxing land, as such taxes respond to changes in value, rather than determining for what purpose the land will be used and thus creating value directly.

The combination of public land ownership and strict planning prevented land speculation. Private developers were content to accept the system because, although they could not realize immense profits, they could confidently predict returns on their investments. In other words, they were willing to give up the premium on risk in return for security. Widespread acceptance of an ideology of tolerance and egalitarianism was evident in the willingness of the well-to-do to live with neighbors of different incomes and lifestyles. The result was the absence of a rent differential based on area social composition, which would have been engendered if only upper-income groups inhabited certain neighborhoods.

More recently, however, policies have changed. Although the system of municipal land ownership remains, planning objectives have moved away from the earlier priority placed on equity. As the director of planning for Amsterdam approvingly told me in a dinner conversation, "We are becoming a normal city." The municipality has transferred ownership of social housing to nonprofit housing corporations, and these organizations are selling existing and new units to private buyers at market rates. The intention is that such sales will subsidize the construction of new social housing, but currently there is insufficient private market activity for that to happen. Whereas for a long period after World War II 90 percent of new construction was of social housing, the goal is now 30 percent and will eventually be 20 percent. What we see, then, is that although public land ownership has allowed Amsterdam to plan all new development and to realize the gains from increasing land values, it has not compelled the city to employ these gains to subsidize a broad right to the city. Under social democratic governments, the emphasis was on providing affordable housing. With political control having shifted to the liberals, it is increasingly on letting the market determine prices. As a consequence, gentrifying parts of the city are experiencing rises in property values, and due to the length of land leases (50 years), the benefits of these rises are accruing to individual owners.

## *Singapore*

Singapore has a vastly different form of government from Amsterdam. It is a city-state ruled by a single party; while not a dictatorship, it nevertheless has little space for democratic expression. Also unlike Amsterdam, it has quite a high level of income inequality (a Gini coefficient of 0.48 versus 0.31 for The Netherlands, or more than 50 percent higher [CIA 2011]). At the same time, it resembles Amsterdam in being very densely populated, in relying heavily on trade[9] and

9. Both have major ports that engage primarily in transshipments—that is, ships carrying goods from their source of origin are unloaded, then the contents are reloaded onto other ships

professional services for its prosperity, and in having a very large stock of publicly provided housing. In fact, in 2009 about 82 percent of households lived in public housing (Mah 2010); the comparable figure for Amsterdam was 55 percent in 2007 and is shrinking (Blom 2008). Although 95 percent of Singapore's public housing occupants own their units, control of the buildings, as well as the land under them, remains with the government's Housing Development Board (HDB). The proceeds of development go into the public coffers and are reinvested in improvement and expansion of the housing stock. In addition, the government provides a grant to cover the net deficit of the public housing program. Cumulatively, in 2009 this added up to more than $20 billion Singapore dollars (about US$16 billion) (HDB 2009).[10]

The government acquired the land, much of which had structures to be demolished on it, from the 1960s to the early 1990s, providing very low compensation to the owners. The government's view was that landowners should not enjoy the benefits of increases in land prices that had accrued over the years.[11] "It counseled the landowners to see this as their contribution to the welfare of society" (Chua 2011). In the words of Lee Kuan Yew (2000, 119), Singapore's founding father: "I saw no reason why private landowners should profit from an increase in land value brought about by economic development and the infrastructure paid for with public funds." The government's complete control of the polity allowed it to override any objections that landowners might have had. In contrast to the European cities, including Amsterdam, where housing ownership has become increasingly privatized or transferred to nongovernmental organizations and where most new development is by private developers, Singapore has continued to build public housing on a large scale.

The system is unique, in that 98 percent of occupants own their own units and may resell them at market prices (HDB 2009). They are, however, under substantial restrictions, as the HDB retains possession of the buildings and enforces stringent regulations on them. Residents cannot sell their units for the first five to eight years of occupancy; they are limited as to whom they can sell them to, as buildings are required to maintain an ethnic balance proportionate to the ethnic distribution of the entire Singapore population;[12] and they must abide by HDB

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heading for numerous destinations. The port of Singapore is the world's busiest container port. Amsterdam's is of lesser importance, but still ranks as Europe's fourth-largest port.

10. Since the population of Singapore is less than 2 percent of the U.S. population, a comparable expenditure by the U.S. government would be US$800 billion over 50 years.

11. Anne Haila (2011, 25), a Finnish scholar engaged in a study of Singapore, comments on the similarities between the ideas of Henry George and Singapore's land use regime. She quotes a Singapore scholar, Sock-Yong Phang, who remarked that "the basic ideas of Henry George have been implemented, in effect, in independent Singapore."

12. In 1989, concerned that ethnic concentrations were forming in HDB complexes, the gov-

rules that govern the management of the buildings. HDB prices its new flats to be affordable to 80 percent of the population (Lee 2010).

As in Amsterdam, land use planning derives from the government's ownership of the land. Not only does this prevent speculation and provide for a fairly even distribution of desirable residences across the city, but it ensures the development of community facilities available to the entire population. Expansion to peripheral areas is in accordance with a planning doctrine that combines the garden city ideas of Ebenezer Howard with Le Corbusier's Radiant City. New developments all encompass large "hawkers' centers" and "wet markets," where inexpensive food, both cooked and uncooked, is available, as well as community centers, schools, libraries, and cinemas. Despite high population density, green space is ample and accessible. Although building height and appearance vary, high-rise is the norm.

> At the basic level HDB helped the population to adapt to high-rise, high-density living. At first many Singaporeans had reservations about moving into the newly-built flats. They were used to living in single-storey attap houses in kampongs. Some resettled residents even brought their pigs and poultry to their new flats! Many residents also preferred apartments on the lower floors, fearing that they might have to walk up many flights of stairs should the lifts break down. Today the converse is true. Flat buyers are prepared to pay more for higher-floor apartments to get a better view, confident that their lifts are well-maintained and reliable. (Lee 2010, 2)

In contrast to Amsterdam, where the municipality is reducing its commitment to housing provision, Singapore retains the goal of keeping the great majority of the population in the public housing sector. To avoid the residualization of public housing structures, the government has raised the income limit for eligibility and is constantly increasing the standard at which the apartments are built. Even in the beginning, when structures lacked architectural distinction and many amenities, the apartments were spacious and able to house large families. Now the newest buildings are indistinguishable from high-end private condominiums (see figure 2.2).

The Singapore system captures for the public much of the growth in land value. It achieves this not simply through land ownership, but also through the public housing system, under which the suppression of increases in land costs has allowed the construction of a million housing units at a price affordable by the great majority of citizens (CNN International 2010).[13] Nevertheless, there has

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ernment established the Ethnic Integration Policy (EIP), which set limits on the maximum proportion of each ethnic group in each neighborhood and block (Lee 2010).

13. Housing purchase is assisted through grants to lower-income households, very low interest rates on HDB loans, and subsidized selling prices on new construction.

**Figure 2.2**
The Pinnacle, High-Style Public Housing in Singapore


been price inflation in the resale market of apartments, with residents selling their units for multiples of the amount they paid for them. The increase results primarily from locational value and scarcity, rather than from owners' investments in their units.[14] In response, the HDB is accelerating housing production, with 12,000 new flats under construction in 2010 as compared to a little over 3,000 in 2008 (*Asia Property Magazine* 2010). Thus, while some number of households will realize speculative gains on their property, in the long run such profits will be limited. Moreover, to keep the matter in perspective, only a relatively small number of individual families,[15] not landlords or speculative developers, will receive these returns.

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14. Demand has been fueled by high-income immigrants, who have come to Singapore as a consequence of government policies to attract expatriates with needed skills or substantial assets.

15. Among the restrictions on eligibility to buy an HDB unit, whether newly constructed or resold, is the requirement that the purchaser "must form a family nucleus" (HDB 2009, 9).

## *Other Methods of Retaining Increases in Value for the Public*

### COMMUNITY LAND TRUSTS

In a community land trust (CLT), a community organization owns and manages the land, while residents sign long-term lease agreements giving them ownership rights, either as individuals or as cooperatives, over their housing units.[16] Thus, the mechanism is the same as in the Amsterdam and Singapore cases; the principal difference is that a nonprofit organization rather than the government owns the land. As in Singapore's public housing, there are strict limits on resale.[17] DeFilippis (2004) gives the example of the Burlington, Vermont, CLT, in which the city government initially provided grants for land acquisition. As the trust expanded, it was able to tap other sources of funds as well. In 2003 the land trust had about 500 units of housing on its land, as well as community facilities, emergency shelters, and special-needs housing. Land under the CLT's control is scattered throughout the city, thereby contributing to income heterogeneity.

CLTs thus attain the same objectives as public land ownership in that they restrict speculation and help ensure the availability of affordable housing. Their limited scope and nongovernmental status, however, prevent them from achieving the planning outcomes created in Amsterdam and Singapore. As private landholders, though, they are protected from the political swings operating in the United Kingdom and The Netherlands that have resulted in losses to the pool of affordable housing.

### PROFIT-SHARING ARRANGEMENTS

In the complicated negotiations that surround the construction of public-private partnerships involving major projects, the public sector usually provides developers with concessions in the form of regulatory and tax relief. In return, developers generally agree to provide a public benefit, often in the form of building public amenities or low-income housing. In some cases, the deal includes a provision for profit sharing whereby the government receives some of the benefits from increasing returns on the property in the form of a payment in lieu of taxes (PILOT). Battery Park City and 42nd Street in New York offer examples of this form of value capture.

Built on the landfill produced by excavation for the World Trade Center, Battery Park City at the southern tip of Manhattan contains some of the most expensive office and residential real estate in the city (see figure 2.3). The site continues to be owned by the Battery Park City Authority (BPCA), a subsidiary of New

16. The discussion in this section is drawn from DeFilippis (2004).

17. In some CLTs, homeowners can keep some of the increases in equity in their homes. Although this allows households to build up assets, it also has the effect of reducing the amount of affordable housing.

**Figure 2.3**
The World Financial Center and Apartment Buildings in Battery Park City

York State's Empire State Development Corporation (ESDC).[18] As a consequence of its public ownership, the BPCA does not pay property taxes to New York City. Under an agreement negotiated in 1986, however, it remits to the city any profit on revenues received from land leases for buildings on the site (Fainstein 2001, chap. 8). Initially, it was expected that these payments would be used to service bonds to underwrite the construction of affordable housing elsewhere in the city.[19] Ultimately, however, the city stopped using the income from the leases for housing and instead diverted it to the general fund. Still, until 2005 the role of the public as landowner meant that the land rent did support public functions through additions to the city's general fund. By 2005, however, the money was

18. Initially, this body was called the Urban Development Corporation.

19. In part this commitment was a response to criticism that the housing portion of the project would be entirely devoted to upper-income residences. The argument was that much more housing could be built in areas where land was less expensive.

being directed to back the construction debt on the expansion of the Jacob K. Javits Convention Center (Independent Budget Office 2004).

In a somewhat similar arrangement in 1984, another subsidiary of the ESDC, the 42nd Street Development Corporation, which managed the redevelopment of Times Square, retained title to the project area and provided the developers with a 99-year ground lease. The amount of the ground rent would escalate yearly in response to the profitability of the buildings. In return, the developer and his financial backers received both gigantic amounts of tax relief and compensation for their contribution to site acquisition costs (at market rate) above an agreed-upon amount. This meant that only 50 percent of the basic rent otherwise payable would go to the city until the bonds that financed the purchase of the site were retired (Sagalyn 2001).

## LINKAGE FEES

In some cities, including Boston and San Francisco, commercial developers must pay a fee in return for the right to build. Termed linkage fees, these funds are then used for public purposes, usually housing construction. They thus constitute a means by which the public captures increases in land value generated by development. They are a variant of traditional exactions, whereby developers assume some of the costs of negative externalities produced by new development. Linkage fees, however, must be paid regardless of whether it can be shown that the need for increased housing is a direct result of a specific development.[20] In Boston, legislation establishing such fees was passed in 1983. Article 80 of the Boston Zoning Code, adopted by the Massachusetts General Court in 1996, requires that all new development above 50,000 square feet go through a comprehensive review process at the Boston Redevelopment Authority (BRA) and that new commercial development pay a linkage fee of $7.18 per square foot for affordable-housing development and $1.44 per square foot for jobs development. This revenue stream produces a significant portion of the operating budget of the Boston Housing Authority. According to the BRA's 2009 annual report, eight million square feet of office space was under construction at the time of publication, providing an annual housing linkage of $5.72 million (derived from BRA 2010).

Linkage fees have some of the same equity effects as land value taxes, in that they represent payments by a developer in return for the increase in value

20. The original justification for housing linkage fees was that the creation of more employment resulting from new development would increase pressure on the housing market, and therefore housing need was a consequence of the development. The direct connection, however, is tenuous. In the United Kingdom, the Town and Country Planning Act of 1990 made affordable-housing construction an element of agreements between local authorities and private developers. Subsequently the Labour government that took office in 1997 strengthened this provision so that these agreements became a requirement for all new market-rate housing construction of any scale.

resulting from development.[21] Except for the fact that they somewhat limit the profitability of development, they do not have the effect of restricting speculation. The equity consequences depend on the uses to which the revenue stream is put. In Boston, its dedication to affordable housing and jobs does add to equity. The planning review required of large-scale developments also contributes to the public good. The fact, however, that the payments are linked to specific projects and that they are one-time-only assessments (although payments are spread over a 12-year period) means that the impact of linkage on overall development and value capture is quite small as compared to public land ownership.

### TAX INCREMENT FINANCING

As the name implies, tax increment financing (TIF) captures the increment in property tax resulting from an increase in land value within a designated district. In the usual case, these proceeds go to pay off the bonds used to support development of the district or to add amenities to the area. As such, TIF represents one more scheme whereby developers receive tax benefits. In one case, however, that of the Minneapolis Neighborhood Revitalization Program (NRP), some of the gain from the downtown TIF was distributed to neighborhood groups throughout the city. In 1989 the city refinanced the TIF bonds that it had used to support downtown redevelopment. The NRP, under state legislation that combined all the neighborhoods in the city into a single TIF district, distributed the funds achieved through the refinancing to all parts of the city according to a formula whereby the poorest neighborhoods received the most money. Participants could develop and implement plans for their neighborhoods in a form of participatory budgeting. The program was redistributive in two senses: money was diverted from downtown to other areas of the city, and the sums were allocated so that, while every part of the city received something, the poorest neighborhoods got substantially more (Fagotto and Fung 2006; Fainstein and Hirst 1996). Over 20 years, the program was to distribute $20 million a year.

### COMMUNITY BENEFITS AGREEMENTS

Community benefits agreements (CBAs) ensure that the gains resulting from development accrue to the residents of the surrounding area. In contrast to TIF, which typically returns gains to the project owner, here the benefit, as the name implies, goes to the community. There is no requirement that the beneficiaries be low-income, but CBAs typically involve low-income neighborhoods. Although sometimes the government is involved in the negotiations, often the agreement is worked out between the developer and community groups. Wolf-Powers (2010,

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21. In Boston, the BRA retains ownership of some property after private development, resulting in earnings in 2009 of about $6 million from sales and $21 million from rents (BRA 2010, 33).

153) stipulates that for CBAs to be successful in bringing about major benefits, usually in the form of jobs and housing, the real estate climate must be robust, the developer must get a large public subsidy, and the community must have sufficient potential to block the project for the developer to acquiesce.

## *Toward Justice in the Market for Land*

The property tax is obviously an effort to retrieve for the municipality at large some of the gain resulting from a scarcity of desirable land. Its impact on equity is a matter of considerable debate, as residential owner-occupiers receive the benefit of increases in value only at the time of sale or in the form of loans based on using property as collateral. Rises in unrealized property values can inflict a burden on householders whose incomes have not risen commensurately.[22] Furthermore, because the proceeds are placed in either the general fund or the education budget, they do not specifically finance redistributive measures. Public land ownership, with rents for housing paid as a percentage of income, in contrast, lends itself to using land to produce equity. The case of Amsterdam comes closest to this model. In Amsterdam's social housing, the size of the rental payment is based on the initial costs of the building, but the rent burden is offset by a rental subsidy. In Singapore, the householder benefits by dint of ownership of the unit and pays only a minimal property tax. The subsidy toward purchase, however, is small, and the down payment is unaffordable by the least affluent part of the population. In both Amsterdam and Singapore, public land ownership prevents speculative development and flattens the bid-rent curve, since it prevents the uneven development created by markets in land. By reducing discrepancies in desirability among different parts of the city, it substitutes equity for a narrowly defined efficiency in land markets.

Other means of confiscating land value increases, as described above, require private developers expecting sufficient profits to enter into deals with public sector representatives or to make a compulsory donation to a trust fund. Except in the case of housing trust funds or employment commitments, there are no guarantees that the developer contribution will produce greater equity. Moreover, if it can be used as the basis for a tax deduction at some other level of government, its potential redistributive effects are wiped out in relation to the nation as a whole.[23] Thus, if equity and good planning are the principal objects of capturing

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22. Although "circuit breakers" are often put in place to protect elderly on fixed incomes, they typically do not buffer other households.

23. Property taxes are generally portrayed as payment for publicly provided infrastructure and services. The fact that owners of more expensive properties pay more tax despite receiving the same services as others means that it is one of the few taxes on wealth. Consequently, it is theoretically redistributive.

increases in land value for the public, elimination of the market in land is a prerequisite. That this is done in nations that have active market economies indicates that land banking by the public sector can occur within otherwise capitalist economies, resulting in greater equity and a broader right to the city.

Other methods of obtaining public benefits from increases in value also exist. They do not, however, change the structure of property markets; rather, they seek to ensure that some of the gains produced by market transactions in property go into government coffers or to support desired infrastructure, facilities, or housing. In contrast, public land ownership, while it does not preclude profitable investment in improvements, both ensures that locational advantage does not produce windfalls for private landowners and has the potential to determine where people live, work, and play. Public land ownership is not sufficient to produce equitable outcomes and the right to the city, since its contribution to equity depends on the commitments of those holding political power. Nevertheless, it offers the possibility of capturing the unearned increment for the population at large. As is increasingly the case in Amsterdam, it is not necessarily used for explicitly redistributional purposes. Still, even when the proceeds are used to promote new, relatively expensive development, as is now happening in Amsterdam, it gives the government much greater control over land use than does zoning, where new construction depends entirely on private initiative. Consequently, it inhibits uneven development and thereby reduces spatial inequality.

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