The Power of Law

a discourse analysis of the public debate around the Land Grab Law in Valencia, Spain.

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* The reason for using the title Land Grab Law: Using Google as a searchmachine for “LRAU” * yields a full first searchpage with only sites that refer to the LRAU as Land Grab Law. This shows the pervasiveness of the discursive struggle over the landlaw, and I thought it fitting to allude to that in the title of this thesis.

**Note that this is searched without history or location tracked by Google, so a “clean” search.

*** Cover picture: Once Upon a Time in the West, Sergio Leone, 1968. A movie about spatial planning, law, and shot in Spain.

Quien hace la ley hace la trampa
-spanish expression

Every law has its loophole
[EN]

Elke wet heeft zijn maas
[NL]

Abstract

This research provides insight in the relation between law & spatial planning by means of a discourse analysis. The land readjustment law in Valencia, Spain, (LRAU/LUV) has both been praised and criticised by planning professionals, media, citizens and the EU parliament. The Valencia case is used as a case study to explore how discursive techniques are deployed by different discourses to further their influence in the public debate over the LRAU/LUV law and the planning practices. The study shows how dialectics between the discourses of property rights and laws shape the practice. The research concludes that the LRAU/LUV law in Valencia is subject of power-knowledge plays and shows how it affects the quality and legitimacy of the policy it helps enact.

Preface

This thesis constitutes the end of an academic education. It is created, not produced, by Diederik van der Loo, in his endeavour to understand the professional field to which he belongs. I find the nature of spatial planning to be exciting and challenging, with all the drama and intrigue of a political novel. We are only beginning to understand how planning works, yet as a human race, we have been planning for a very long time. Science is only just now catching up.

We have happy accidents, and thanks to these, I found out about the exciting things that were happening in spatial planning in Valencia, Spain. Like a rolling stone the inquiry had to tumble a bit before it came to rest and settled on the power of law as a research topic. I hope this research may enlighten some of my colleagues, amuse my family, and meets with approval from the rest of the planning community.

I humbly thank my supervisors Raoul Beunen and Martijn Duineveld for their feedback and their patience. Without dear friends that were the proverbial tower of strength, this thesis would not have been. Thank you especially for your unwavering support. Lastly, a great many thanks to all the wonderful people along the way of this tumbling boulder.

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Introduction

Spain offered a unique situation for studying a common problem: a conflict in planning on multiple levels. Not only on a tactical level there were local skirmishes about the zoning and planning of public space, but on a strategic level conflict about the rules which govern planning takes place in the region of Valencia.

A short history of Valencia and its planning
Over the past twenty years the region of Valencia, Spain, has seen changes in the landlaws. In 1994 the Ley Reguladora de la Actividad Urbanistica (LRAU) is adopted by the Valencian Autonomous Community (i.e. the region Valencia). The LRAU is a regional landlaw that regulates urban development and the land readjustment that is necessary for this development. This law includes provisions for compulsory land readjustment and compulsory contribution to urbanization. The LRAU arranges a.o. that an owner might have to cede land to the municipality for social purposes, provide his own land as space so that a developer can develop and pay a contribution to the costs of infrastructure provision. In turn, the owner receives more building rights for his now reduced property (for a more extensive explanation see chapter 4, Historical Context). For municipalities, this is seen as a good solution because the costs of infrastructure provision are then not solely their burden, but are shared amongst the parties that profit from development.

In the years that followed, this law and its successors gained attention and caused a public debate. A different opinion this law came about; at first in the local newspapers, then in foreign newspapers and at last in the main Spanish media. This opinion holds that the land readjustment is not respecting the property rights of landowners that do not wish to cooperate or contribute to new development. The law is called a land grab law by the opponents and the legitimacy of the LRAU is questioned by civic action groups opposing the planning practices. The public debate that followed concerned property rights, ownership, land use plans, good governance, the planning system and the rule of law. This debate regularly caught the headlines of major Spanish and foreign newspapers and has even attracted attention from the EU parliament.

Spatial Planning in Spain as a whole is equally interesting, as first the financial crisis of 2007-2008 and then the following economic crisis collapsed what turned out in hindsight to be a real estate bubble. With the fast growth of real estate prices, both politicians and planners were looking at ways to capture value increase in private real estate to contribute to public costs. Extraordinary examples of the real estate bubble are located in and around Valencia with the unused Castellón airport, the new and unfinished Valéncia C.F. stadium, and the over-the-budget Calatrava-designed Ciudad de las Artes y las Ciencias. It is interesting to understand how this real estate bubble could have come about.

Spain is a young democracy, only since 1978 does it have a multiparty government. The years under the Franco dictatorship still influence the practices in planning as the basic governance situation still struggles with corruption (Transparency International, Corruption risks in Europe, 2012). Since the transition toward democracy, Spain has also notably switched from a central nationstate to what is in effect a more federal model for the state. The regions or autonomous communities have tried to define the relationships under which planning takes place anew. Yet old practices remain in place that have a strong influence on how planning is conducted and this plays a large role in the consequences of planning. With the introduction of a new regional law LRAU in 1994 the presumption was that it would be able to deal with and change the old practices.

Towards a research goal

Planning scientists have published about this law as a planning tool. Some planning researchers see the LRAU as a desirable model for other planning systems. The newspaper and internet headlines showed that this planning tool in the form of a law was an object of contention.

If we look at the region of Valencia, researching what effect landlaws have is especially relevant. The landlaws are an object of contention in society, and are controversial. Both foreign and Spanish newspapers report regularly about home ownership and legal rights in Spain (El Pais, 2005; The Telegraph, 2006; Financial Times, 2006; Bloomberg News, 2008; El Mundo, 2008; NY Times, 2012; ABC, 2012; only a selection)

The land laws in the Valencian Autonomous Community have relatively recently been changed (LRAU: 1994, LUV: 2006, Coastal Law: 2012), and as such are more open to discussion and debate than laws that have been in place for a longer time, or whose legitimacy is not questioned. The purpose of this MSc thesis is to understand how this landlaw and its successor as planning instruments influence and are influenced in the public debate by established planning professionals and active citizen groups. Because a law can be considered a spatial planning tool, it shapes which kinds of planning processes are possible and how they are possible. An investigation into the power of law contributes to a better understanding of how planning works.

Law and Planning

Research has been done on the LRAU, however, not with the goal of researching the relation between the law and power and the influence of the law on the planning process. The PhD thesis by Munoz Gielen in 2010 investigated how to capture value increase in urban redevelopment. The idea is not new and not strictly limited to Spain, also in the Netherlands planning researchers have looked at value capturing (Krabben & Needham, 2008). That research shows that "[...] the splitting of property rights (separating infrastructure provision from property rights) can modify the power-relationships in the network of actors involved in urban regeneration, and this can improve [the] capturing [of] value increase" (Munoz-Gielen, 2010, 422). But beyond the evaluation that there is a change in power-relationships that is beneficial for achieving value increase by the municipalities, that research does not evaluate the LRAU on the power-relationships itself or its consequnces on the legitimacy of spatial planning.

This knowledge gap on the influence of law, and the power of law on the practices of planning is consistent with the planning literature on law: "While there is quite a lot of literature on planning and institutions (Bolan, 1996; Healey, 1997; Salet and Faludi, 2000; Gualini, 2001; Alexander, 2005; Buitelaar et al., 2007b), there is not much literature within the field of planning theory that links planning explicitly to law (Salet, 2002)", according to Buitelaar & Sorel (2010, p983).

Planning and law are inseperable: In its basic form, planning as a state competency exists because a law mandates it to exist. Without a law defining the process of spatial development, there is just development, and no spatial planning – no concerted effort to tune or adjust development to a politically desirable solution. The planning literature shows that it is necessary to investigate how law influences planning: "discussions on tensions between flexibility and legal certainty, and between planning and law are widespread. Particularly, the relationship between planning and law deserves more attention in international planning theory" (Buitelaar & Sorel, 2010, p984); "The relationships between planning theory, sociology, law, and political science seem especially promising. Law and political theory should not be content with the domination of the organizational recipes in practice. On the

other hand, planners must also become much more involved with the normative disciplines mentioned above. As a social institution, law is far too important to leave up to the legal experts." (Salet, 2002, p34).

Priemus & Louw (2002) acknowledge that a change in legislation for land policy is necessary for the changing circumstances under which land development takes place. The role of public intervention in the land market is being questioned in the Netherlands, yet local authorities claim more effective policy when they are in control of such a process: "The question then becomes one of how land policy should be changed. An additional question is that of whether or not the relationships in the building market should be reviewed." (Priemus & Louw, 2002, p370). These relationships in the building market – the relationships between development companies and municipalities – are also defined by law, at least concerning the rights of companies to develop and the rights of municipalities to intervene in the development process.

The nature and workings of these relationships around planning activities is interesting, particular for non-planning experts: how is power exerted, how does power work with law as a tool, what methods or techniques does a party use for its interests? These question are addressed in this thesis, because of the knowledge gap in planning literature considering the relation between law and planning (Van Dijk & Beunen, 2009).

Change in planning research

Planning has seen a shift in its perspective over the years.Gradually, a more central role for the process over the content of planning is accepted. This allows planning researchers to focus more on issues of power.

By now many planning researchers acknowledge that planning is contextual and specific to each legal system and the institutions and practices of an area (Faludi, 2000; Healey, 2006; Hajer & Zonneveld, 2010; Buitelaar & Sorel, 2010; Salet 2002). This was not always the case, as the research field of planning had first organised itself in the 1950s as a quantitative beta science. Healey (2007, On the Social Nature of Planning) argues that planning has shifted from researching the physical conditions in the 1970s to the social processes that underpin the complexity of planning. Moreover, the type of research has shifted to the perspective of social science.

Faludi acknowledges that planning research indicates that planning consists of decision making processes that are "embedded in a context shaped, not only by the plan respectively by its messages, but also by what has gone on before by underlying meanings, by assumptions shaping the minds and thus framing the actions of those concerned" (2000, The Performance of Spatial Planning).

This means that the key to contemporary planning research lies in the context of planning and frames of mind that shape planning. The context of planning consists of, amongst others, how planning is interpreted by citizens and by what framework (i.e. set of rules) planning is played. This framework can consist of both as a formal framework, in laws and legal systems, and of an informal framework, as the practices of a place, or as language or actions that are commonly accepted.

If a planner wants to investigate this framework, communications become a more important focus of the planning researcher. Not only is language the means of acquiring information about the planning process, it is information in itself. Hajer & Zonneveld (2010, Planning in the Network Society):

> "This implies that much of the essential work of the planner is discursive: listening to people, making an inventory of problems and wishes, scanning developing concepts that can guide thinking about spatial development,

> assessing the possibilities of building coalitions among actors and thus in essence persuading actors of various kinds to think about the future developments in one and the same language (cf. also Healey, 1997)."

It is because of the shift in planning towards power, communications and process (Flyvbjerg 1998) that the knowledge gap in planning literature becomes more pronounced. This increases the need for research that acknowledges that planning is power, and that legal systems themselves ought to be critically researched for their influence on planning practices. No longer can a researcher be content with an instrumentalist approach of institutions (Moroni, 2010) but a more dynamic and holistic oriented approach of the system of planning deserves investigation by planning researchers.

The need for Discourse analysis

A post-structuralist perspective on planning research acknowledges that there are many different forms of power (Hajer & Wagenaar, 2003), including systemic power: how systems are shaped, which mechanisms are functioning and have an influence on the outcome of what those systems are able to reproduce.

Instead of researching particular theoretical viewpoints, this thesis is concerned with looking at planning practices as they occur in real life, in a particular context of time and place. In order to look at what really is, planners need to free themselves from influence that comes with looking at a particular situation. Flyvbjerg (1998) called it the 'rationality of power' – the way in which day to day jargon and activities create a tunnelvision for planners involved in the practice. A discourse can be understood as a combination of communications and a worldview that underlies these communications. To research what influences a discourse, the actions and utterances of a side have to be studied. Richardson (Freedom and Control in Planning: Using Discourse in the pursuit of Reflexive Practice, 2002), calls it "discourse theory can ... open up original perspectives on how things are as they are". And for academic reflexivity, "discourse theory is inescapable as an element of critical analysis".

For Valencia, it is not enough to treat the circumstances of the LRAU as a given context which cannot be changed. In that respect the research by Munoz (2010) falls short for it follows an instrumentalist approach. Also, we have to look critically at what Salet (2002) calls the institutional approach. This approach formulates organizational recipes for change: if we change the institutions we would have different planning. Institutions mean here the rules that are supposed to govern the behaviour of actors in a certain situation. Yet Moroni (2010) points out that institutions are laws, rules, procedures and as such: socially constructed. Institutions are limited in their reach, but they are also evolving to fulfill new needs. Rules are not unambigious: they produce multiple and contested meanings.

The dynamics of power are an ongoing process. Which tactics and gambles work in one situation may not work in another, yet stakeholders in a planning process will always learn and adapt to new situations. This complex threeway interaction between a law, power relations and a discourse is dynamic, even though there exists a boundedness of performativity (Van Assche, Beunen & Duineveld, 2011, Performing succes and failure).

The law as an instrument can be considered to have different consequences and effects then it intents (Van Dijk & Beunen, 2009) and for this thesis the actual effects are interesting. Planning can be considered as a struggle and a political act (Foucault, 1998). Thus it is useful to look at how influence and power function for a planning process.To look at the debate around land laws from a power-knowledge perspective (Flyvbjerg, 1998) it is useful to perform a discourse analysis (Hajer et al, 2003).

Purpose of research

The purpose of this MSc thesis is to understand how the LRAU and its successor the LUV as a planning instrument influence the discourses of established planning professionals and active citizen groups. Does the codification of one set of values with regard to property rights marginalize other values? Munoz-Gielen researched the LRAU/LUV for its possibility in capturing value increase (2010). This generates income for municipalities so that they are not saddled with the costs alone. By only looking at the law as a given fact, it left open the function that the law itself takes in the process. In his conclusion, he states that it remains to be investigated whether a planning instrument can be held responsible for the quality and legitimacy of the policy it helps execute.

By using discourse analysis to show the different conceptions of property rights and by making the actions taken to gain influence by different sides explicit, this thesis aims to shed light on the responsibility of planners and planning instruments with regard to creating planning law. Thus follows the problem statement:

> **To develop a new perspective for the interaction between planning and law by studying the processes of discursive action by stakeholders in the planning practices in Valencia, Spain.**

Theoretical Framework

This research uses a theoretical framework based on a social constructivist view. The epistemological choice is elaborated in the chapter Methods. A constructivist view of science aims to understand the world as lived and worked in (Creswell 2009). The assumption of the view is that the world is not an objective place where one meaning is 'true' or 'natural', that can be divined and discovered by the scientist. Rather, individuals all develop their own meanings of their experiences. That means that there are just as many meanings as there are individuals. It assumes that meanings are constructed by individuals based on their social and historical embedding and the interaction with others. That is the social part of constructivism. Added to that complexity, the constructed meanings are not necessarily singular and finite but individuals also formulate complex meanings or give multiple meanings.

The researcher cannot look into every single meaning by every individual. Instead, he looks into the complexity of views. Therefore, a constructivist thesis will rely on participants views to clarify the situation of what is being studied. The participants views are leading. As a researcher, it is essential to understand their context by visiting them personally. Data is the generation of meaning as captured by the researcher. It is therefore limited to what the researcher can capture. The researcher has to be amoral and objective in acquiring, presenting and analysing the data (Duineveld, 2012, Doing things with varkens and words). How this is handled is clarified in the chapter Methods.

Once these methods are clarified, the story of how the public debate around the law came to be can be retold and the ways in which the discourses use the law to advocate their interests become clear. To give insight in this process, the data that is captured from interviews, literature and newspaper articles is subject to a discourse analysis.

Planning Literature

Discourse is in this research interpreted in a 'thick' definition and includes all forms of power and influence. It is not only words, communications and language that are included in a discourse, but also the actions undertaken by individuals and social practices (Wagenaar & Noam Cook, in: Deliberative Policy Analysis, Hajer & Wagenaar 2003), as "Language IS action" (Wood & Kroger, 2000). In a poststructuralist sense, a discourse constructs objects and subjects as well. Boonstra (in: Words matter in policy and planning, KNAG, 2006) defines discourse as a rhetorical manifestation of a specific perception, belief or worldview, which gives meaning to the world in which people live: " It is an applied and specific form of an interpretive approach, that studies the content of actors perceptions and their effects on social action", or as a frame of reference. Boonstra then still assumes reality to be essentialist by identifying a 'reality' that can be correctly labeled.

Van den Brink and Metze (Words matter in policy and planning, 2006) point out that the study of discourse concerns itself with either the frame of reference,individual ontology of experiences, the language in use or social interaction. For this thesis it is not enough to look at a detailed linguistic kind of discourse analysis, but to take the interpretation of discourse as intertextual and in relation to social practice. Wagenaar & Noam Cook (Understanding policy practices, 2003, in: Deliberative Policy Analysis, 2003, Hajer & Wagenaar) point to practical reason (phronesis) or experience that guides practitioners in their day to day activities: "Practices as a particular configuration of human activity" (after MacIntyre, 1981).

In studying discourse and discursive action, a discourse does not 'have' power in the possessive sense of the word, but it produces power (Flyvbjerg 1998). These are actions of language and power and are produced both consciously and unconsciously (Duineveld

2012). They are the means to an end (Flyvbjerg 1998). For an analysis of a discourse of law, there is no clean sheet from which to start: historically landlaws have been active, as was shown in the results, the formal rules, and have evolved and formalised according to their context. Discursive techniques did not pop up out of thin air either. The discursive techniques grow out of real or perceived needs to influence the public debate, sometimes in response to a challenge to their own needs.

If you want to study why kids are arguing for a specific meaning of the rule, look at the status of the game. Who is ahead, and who is losing? What expected effect would a specific interpretation have on the outcome of the game? It is the most interesting, and answers the research questions the best if the analysis of the results looks at the consequences of changing the rules.

> "By seeing a practice as a socially established form of coperative activity, it cannot be confused with an institution. Institutions may contain reified or codified elements of practices, they may support practices, but they are nevertheless distinct in that institutions are empty without the practices that sustain them. Also, practices are not the same as organization routines or standard operating procedures"
> (Wagenaar & Noam Cook, 2003).

This has great bearing on planning, as institutions (e.g. laws and legal systems) are no longer considered simple recipes for alternate practices (Van Assche, Beunen & Duineveld, 2013, Formal/ informal dialectics and the self- transformation of spatial planning systems: an exploration (forthcoming)).

Instead of prescribed or expected effects from a law being viewed as given in an instrumentalist approach (Munoz-Gielen, 2010), the real effects including unintended consequences and dynamic responses by informal practices are interesting to study (Moroni, 2010; Van Assche et al, 2013(forthcoming)). By using a qualitative discourse analysis, the focus is on what discourse can reveal (about rules, scripts, social structures) and thus can contribute to the understanding of phronesis in planning.

The relation between the law and power is not researched often in planning, owing to the aforementioned knowledge gap in planning (see Introduction). Van Dijk & Beunen (2009) point out that law is the modern agency of social control that seeks to regulate behaviour. It is thus an explicit form of power in use. Flyvbjerg (1998) also points out that in stable power relations rationality is a strategy of power, However, power relations are constantly being produced and reproduced, thus an inevitable change in the power relations will give rise to the questioning of the rationality.

Harris (Discretion and expediency in the enforcement of planning controls, 2010) looks at planning as different levels of enforcement of the power of local governments. In this respect planning is an overt act of power in use, with varying circumstances and goals in mind, which he calls locus and character. Not every action is the right action at the right time or in the right situation. Thus it can be said that the practices which occur call for a different intervention or a different rule-set that needs to be applied (institutions, laws, procedures). The rules are then dependent on the situation. In turn, stakeholders will adapt to a given ruleset to use them to their advantage (Van Assche, Beunen & Duineveld, 2013 (forthcoming)), and change the practices accordingly. The process of change in response to conflict is called dialectic.

Dialectic processes run on different levels: in response to actions by one stakeholder, another will adapt and perform different actions (Formal/Informal dialectics and the self-transformation of spatial planning systems: an exploration, Van Assche, Beunen &

Duineveld, 2013 (forthcoming)). In doing so, the actor performs according to its discourse (Performing succes and Failure in governance, Van Assche, Beunen & Duineveld, 2011). Different discourses also produce a dialectic process between themselves (Richardson, 2002, Freedom and Control in Planning: Using Discourse in the Pursuit of Reflexive Practice): "If we can understand more clearly the forms of discursive interplay in the everyday activity of planning, we can become more proactive and more strategically effective in the process of discursive construction that we are all – planners, policy makers, lobbyists, politicians, academics – engaged in. We are all in the business of constructing and reproducing policy and planning discourses."

Research Questions

The problem statement:

> To develop a new perspective for the interaction between planning and law, by studying the processes of discursive action by stakeholders in the planning practices in Valencia, Spain.

In combination with the literature on planning, law, discourse and dialectic, the problem statement leads to the following main research question:

> **How does a planning instrument, as the LRAU/LUV, affect planning practices?**

Of course this is a broad question .This can be further split up into subquestions to guide the research. Already from the literature it is apparent that the system of law may have an influence on planning practices, but for this thesis we need to research how the planning practices in Valencia are affected.

> Which planning practices in Valencia are affected by the LRAU/LUV?

In order to look beyond the given powerbalance, the discourses in Valencia need to be studied.

> What discourses come about as a result of a context of institutions in Valencia?
>
> What kind of actions or discursive techniques do discourses recruit for their struggle for influence?

And in order to investigate the dialectics of planning in Valencia, the workings of discourses are next studied.

> How do the discourses influence eachother?
>
> How do the discourses influence institutions et vice versa?
>
> How do the discourses influence planning practices et vice versa?

Which meaning is given to the events in Valencia, Spain, is dependent on who you speak with. Based on different experiences and positions in society, you will hear a different story. These differences are complex too, but they make sense when contrasted to each other. In order to investigate how the different stories are attempting to influence the meaning-giving, this thesis first looks at the circumstances as formal rules and informal practices and then at the different methods of influencing the meaning-giving. From these methods, or discursive

techniques, it becomes apparent that there exist two contrary discourses. Tentatively, the two discourses can be named “Pro” and “Contra” the LRAU/LUV. They are organized according to their antagonist posture, which became obvious from news about the public debate in Valencia.

Conceptual clarifications

When using the aforementioned social constructivist perspective to do research, the following core concepts are relevant:

Property rights
What is at stake in the public debate around the law on land readjustment is the conception of property rights, or what you are allowed to do or not do with your property. Property rights can be explained as many rights as the same time that a person has over things. This is called a “bundle of rights”, which consist most commonly of (1) the right to exclude; (2) the right to transfer; and (3) the right to use and possess. These rights are socially determined, and laid down in law. Munoz-Gielen (2010) sums up some previous conceptions:

“The Roman Law conception of property rights, Dominium, included the right to use it (usus), the right the fruits (fructus) and the right to disposal (abusus).” (Munoz-Gielen, 2010). In this conception it would be the usus which is contested, because usus also includes non-use. However, this does not define how much of the resources are falling under the right of Dominion, and neither is defined how far your rights stretch.

“In the liberal interpretation of the 18th and 19th century property rights included, as part of their essential contents, the faculty of doing whatever the owner wants on, under or above his land. Essential content means that it belongs to the structural or genuine elements of the property right[1]. If the essential contents become hollowed out, property becomes seriously harmed. Whatever means that the owner can decide, for the owned object, the an (whether to do or not to do), the quomodo (how, in which way, what for), the quantum (how much) and the quando (when). On, under or above means that the owner can do whatever he wants with the space situatied above his plot (upt to the sky), directly on his plot, and under his plot (down to the hell).” (Munoz-Gielen, 2010). In this conception the right of your property is also defined to the limits of his property. The liberal interpretation effectively means an absolute right. Of course this was even at the time an idealized version of rights, but many of the liberal interpretations have made it into national and international declarations of human rights, or as the basis for treaties between states.

But the public domain has encroached on this absolute right: “With the transition to the 20th century the social function of property appeared. Sanitary (fire and building hygiene) and social considerations further limited the contents of property rights. The broad competences of the owner became gradually limited and the exercising of his rights subjected to obligations. These limits and obligations, which derive from the interests of other individuals, and from public and collective interests, now prevail over the interests of the owner and have become part of the esential content of property rights.” (Munoz-Gielen, 2010). Here we can see further limitations to a conception of an absolute right of property. No longer is an owner the sole director of his property, but for reasons of public interests, the society may have a claim on his property. This can be said to be the prevalent opinion of the claim of public domain on individiual property rights across all of western society.

[1] “Essential content of property rights can be identified [...] with what is called the minimal ‘bundle of rights’” (Munoz-Gielen 2010, pg 25).

Priemus & Louw (2002) and Munoz-Gielen (2010) argue for a separation of landownership and construction rights. Both have different reasons, Priemus & Louw see it as a way to create competition in the building market, and Munoz-Gielen sees it as a way for municipalities to capture value increase. The question as to how much rights are attached to property ownership is of course defined by law.

Law

Property is only one dimension of this planning issue. Another is the role of the law. Take for instance the following statement by Gielen, which is at odds with both the Spanish Constitution and the Charter of fundamental rights of the European Union: "These limits and obligations, which derive from the interests of other individuals and from public and collective interests, now prevail over the interests of the owner and have become part of the essential content of property rights. The owner can enjoy his property only if he/she does so within the legal rules and prescriptions, and after receiving a public authorization or concession. In other words, the public administration fixes now the an, the quantum and the quomodo." (Munoz-Gielen, 2010).

The Spanish Constitution from 1978, Article 33, part 3 states: "No one may be deprived of his property and rights except for justified cause of public utility or social interest after proper indemnification in accordance with the provisions of law." (via http://www.servat.unibe.ch/, retrieved 13th of august, 2012).

The Charter of fundamental rights of the European Union, article 17, part 1: "Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest".

Van Dijk & Beunen (2009) make a distinction between intention and effect of a law. "The intention [of the] law can be either facilitating to the subject (providing legal basis for desired opportunities) or modifying (changing behaviour from the original pattern in a different direction). The effect of the law can be either distorted (the subject did not properly understand the purpose), compliant (subject did understand and responded according to the plan), avoiding (trying to find ways around it) or adverse (impact on subject behaviour works in the opposite way)" (van Dijk, & Beunen, 2009). Here we see a difference in meaning of the law: one could judge a law by its intention, and observe the law as something that could either be used by people to justify its actions or that could change the actions of people not behaving correctly. Another could judge the law by its effect that it has on people; what do people do with the law? Do they act complying, avoiding or counter to the law. In any case, do the people actually understand the law (distortion)?

Teubner (1989) in "How the law thinks" supposes the following:

> "Under a constructivist epistemology, the reality perceptions of law cannot be matched to a somehow corresponding social reality "out there". Rather, it is law as an autonomous epistemic subject that constructs a social reality of its own. It is not human individuals by their intentional actions that produce law as a cultural artifact. On the contrary, it is the law as a communicative process that by its legal operations produces human actors as semantic artifacts. Since modern society is characterized on the one side by a fragmentation into different epistemes, on the other side by their mutual interference, legal discourse is caught in an "epistemic trap". The simultaneous dependence on and independence from other social discourses is the reason why modern law

is permanently oscillating between positions of cognitive autonomy and heteronomy." (Teubner, 1989)

That means that the law is not an objective ruling over an objective reality, but rather a discourse in itself. As a constructionist research, this also supposes that the law itself is socially constructed. The law can be studied in the same way as the process of sensemaking by individuals, but just as in what defines property rights, the meaning of a law is socially determined. A law is a way of making sense of a desired situation of formal rules, that govern intention and effect of behaviour of individuals. And with regard to the last statement, the law is both dependent on the perceptions that people have, but it is also developing independently of input by people in the public debate. This is because the legal profession continually builds on previous litigation and has to take into account the consistency of the law with other laws.

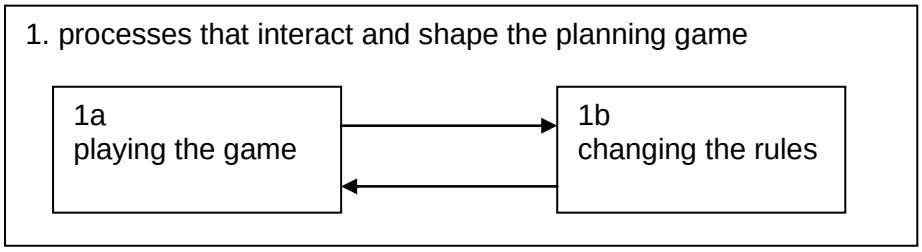
Events are interpreted and given meaning by discourses. Once these given meanings become more fixed, they create a path dependency. Path dependency means that there is a certain likelihood that consequences have a limited scope of possibilities, but it is not a guaranteed consequence, as in a deterministic view. Events may change outcomes or measures taken can also not have effect. In this respect it is also necessary to look at a discourse as not owned by a single entity. A discourse 'has a life of its own', and a person or a group can undertake actions which fit the discourse. A discourse lives regardless of specific users. Pathdependency on what results are possible or the possible directions to take, it is called performativity (Van Assche, Beunen & Duineveld, 2011; Beunen, Van Assche & Duineveld, 2011). However, without sustained repetition of its communications, also known as the self-referencing systems theory as Niklas Luhmann created (Luhmann, 1995, see also Van Assche & Verschraegen, 2008), and a sustained acting of means of power and influence, a discourse does not survive.

Power then consists of all the means possible to exert influence, to the end of the goals which serve the goals and the continuation of the discourse.

Dialectic

Dialectic is the process of change in response to conflict. Van Assche et al observe that there are recurring relations between formal an informal institutions (Formal/informal dialectics and the self-transformation of spatial planning systems: an exploration, van Assche et al, 2013 forthcoming). In their examples, property rights are according to them, only an institution in relation to a certain configuration of other institutions. Once one of these institutions change, the others that have a relation to these, will change in response.

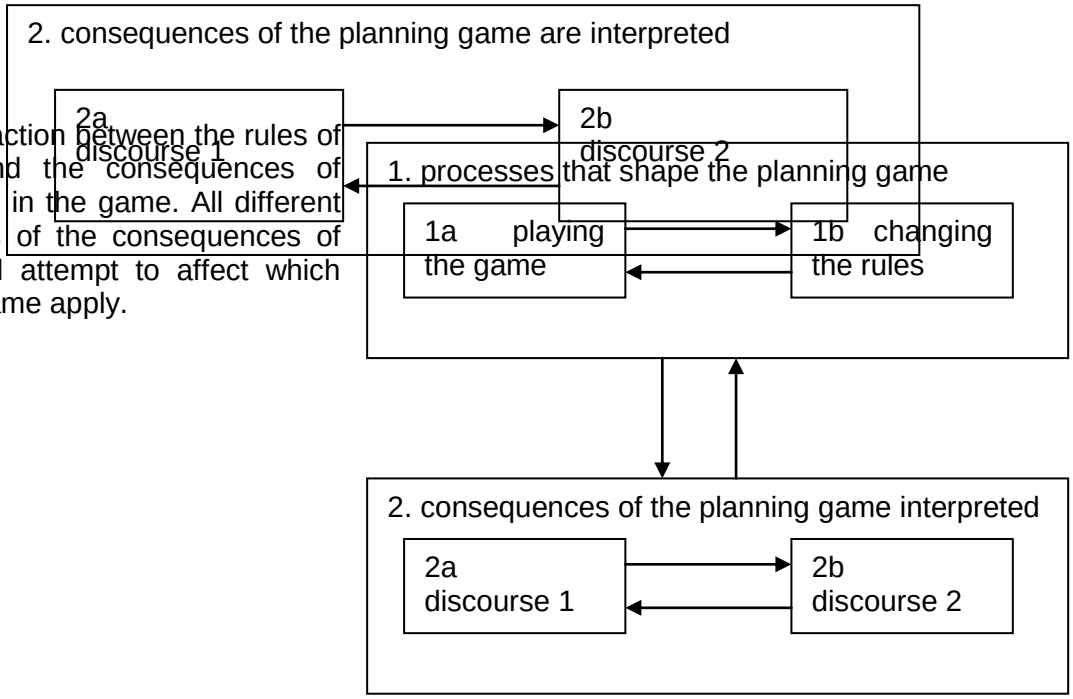
In essence, we can say that formal processes (a.o. laws and procedures) and informal processes (practices) interact and shape the rules (1) by which the game of planning is being played. That means we have both a process of playing the game of planning (1a), but while it is played there may also be changes to the rules (1b)



The consequences of the game are interpreted in (at least) two different ways (2). These two discourses for the Valencian LRAU/LUV, are distinct and divideable in 'Pro' (2a) and

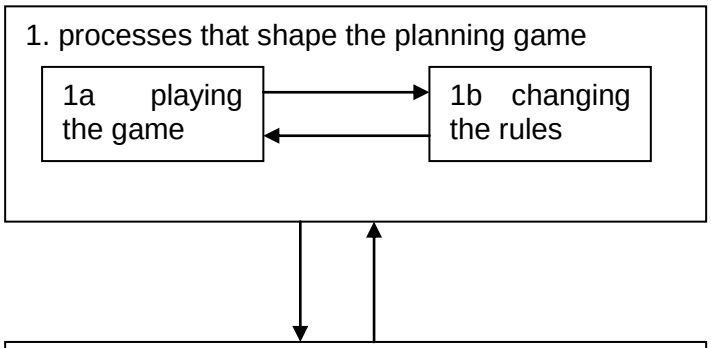
'contra' (2b), but actions of the one discourse also solicit response from the other discourse, in order not to lose out on influence.

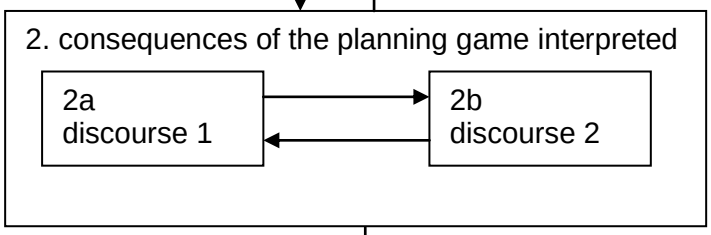
There is interaction between the rules of the game and the consequences of what happens in the game. All different interpretations of the consequences of the game will attempt to affect which rules of the game apply.

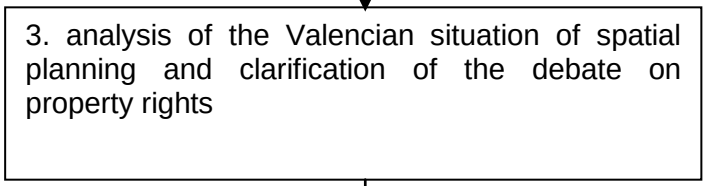


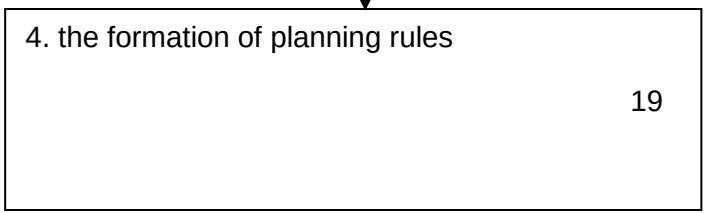
These different interpretations can be used to analyse the Valencian situation of spatial planning and clarify the debate on property rights (3).

The results of the analysis provide valuable data for the formation of planning rules (4).









Methodology

Positioning the research

From the outset of research, the curiosity of the researcher for certain worldly phenomena leads the initial drive to investigate. How are things working as they are working? Why are they? What kind of effect has it? The questions a researcher has in their mind are initially leading the charge. The worldview that a researcher has is of major influence on what is actually being researched. What avenues of inquiry will be taken, out of all possible routes? For every problem, there are so many questions to ask that could be relevant. How to decide which are more relevant than the rest? The background of both the problem statement, the theoretical framework and the background of the researcher all together give clues on which questions are asked. A scientific researcher has to clarify to his audience why he chose which turn of thought.

This particular research bears the markings of my own education, as a student of spatial planning, coming from the Netherlands with its particular system of spatial planning. That is to say, the research, and myself as the researcher, are coming from a certain background which has an influence on the research being done. As a student of spatial planning in Wageningen, I am taught to look at public space, the environment, the zoning of land use, the processess of making decisions about what to do with the public space and how to involve citizen in participatory forms of planning. I am also taught to look at planning as a distinct activity, which is justified –according to the dominant line of thought in planning– by the results to influence society and by its ability to achieve physical results in public space. However, I am also an independent mind with distinct preferences for questioning common truths and looking critically at widely held assumptions. My own background and interests points me into the direction of researching the how and why reasons for a certain distribution of power of a situation.

> Throughout this thesis, boxes such as these contain comments and observations made by the researcher. They provide extra depth and context to the research.

This research is scientifically relevant for the academic planners because it contributes to the understanding that laws play a role for planners, how they play this role, that laws are not neutral and planners cannot rely on laws to be neutral. It is also relevant for the public interest and practices of governance because of the study on how laws and legal systems interact with planning practices: Louw et al: “1. Governance refers to a set of institutions and actors that are drawn from but also beyond government.” (Spatial Development policy: changing roles for local and regional authorities in the Netherlands, 2003). For society, this research can lead to less extravagant expectations that laws can fix situations for problems.

Epistemology

This research, which focuses on how the LRAU/LUV is both constructed and used by the tentatively identified two discourses (Dialectic heading in Theoretical Framework), is a qualitative research. It does not seek to quantify, but rather explore the reasons for why the situation in Valencia, Spain, came to be. How did the different discourses construct reality and how have they shaped the public debate? The problem for this research then becomes the setting of which academic worldview and tradition it fits in. This thesis finds itself on the brink of three knowledge claims (Creswell, 2003):

- Constructivism
- Advocacy/Participatory
- Pragmatism

In line with discourse theory, a constructivist epistemology assumes that meaning is constructed by human beings, and that which counts for truth is not an absolute truth. Rather, it is a contextual truth, a socially generated shared understanding of the world, that has its roots in the interaction between groups. The process of making sense of what is the LRAU/LUV, or what it ought to be, is based on the perspective that an individual or group has: their cultural, historical or professional background all play a role in this.

Yet the advocacy/ participatory epistemology is also possible to apply to this thesis: the power that plays a role, the vying for influence and advantage of the ideas that make up discourses place constraints on what counts as scientifically true. The challenge for this research is to unveil these views and make them explicit. It can be stated that this research could potentially function as emancipatory, by providing information on actual processes of power. It influences the balance of power relations (after Flyvbjerg, 1998) and destabilizes them in order to provide a fairer balance. Even though there may be a political effect from this thesis in that respect, there is no political agenda to this research (as would be for a advocacy/ participatory research, according to Creswell (2003)), but rather is as an academic machiavellian in its approach.

As a researcher, I have attempted to be a true academic machiavellian: to take an amoral position when doing the research, and not letting myself be guided by my own convictions of how things ought to be. The academic machiavellian is not immoral, and does not ignore the ways of power. Instead, he is interested in power and influence, and looks at planning as in essence a political act. Power is not a bad thing (Duineveld 2010) or ‘owned’ (as in: he has power) but rather seen as any and all possible ways to influence relations and ways in which society is organised (Foucault 1998).

In the sense of the academic machiavellian, the pragmatic epistemology could also be said to apply. The truth of the planning science is what works at the time, in the context, for the problem at hand. The truth of this research and of the LRAU/LUV is that which is true to each player, or side, or group that wants to make use of it – for their own purposes. Additionally, the problem of the LRAU/LUV is considered more important than any strict method: instead of working with instrumentalist assumptions in planning, the choice for this thesis was to question those assumptions and find a method that is more applicable to finding a solution for this particular problem.

Regardless of which genre of epistemology fits best, all three fit this research. It would be dogmatic to view research –and especially social science of the spatial planning kind where particularness – as an either/or situation instead of a continuum. What stands out is that this is indeed a qualitative research. Given no other choice, this thesis can be considered to be in the constructivist epistemology tradition. To do so, this report uses as method a narrative research, with elements from the grounded theory method of inquiry. It clarifies the events by narrating the timeline and the actions and communications of important individuals.

Combined, the actions and communications form discourses which are the driving forces to explain the public debate.

Case study

Flyvbjerg, in Making Social Science Matter (2001), argues for planning as a social science to embrace the qualitative research with the use of case studies. Even though this thesis only uses a single case study, the results are still useful for generalization and for the formation of scientific thought. The concrete and practical knowledge that is derived from the case study is valuable in its own right as context dependent knowledge, and is not less valuable than the generalized knowledge.

Although it was also the reason of being for the research, the region of Valencia is exceptionally fit as a case study for investigating the research questions. The discourses that can be discerned in Valencia are very visible on the surface. Instead of having to award meaning to the discourses from an outsider position, these discourses and their agenda's are made explicit because of the conflict they find themselves in. Thus, a potential hazard of researcher bias is avoided.

To study this law it is worthwhile to investigate the effects of the law on the ground. It is not only legal theory theory that influences and structures practice of spatial planning. By drawing on examples from the region Valencia itself, and examining the case of the LRAU/LUV, is becomes possible to generate knowledge that is grounded in reality, and see how a law actually works, instead of how it ought to. Flyvbjerg (2001) calls this the power of example, and makes a case for the quality of a good narrative. With a good narrative, it becomes viable to theorize about how a law works.

Methods of data collection

To gather data, an interview enriched discursive analysis of the media was made. The first step was an extensive use of newspaper reports and online news. As a discourse unfolds by way of communications and actions, newspapers and newsmedia are the most likely sources to report any activity by groups or individuals about the research problem. The second step was holding interviews with stakeholders, both with planning experts and with lay people. In total seven interviews were held. Stakeholders have a vested interest in the process of planning, and are also knowledgeable about why they undertake certain discursive actions – they can be said to be conscious about their discursive actions. The interviews were held in the manner of a conversation.

Scientific literature was sought out for the theoretical framework and to evaluate the implications for planning in the discussion. This literature was sought via Scopus, CAB abstract and Web of Science aggregate searchmachines of published scientific articles and journals. Because there were few articles available on a non-instrumentalist law research in planning, a second tiered search was done via the references made in the first tiered articles.

The online archives from both local and international newspapers were easily accessible and provided an overwhelming amount of information about the subject. It was hard to achieve a good oversight about the planning issues in Spain, as there was so much information available. For those articles that were in spanish, Google translate was used. This was a Spanish to English translation, because since these languages have a lot more users than Dutch, the translationservice is more accurate than a Spanish to Dutch translation. As the newspapers scientific terms do not work well as search objects, one important early step was to incorporate colloquial terminology from the first few newspaper articles. Additionally, tips

for sites and articles by the people who were interviewed were a way of diving directly into the discursive struggle. In that sense, it was good to also make use of the 'abusos-no.org' archive of collected newspapers about the LRAU/LUV from 2003 to 2012, as it provided a clear-cut selection of information that is advantageous to a particular discourse. In essence it gave a view of discursive action by its own formation of a collection of newspapers.

The interviews that were held were the most direct form of data collection: participants in the discursive process that had different degrees of discursive consciousness could be asked to relate to their actions and communications. The information was, remarkably, given freely, although as a researcher it was necessary to win their trust first.

In processing the interviews, the interviews were first transcribed literally. Quotes from the interviews were, as far as possible, cited in the context of the conversation.

Interviewee selection

The selection of interview participants took place after an intial interview with a planning professional in the Netherlands who had done research in the region before. He knew which people were knowledgeable about the subject, and which people would be able to hold an interview in English. After arriving in Valencia I undertook to ask also non-experts about their experiences. The selected people to interview were thusly: a researcher on spatial planning from Valencia, one of the authors of the Valencian law who currently held a planning practice, the vice president of the most clamorous citizens action group, an unaffiliated foreign national living in a small village, an unaffiliated critical local citizen living in a natural park, a journalist for a local magazine and an unaffiliated foreign national working in a bar in downtown Valencia.

The author of the Valencian law was selected because he would know the most about the reasons for the law, and the details of how it came to work. The planning researcher knew a lot about the situation and the context for the law, which he had not published about. The vice president of the citizens action group was selected because they are the group that disagreed most strongly with the law. The interviews with the laymen who were only partially involved did provide with a lot better understanding of the reasons for action undertaken by groups of people. The information they provided were not of a technical nature, but I was surprised to find that the discursive practices had reached even them on a conscious level. This had to do with the fact that since the financial crisis, a lot of these planning problems had become more pronounced and opened up in the newspapers as scandals.

The situation on the ground in Valencia called for a further investigation of the formal rules and informal practices around planning. These were formed from a combination of literature and the interviews, by expert judgment of the researcher, to provide a comprehensive overview of the influences on power and planning. I used an abductive process for this: if one planning expert talked about others, these others become interesting to talk to, to check stories. In case were they talked about others as opponents, I followed this dialectic trail to countercheck. A certain amount of serendipity, or the making use of happy accidents, was helpful in finding laymen.

Interview strategy

The interviews were prepared in advance by reading publications, both academic and non-academic, about instances planning conflicts in Valencia. Then questions were framed to fit into the viewpoints of the interviewee. This was done to win the confidence and trust of the interviewee, and to talk along with them on the issues they held dear. In order to be semi-

structured these were open-ended questions so as not to steer the interviewees in a certain direction. This left the particpants free to use their own words to describe the situation. Their own descriptions are necessary to construct their discourse. This is to prevent the bias of the researcher.

A researcher cannot directly ask “what is your discourse?”. There are several reasons for that. An interviewee might not be inclined to open up and share it with the researcher: It gives away the strategies to power, for example it would make the way the rules are used (in order to benefit the interviewee of course) transparent to others in the process. Another reason is that planning experts are not necessarily scientists and can not be expected to be that reflective, or sociologically educated. And that counts even more so for non-experts. A discourse can be gleaned from different statements, communications, acts and social practices.

The interviews were held in a conversational manner. This put the interviewee at ease and more willing to share their viewpoint. It was a goal of the researcher to not interrupt a story being told. Other interview tactics consisted of probing further into a story, feigning ignorance to hear already familiar facts in the words of the interviewee. Also, by letting a silence develop, the interviewee was tempted to fill in the silence with more experiences. Later in the interview, I as the interviewer functioned more as an interventionist: to provide opportunities for the participant to produce the fullest account possible.

This strategy further sees the researcher as performing bricolage, the ‘cobbling together’ of a discourse from multiple sources and the researcher’s own techniques (Wood & Kroger, 2000). The researcher engages in the discourse, but does not adopt the discourse. In order to identify the possible discourses to construct a narrative with, the researcher has to go ‘embedded’ with the different actors. Which actors are most interesting to interview, was found out by first speaking with expert planning professionals.

Methods of data analysis

There are many ways to perform a discourse analysis. Wood & Kroger (2000) divide the possible methods between a ‘thick’ and a ‘thin’ interpretation. A thin interpretation of a discourse analysis only looks at the linguistic structures and is (usually) limited to written communications. A thick interpretation of discourse analysis includes action and verbal communications. For this research, because influence and power consist of more than only words, the thick interpretation was chosen.

According to Richardson (2002), planning is continually discursive and everything always belongs to (a) discourse. Thought, communication and action are part of a discourse, and that makes it better to consider planning as a living entity rather than only studying the written and codified (and ossified) practices of planning. For reflexive practitioners in planning a thick definition does justice to the multiplicity of everyday experiences (phronesis) and autopoietic decisions (after Seidl) that are present in planning.

The method of analysis that I chose was what Wood & Kroger classify under post structuralism (Doing Discourse Analysis, 2000). In post structuralism, discourses construct both objects and subjects: with various sorts of groups, there also exist various ways to construct and make sense of the world. This construction of reality happens via the process of using language (Foucault, 1982). Law has influence on the dominance of perspectives and attitudes, which in turn influence the planning process. Each of these three concepts changes after the other two do, in a dialectic process.

In the analysis, selected quotes are used to clarify the discursive techniques in describing the consequences of the events in the timeline. In interview #3, multiple people were present and their separate comments are denoted by the first letter of their name. The discursive techniques are grouped together tentatively in the Results chapter for clarities sake, in either the group Pro or Contra the LRAU. In the analysis chapter it is explained why they were grouped as such.

In the analysis a narrative is used to clarify the how and why the discursive techniques influence the planning process, the law as object of struggle and the discourses itself. The insight in how discursive techniques influence all these points shows how power works in planning.

Historical context

In Spain, providing infrastructure is considered a public task since 1956, and seen as separate from the right to build since. Owning land, whether as a landowner or an urbanizador – an urban developer -, bears a responsibility toward society. In effect, a landowner is seen as a concessionaire. The duty of the concessionaire is to provide public infrastructure and facilities, and redistrubute improvements and costs (Muñoz Gielen 2010). This specific conception of both rights and duties is particular to Spain. The rights to build belongs to the owner, but is limited in the following ways: Landowners have no right to any kind of 'minimum' in the case of land readjustment or expropriation, and it are the landowners that are obliged to apply and obtain permits in order to build. Additionally, by forcing landowners to contribute or expropriate, their right to notdo something with the land is reduced.

This chapter will clarify the historical context, the historical context of these Spanish rights and duties, the historical context of the interventions by the EU, the practices on the local level. By looking at the circumstances in which the LRAU was created and how the rules for the planning game have changed over the years, it becomes possible to value the actions of the different discourses later in the analysis of the discursive techniques.

The formal rules of planning in Spain

The Spanish situation of planning can be viewed by looking at its formal rules. These rules are a interrelation between local, regional, national and European laws and regulations that determine the circumstances under which planning takes place. Officially these are the rules of the game in planning. These rules have formal components, for example certain laws, and also informal components, for instance certain local practices. The process of development and the consequences of development are influenced by these rules.

In order to determine what the consequences of a change in the laws are, I will first list the formal rules, and the informal rules that make up the Spanish planning domain in the Valencian Community.

1956 Ley del Reparcelacion, National law
In the 1956 national law on reparcelation the land readjustment regulation was laid down. It mandated a municipal General Land Use Plan, which zoned all of the municipal area into urban, developable and non-developable and restricted (Natural reserves) land. A General Plan and sometimes a Detailed Plan quantified the building rights per landowner. These building rights were "useable as collateral for loans and mortgages, in market transactions, the price of land tends to incorporate the residual value of these building rights" (Munoz-Gielen 2010) and are acquired for all property, new and old, on the basis of a general plan. Thus people can hold land and 'have the right to build more'. Note that this does not give them permission to build, as it is still required to ask the municipality for a building permit and pay the fee for it.

Urbanizacion is commonly understood in Spain as infrastructure provision, and this providing of infrastructure is considered a public task. The national law for reparcelation demands 'an equitable redistribution of improvements, costs and duties'. This means that people who benefit from the new infrastructure provision also contribute to the costs that were made for

it. In return they receive ‘building rights’, as the idea is that with better infrastructure, the area can be built up more, and be worth more.

Building rights
To prevent landowners from privitising profits and collecitivising losses, plots were grouped in ‘redistribution areas’, for which a weighted floor area was calculated. The weighting is done on economic value. A value of modal use was calculated by taking the floor area that is anticipated to be built, split by (the total redistribution area minus the public infrastructure). Example, you and your neighbours have 200m2, and infrastructure is 100m2. The plan supposes a new floor area after development of 400m2. The modal value of this redistribution area is 400/(200-50) = 2.67m2 floor space modal use/m2 land

From this modal use factor, one would receive at the end of the urbanisation development: (floor area brought in * modal use factor). Thus, one would always get the same fraction of the redistribution area’s as one had before the development – at least, supposing without change in the building rights. Example, you contributed 50m2 to the previous example. You have the right to 50*2.67=133m2 floor space modal use.

Three systems emerge in this law:

1. Landowners are obliged to form a joint development organisation which organised and financed the infrastructure provision, and can engage in voluntary land readjustment by this development organisation. *All rights remain with landowner, there is no public claim on his land.*.
2. Municipalities can overrule the landowners and provide infrastructure and applying compulsory land readjustment – landowners pay the total costs of the infrastructure (relative to their share of land) six months in advance to the municipality. *Building rights remain with the landowner, a claim is made on some of his land.*
3. Municipalities can force expropriation and take direct responsibility for implementation. *Complete transfer of the bundle of rights.*

The results were that the private implementation of public infrastructure and facilities was formally organized: from that moment on development was led by private invest. Due to leaving the initial routes (system nr. 1) toward development in the hands of landowners, they were very powerful when it came to the planning process. This led them to wait for the maximum profit. Speculation “was said to have achieved critical levels” (Munoz-Gielen, 2010). This had an effect on the local practices: “Compulsory land readjustment and expropriation remain a politically sensitive matter, especially at the local level.” (Parejo & Blanc, 1999, quoted by Munoz-Gielen, 2010)”

1976 Land use and Urban Planning Act, national law
The 1976 Land use and Urban Planning act aimed to get rid of the stagnation in the construction of housing. It introduced the new party of urbanizador, a third party developer. An urbanizador is responsible for the infrastructure provision in a development, and for the proportional redistribution of costs and improvements between landowners in a plan. In order to implement the plan, an urbanizador will have to get the voluntary consent of the affected landowners in an area. The urbanizador is not required to own land, and is appointed by the municipality. The area of operations for the urbanizador is limited to land classified in planning acts as developable, not urban or rural.

This urbanizador can get a share of the benefits (in building rights) linked to the contribution he makes (with cash or in building rights) for realizing the infrastructure and facilities. The urbanizador is dependent on cooperation of landowners since their property rights are well defended by law and courts. The results is that urbanizadors that are appointed by municipality who are unable to aqcuire consent of landowners, are at some point in the development process obliged to ask the municipality for expropriation. They have to pay high

costs for this expropriation and it becomes very difficult to realise a project since it has an uncertain outcome of profit. Not a lot of development takes place in the years after this.

1978 Spanish Constitution

The 1978 Spanish Constitution was the newly democratic constitution after the death of Franco in 1975. The political transition had been under way for three years, and the new constitution was accepted with a referendum by 92% of the population voting in favour. The document was drawn up by a seven member panel representing the wide political spectrum of the Spanish Parliament. The constitution repealed the previous 'statutes' (Fueros) or charters, by which the dictator Franco had ruled. It consisted of significant regional autonomy and does not make a claim to be a unitary state. The history of Spain has always been conflictual over central rule. The strength of the Communist Party at the time prompted both the Centrists and the Social Democrats to include significant social and communal rights into the constitution, such as the right to adequate housing, employment, social welfare provision, health protection and pensions.

Of the Spanish Constitution, the article pertaining to spatial planning and value capturing activities is article 47, part 2:

> "Communities shall have a share in the benefits accruing from the town-planning policies of public bodies".

This was interpreted to mean that municipalities automatically held 10% of building rights in developeable areas. The 10% figure was stable until 2007, thereafter between 5% and 15% because of differing regional laws. From here on, *building rights are always considered to include this 10%, in effect, building rights are reduced.*

Also notable is article 33 of the Spanish Constitution on property:

> "No one may be deprived of his property and rights except for justified cause of public utility or social interest after proper indemnification in accordance with the provisions of law."

(http://www.servat.unibe.ch/icl/sp00000_.html , retrieved 13th of august, 2012).

In article 148 of the Spanish Constitution, on the competences of Autonomous Communities, or the regions, which Valencia is, part 1, 3 gives responsibility of some planning tasks to the regions:

> "The Autonomous Communities may assume compentences in the following: [...] 3) regulation of the territory, urbanism, and housing; 4) public works of interest to the Autnomous Community in its own territory".

However, the national government also retains certain rights and holds exclusive competence over matters in article 149 of the Spanish Constitution, such as: the procedural legislation, and the bases of the legal system of public administration and statutory system. Both these are relevant to planning, as the procedure for which public tenders are awarded are regulated by these laws and the common view that planning includes performing public tasks and is essentially public administration. Lastly, the central government is the final source that can determine if regional Autonomous Communities can be granted or retaining authority on any matter, according to article 150 of the Spanish Constitution.

1978 Planning Regulations, national law

The 1978 law set minimal standards for public infrastructure and facilities. Public infrastructure facilities must be incorporated in General Land Use Plans by the municipality. The result was that it created more certainty about the costs of public infrastructure and facilities that had to be paid by landowners. Landowners were still obliged to contribute to infrastructure development from the profit they made of the development plan, or cede an area of 10% of their property in building rights to the municipality.

1992 Ley del Suelo, Planning Act, national law
This national law raised the standards in quality for both public infrastructure and facilities, and added standards for minimal percentages of social housing to be realized within one project. The increased public claim, from 10% to 25%, on developments resulted in increased costs for landowners in the contributions to urbanizacion.

1994 Ley Reguladora de la Actividad Urbanistica, Regional law Valencia
"[The LRAU] specified land readjustment and, if necessary, compulsory land readjustment as the default procedure" (Munoz-Gielen 2010). All developable land (both urban regeneration and new sites) fall under this law. The LRAU generalizes the compulsory land readjustment formula, and adds the possibility of appointing a third party (urbanizador) as implementor. By this law, the region includes guarantees to initiating parties about the handling of proposals. This strengthenes the belief that the dealings will be fair under the law. A Detailed Plan (or physical zoning plan) must be linked to an implementation schedule of the proposed developments. In addition, a Joint Development Program, later called Integrated Action Programme, and a Development Agreement for financing and implementation of public infrastructure and facilities are obligatory for a third party urbanizador.

Land readjustment means:
1. An allocation to every plot, according to the Detailed (land use) Plan of the building possibilities (i.e. reparcelation);
2. The modification of property from old to new acreage, (proportionally to economic value of initial property) and transfer to public domain of land needed for public infrastructure and facilities;
3. The urbanizador can occupy the plot to build infrastructure (a.o.: roads, footpaths, lighting, cables).

Building rights of new property remain with owner, transferred property for infrastructure includes complete transfer of bundle of rights. Building rights for the land needed for public infrastructure and facilities are considered to never have belonged to the landowner according to the 1978 constitution. In addition, the new building plot owners are charged (proportionally to building rights to the new plots) for infrastructure costs, and may pay in instalments, or they may pay in building rights. Building rights for volume can be bought or sold and transferred from one plot to another with the help of a solicitor. The rights to value increase as part of property rights are partially taken from the owner in this way. If the landowner does not cooperate, a part of the building rights for the property to pay the infrastructure contribution is transferred to the urbanizador. The remaining building plot goes free of charge to the landowner. The 'bundle of property rights' that an owner has over a plot is thus limited by a claim of society on his land. Economic development of a third party private developer can be part of that claim of society.

Old rights and charges on the old plots are transferred to the new plots if compatible with the plan. A new plot transferred to the urbanizing agent as payment in kind, the land has to be transferred free of old rights and charges. Old rights and charges that have to disappear have to be compensated by the former landowner. Owners of serviced plots can submit building applications and the municipality issues as-of-right building permits. *Buiding rights alone do not mean you can build. Usually they require a permit fee as well.*

Building rights refer to the economic value of the new buildings, not the land area.
The infrastructure provision costs (urbanization charges) consist of:
1. the costs for preparing plans, technical projects, damage compensatoin, civil works for street, pathways, electricity, public light, planted trees on paths and gardens, water and sewage, gas, telephone, cables, etc;
2. a contribution to the costs of off-site public infrastructure that serves the scheme in question, but has been previously realized in other schemes;

3. the profit margin of the urbanizador, usually around 10% of total;
4. and overhead costs, organizational costs made by the urbanizador. Note that this usually means the 10% is pure profit, as all other costs can be grouped under overhead.

Results cited as important achievements for the 1994 Act:

1. A better estimate of risks and costs for a third party developer.
2. An urbanizador together with the municipality can overrule landowners functioning similar to the 1956 system #2, whereb the urbanizador functions as an implementor.
3. Municipalities and landowners became less dependent on oneanother for undertaking development (Munoz-Gielen, 2010, pg 150).

> "The Act introduced some important modifications in the land readjustment regulation that divested landowners from the possibility of using the option to wait. The modifications gave Valencian municipalities relatively large powers for infrastructure provision, compared with England, The Netherlands, [and other nations]." and
> "Municipalities are no longer dependent on the landowners to provide the infrastructure, and the consequence has been that municipalities have increased their requirements. Another consequence has been a significant increase of private investment and an acceleration of urban development" (Munoz-Gielen, 2010).

1998 Ley sobre Régimen de suelo y Valoraciones, Land use planning and Appraisal Law, national planning law

The 1998 national planning law sets up a liberalization of land use by the Spanish national government (Ponce, 2004). Instead of a restrictive policy, allowing only development on land classified as developeable, now all land can be developed if it is not on land classified as restricted or *rustica,* rural land. This has significant effects on the possibilities of the 1994 law, which was until this change in law still restricted; municipalities first had to make a General Land Use Plan in which land would be classified as developable before a development plan could be enacted. With the National 1998 NPL, the Valencia 1994 law applies to every place where development is not restricted, in effect all non-developeable land became developeable land.

In the early 2000s a criticism grows of the 1994 law on procurement procedure and legality of expropriation for another private party's economic benefit. This debate was mainly started by expats and pensionado's from elsewhere because their lands were expropriated to provide the public infrastructure. The planning laws and guarantees for private property in Spain come under scrutiny, first from foreign media, later also from the big spanish media outlets (El País, El Mundo).

2005 Fourtou report EU Parliament

In 2005, EU parliamentarian Janelly Fourtou as member of the European Committee on Petitions visits the region of the Autonomous Community Valencia to investigate the LRAU. (http://news-spain.euroresidentes.com/2005/06/european-parliament-delegation-visit.html, retrieved 14th of august, 2012). Concerns of the European Committee on Petitions are the rights of property owners. "In the course of its meetings with President Camps, with Minister Rafael Blasco, and with a number of Mayors from the region who are responsible for such developments, the delegation welcomed the fact that a new law had been prepared by the Valencian government with the objective of reforming the urbanisation process in a way which will better reflect the rights of property owners." (news-spain.euroresidentes.com)

The EU parliament votes on the resolution that springs forth from the Fourtou report (A6-0382/2005) 550-45 with 25 abstentions and calls on Spain to "remedy its law on public

procurement to: include a clear and unambiguous definition of “public interest” that prevents it being used as an justification for expropriation for the promotion of private interests. This is a precondition for any expropriation under European human and fundamental rights legislation.”, (Fourtou, 2005).

In 2005 European Commission sends first formal letter of notice and reasoned opinion (IP/05/1598, 14 December 2005) to Spain to comply with procurement procedures for 1994 law.

2005 Ley Urbanistica Valenciana, Regional law Valencia
The 2005 LUV revises aspects of 1994 LRAU, to include procedures for public tenders for selecting the urbanizador, and adds a public tender for the actual development for the public works – the construction of the public infrastructure and facilities. The practical work and timeschedule to be carried out in a development plan is called an Integrated Action Programme. This change is made for the reason to relieve obligations on owners in semi-consolidated areas (suburbs), but does not fundamentally change the 1994 law. The LUV did not replace the LRAU for property that formerly dealt with the LRAU as law. The LUV would only become the standard for the all new cases in property.

2006 European Commission sends 2nd formal letter of notice and reasoned opinion (IP/06/443, 4 April 2006 and IP/06/1370, 12 October 2006) to Spain to comply with procurement procedures for the 2005 law, the LUV:

> “The European Commission has taken action against Spain to correct breaches of EU public procurement law in three cases. Firstly, the Commission has sent Spain a further request to submit its observations on the new law on land-and-town planning of the Valencia Community (known as "LUV"). Secondly, the Commission has asked Spain to submit its observations on the procurement of computer equipment using technical specifications that could be discriminatory. In both cases, the Commission's request takes the form of a letter of formal notice, the first stage of infringement procedures under Article 226 of the EC Treaty. The Spanish authorities have two months to respond to these two requests. Finally, the Commission has sent Spain a formal request regarding the award of a contract for school bus services in the Valencia Community. This request takes the form of a reasoned opinion, the second stage of the infringement procedures under Article 226 of the EC Treaty. If there is no satisfactory reply within two months, the Commission may refer the case to the European Court of Justice.” (Press release Europa.eu 04/04/2006)

2007 Land Act, national law
The 2007 national land law contains an obligation for urbanization plans to include a 20% minimum of social housing. Regions may have higher percentages if they wish, but not lower. The liberalization of land use from 1998 remains in effect, and land can continue to be developed if it is not on land classified as restricted.

2008 EC vs Kingdom of Spain at ECJ
The European Committee starts a procedure against the Kingdom of Spain at the EU Court of Justice on grounds of the European rules for public procurement procedure not being adhered to (C-306/08 – Commission v Spain):

> Parties
> *Applicant:* Commission of the European Communities (represented by: A. Alcover San Pedro and D. Kukovec, acting as Agents)
> *Defendant:* Kingdom of Spain

Form of order sought

Declare that, in awarding the Integrated Action Programmes in accordance with Law 6/1994 of 15 November, regulating development activities in the Valencian Community, the Kingdom of Spain has failed to fulfil its obligations under Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts, and particularly Articles 1, 6(6), 11, 12 and Title II of Capital IV thereof (Articles 24 to 29),

and that, in awarding the Integrated Action Programmes in accordance with Law 16/2005, Valencian development law, implemented by Decree 67/2006 of the Region of Valencia of 12 May, establishing the Regulation of Town Planning and Management, the Kingdom of Spain has failed to fulfil its obligations under Articles 2, 6, 24, 30, 31(4)(a), 48(2) and 53 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;

order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission states that the awarding of the Integrated Action Programmes (IAP), an urban development measure established by Law 6/1994 of 15 November, Valencian Law on development activities ('LRAU') and its successor, Law 16/205, Valencian development law ('LUV') relates to public works contracts which should be awarded in accordance with Directive 93/37/EC and Directive 2004/18/EC. In other words, the Commission affirms that the IAP are public works contracts awarded by local bodies which include the carrying out of public infrastructure works by urban developers chosen by the local authorities.

The Commission considers that the LUV infringes the Community public procurement directives in various aspects, in relation, inter alia, to the privileged position of the first bidder, the experience of bidders in similar contracts, the provision of alternatives to the proposal of the first bidder 'in open envelope', the regulation of variants, the criteria for awarding IAP contracts, the possibility of amending the contract after it has been awarded (for example, the possibility of increasing development fees) and the regulation of cases of incomplete execution of the contract by the bidder to which the contract has been awarded. Some of those infringements concern both the LRAU and the LUV, and others just the LUV.

(EU Court of Justice, Case C-306/08, 9 july 2008)

2009 Auken report EU parliament

In 2009, EU parliamentarian Margaret Auken visits the region of Valencia to again investigate “the impact of extensive urbanisation on the individual rights of European citizens, on the environment and on the application of EU law” (Auken, 2009) under the LUV.

The EU parliament votes on the Auken report (A6-0082/2009) 349-110 with 114 abstentions and calls on Spain to “review and revise all legislation affecting the rights of individual property owners as a result of massive urbanisation, in order to bring an end to the abuse of rights and obligations enshrined in the EC treaty, in the Charter of Fundamental Rights, in the ECHR and in the relevant EU directives, as well as in other conventions to which the EU is a party; calls on the Spanish authorities to abolish all legal forms that encourage speculation, such as urbanisation agents; [...]”, (Auken, 2009).

2010 The Advocate General advises dismissal of EC action, and holds a narrow view of what constitutes public procurement: in his view, the procedure for and type of work that an

Integrated Action Program undertakes is not a public work. Yet according to both the LRAU and the LUV, an IAP is responsible for the development program, including the work, financing and timing of a plan.

2011 EC vs Kingdom of Spain at ECJ action dismissed
Spain was found in accordance with public procurement, follows the advise of the Advocate General, and the case before the European Court of Justice was dismissed.

2012 proposed new regional land law for Valencia
The motivation for a new regional land law in Valencia cites “the need to renew the legislation on land use, planning and landscape responds to a widely shared social aspiration. Status legislation has led to complexity and a degree of over-development [...]” (Anteproyecto LOTUP, Ley de Ordenación del Territorio, Urbanismo y Paisaje, 2012 forthcoming, translation by Google)

The informal practices of planning in Spain

The formal rules that govern land use and the process of planning are only one dimension of reality. Although they delimit what is legally possible and necessary, there are a lot of formal and informal rules processes that govern how a day to day planning process actually works in practice, that never make it to the status of official planning law. These informal rules can make up the circumstances under which planning takes place, other times these practices are not the idealised versions but the practical realities. In some cases, the formal rules are even ignored and a technically illegal path is taken, sometimes even with the consent of the most players in the planning process.

From the days of the dictatorship
In 1956 the dictatorship of Franco is in power, and the ideology of the Spanish government is falangist. This is an ideology that is not distinctly pro-freemarket, but for arranging services is not entirely pro-government either. Land development is controlled by the government but landowners are considered to have a dutywil toward society. This leads to the solution to put developments of urban areas in the hands of landowners. This practice, despite being born in a dictatorship, is relatively progressive compared to the Netherlands, where development is state-led and state controlled. However, the dictatorship and tight control of government means that the elites in power, powerful landowners, can make or break developments. If they do not stand to gain a profit, development does in practice not proceed. The municipalities do have formal right to overrule landowners, but expropriation costs a lot, and as a rule municipalities do not have a big budget. This causes the landowners to exhibit behaviour of speculations: as they are the most powerful agents in the process, they can dictate the process and wait until they make a profit.

It is commonly known in Spain that there still is a significant level of corruption (Transparency International, Corruption risks in Europe, 2012), (This research, Interview #1, interview #3). There are also many examples of politicians that join in real estate speculation schemes in national and regional newspapers, a few are listed here: El Pais, 29/09/05, 26/10/05, 14/10/09, El Mundo, 27/12/08. The newspaper articles argue that often municipal government will only zone land for development the land of friendly landowners that actually want to make a development.

Corruption and nepotism is prevalent in Spanish government under Franco. In the dictatorship with repressive regulation on free press, and a judicial system that is controlled by the governing party, very few protests are possible and those that are possible rarely lead to changes. The practices by government officials are not challenged, or if they are, they are dismissed by a friendly judge. This has the effect that the corruption and nepotism is not reduced, but instead protected. There are laws in place, but effectively, there is no rule of law which will treat citizens equally.

Change toward democracy
The period of 1975-1978, shortly after the death of the dictator Franco is a period of great progressive thought and desire for democratic laws. The new constitution is drafted by members of all important political parties to provide a broad support for the new democracy. It includes a significant amount of social rights such as the right to housing. The constitution is accepted in a referendum with 91% of the vote, with a 77% turnout of eligible voters. The planning laws are also adjusted to reflect the change to a democratic process, and the French urbanisme concerté is cited by Munoz-Gielen as an influence for the 1994 LRAU. The Spanish laws and the conception of the urbanisation agent is aimed at generating the most new development in terms of square meters to combat the housing shortage.

In 1992 the social-democratic party, PSOE, is in the national government with a small plurality, 39%, and has to negotiate with regional identity parties in order to remain the governing party. This negotiations for a coalition government create a political crisis which in turn creates a policy window to ideologically change property rights. The negotiation with regional parties leads to a devolution/decentralisation of responsibilities (related to what) from the national government to the regions. With regard to urbanism, this means a shift from the national government – where property rights were anchored in the constitution – to regional governments – where the property rights are less explicitly protected in the regional statutes of autonomy. This change is notable in the "right to property", where the national constitution mentions "33. (3) No one may be deprived of his property and rights except for justified cause of public utility or social interest after proper indemnification in accordance with the provisions of law.". This has no corresponding item to protect property rights in the regional statutes of autonomy . This did not matter so much as long as the national government was also the body making planning policy and for a large part determining which areas would be marked as developable. The rights of property owners to not participate in development were traditionally defended in regions by the Partido Popular, the conservative party.

Circumstances of the LRAU creation

In Spanish politics, laws are often changed by the new party in power after the government changes. For example on the national level, after a period of progressive laws on abortion made under the PSOE (in power: 2004-2011), the rules are tightening for women's choice for abortion with the PP back in charge. In the region of Valencia the conservative Partido Popular won the local and regional elections in 1995. Since the 1994 LRAU was made under the social democratic PSOE the expectations were that the PP would not ratify the 1994 law. Instead, the PP did keep the law. It is commonly known (interview #1, #2, #3), that PP is backed by landowners in rural areas. Since landowners see potential profit in developing their land, the PP did not stand firm on defending the rights of landowners to be the absolute owner. Instead the PP went along with the other, PSOE conception of property rights, that property can be claimed by society for a social justification. For the Partido Popular this was a good law because of business interests and potential profit, instead of the social need for more housing. (El Pais :26/10/05: Urbanismo y democracia)

The 1994 law has been made under the conditions of liberalization. Many social democratic parties in europe in the 1990s were looking for market solutions for former government tasks. In Spain this consisted, amongst others, of a privitization of the compulsory land readjustment. No longer would the compulsory land readjustment be done under the auspices of the municipality, but instead under a developing agent. Occasionally this would be construed as a public-private cooperation, with the municipality taking part. As part of a neoliberal state of mind, it was thought that the drive for profit in land development would be a better incentive to create new houses and developments than a state-planned system. The market would provide the best results when coercion would be minimized (Hayek, 1960). It became the aim of both social democratic parties and conservative parties to let the market run its course.

Change to the scope of the Planning Game

The 1997 Constitutional Court ruling on urban planning would invalidate many items of the 1992 national planning law (Marinero & de las Rivas, 2008, ISOCARP congress), (Spanish Constitutional Court ruling 61/1997 of 20 March 1997). The interpretation was that the regions were responsible for urban planning, not the national state. This caused a shock liberalization of land use, as the previous (national) legislation that declared land developable or not was instantly invalidated. A lot of lands could suddenly be developed. In addition, many regional planning laws were declared unconstitutional, with the exception of the Valencian law of 1994. This had the effect of the regions lacking legal systems to organize

the planning proces that they did have before – though unconstitutional. As a way of making quick work of legislation, most regions copied the 1994 Valencian LRAU.

On the 1st of january 2002, the Euro currency became the official currency in the eurozone. For many Spanish companies and citizens, this had the effect of gaining easy access to credit by the banks of the rest of Europe (interview #1). The previous Spanish rules on mortgages were quite strict and well regulated with a relatively high interest (interview #1). Many Spanish companies and citizens used the development rights (Munoz-Gielen, 2010) and the potential value (interview #3, #1), to gain loans from their banks. The lower interest by other banks meant that the influx of money into Spain went at a faster rate (interview #3, #1). The interest dropped overnight from 5% or 6% for Spanish banks to 1% or 1.4% (interview #1), making money easily available for developments. This contributed to the financing of development projects becoming easier.

Spain has known a real estate bubble, where housing prices were inflated more than the real economic basis allowed for. This speculation lasted roughly from 1985 to 2008, with three distinct periods:
1st period: 1985-1991
2nd period: 1992-1996
3rd period: 1996-2008
Roughly over the first period, the real estate prices tripled in six years. The second period was a lull of stable housing prices. The third period of manic house prices saw an annual price change from +5 to +15%, with a peak in 2004. Since 2008 the prices for a new house have dropped with about 18%.
(http://www.guardian.co.uk/money/2008/may/10/buyingpropertyabroad.property?INTCMP=SRCH, retrieved 21st of august, 2012)

Practices on the local level
In the a land-readjustment process under the LRAU and LUV, it is common practice by planning professionals and planning lawyers to advise a landowner to ask for expropriation if a landowner does not want to participate in a development. The reason for this is that the expropriation costs are paid in full of the full economic value of the property before the development takes place. These expropriation costs of built up area are a significant cost that would drive down the profit being made by the development. A land readjustment would only cost the current land use value. If land is classified rustica, or rural land, it is judged by what was produced on the land. If the land did not produce anything (it was a garden), it has no value – by this logic.

If a landowner or homeowner asks for expropriation instead of being part of the land readjustment scheme, it gives a signal to the development agency or the municipality that the landowner does not want to develop, or gain building rights in the development plan. The outcome is usually that the area to readjust will have to exclude this particular property. This is an especially useful tool for landowners who are not farmers (for whom the land is zoned as *rustica*, rural land), but whose land is already built up or semi-built up (zoned as urban or semi-urban). This request will have to be made before the land readjustment process starts up, thus at the beginning of the development process.

The power that mayors have in Spain in a municipality is practically unrivalled, especially in smaller communities (interview #1, #2, #3). “In municipalities smaller than 1000, everybody knows one-another” (interview #2). “In a small community, everybody is a landowner, and the mayor is the representative of the landowners”, “If a mayor, a townhall, decide to make a development, they buy. [...] It was brilliant (hehehe). The municipality has the machine to make the volume, and the PC has the machine to make the money (heh) all the Financial markets were investing here (ahaha)”, (interview #1). “The mayor has all the power, and if he

decides for for a development, all the council does is an up or down vote, and since the councillors are beholden to the mayor, they vote in favour" (interview #3).
This is confirmed in newspapers, in El País: "Municipalities appropriate, through planning agreement, in these processes of transformation up to 50% of the expected gains" (El Pais :29/09/05: Corrupción en la vivienda) . Usually it is the mayor that is pushing for development (El Pais, 25/09/05 : "Carta Privada"). But not only that: often local construction companies are supplied with work by the mayor in exchange for votes (interview #2).

Town councils in the smaller municipalities vote along party lines. The party that won the elections for Mayor (Alcalde) can be relied on to be the party with the majority. There are 8112 municipalities in Spain, with an average population of 5800 people per municipality. If you exclude the 25 biggest cities the average population shrinks to 4200 people per municipality. For comparison, there are 415 dutch municipalities, with an average population of 40600 people per municipality. Without the 25 biggest dutch cities, this is about 28000 people per municipality. This corresponds to roughly 7 times bigger municipalities in number of inhabitants. While this doesn't in particular indicate how rural Spain is, it does give a hint to the number of people which make up the pool for potential administrators. Most councillors for the small municipalities are not professionals in planning, same as in the Netherlands. That means that they are as a rule often not experts about spatial planning.

The conditions of the LRAU
A land readjustment process is always accompanied with a statute of limitations. A statute of limitation sets a time limit of 4 years on when development has to be made. Within those 4 years, the development has to be entirely completed. If the statute of limitations are not adhered to, the urbanising agent does not receive its profit from the development and the municipality will have to take over responsibility for the process. In practice, once a land readjustment process is underway, it is almost always completed within 4 years. This does not mean the plan is completed with the full quality as was proposed. In order to finish in time, it is sometimes necessary for a developer to cut down on the extras. If a process is not taking off, because of lack of finances or otherwise, it is common practice to change the development plan. When the development plan is adjusted, this usually means a token change is made to the plan. For example, a new road will be in the plan, or a road takes a slightly different route. The adjusted plan will receive a new vote in the municipal council, together with the adjusted plan a new statute of limitations will be drafted, and the time period for a development will be extended.

Frequently, the obligatory waterreports and Environmental Impact Assessment are lacking in municipal plans. Although they are obligatory by the letter of the law to accompany a general land use plan or a detailed plan, for both the Coastal Law and the LRAU/LUV, these regulations tend to be missing (El País, 7 august 2012), (Interview #3). Despite the increasing shortage of water in Spain, which has led to plans to reroute water from the Ebro before, in 2004, municipalities continued to seek heavy water use developments, such as golf courses and luxury villas. (http://www.ebre.net/article35.html, 18 march 2006)

The law is also applied selectively, and equal cases do not receive equal treatment under the law. Such is the case even with the proposed new Coastal Law, where no less than 10.000 homes are exempt from the supposedly 'comprehensive' environmental reforms. "These exceptions are made without technical report or justification" (El País, 7 august 2012). Added to that, groups that resist find themselves at the receiving end of laws that would not be applied so meticulous to groups that benefit the mayor and council. (El Mundo, 27 december 2008), (El Pais, 12 july 2012: En defensa de nuestra costa).

Once a building process has started, Spanish courts will not intervene in in a planning process. This happens because the court to complain about a planning intervention is an administrative court, and has no authority to stop processes as does a criminal court. Should

you have a complaint or wish to bring charges, they have to be brought before or else risk automatically being denied. (interview #3). There is a special provision that protects mayors, regional deputies and members of parliament in madrid, that is the status of *aforado*. Aforado is a certain kind of immunity that provides protection so that one cannot be taken to a regular court, if you want to sue. This immunity exists for members of parliament and officials in public functions for the actions they do and the communications they make. This makes it more difficult to undertake legal action against mayors and councillors that have taken planning decisions of a debatable nature. The aforado status means that the defendent has to be taken to a constitutional court. The charges for a constitutional court are more expensive, and place extra restrictions on the rules of evidence. Approximately 4000 people in Spain are thus protected (Interview #3). While a process takes place, up until a possible conviction has been made, it remains legal to function as a public official, whether you are aforado or not. Pending the investigation, it is common practice to not suspend your working activities (in the case of public officials, mayors, councilmembers or regional deputies) but continue to be an active practitioner (interview #3).

Results

As discourses may exist independent of actors, the assumtion is that there is not any intentionality of one particular actor to shape a discourse. There is a link between certain discursive techniques. I have defined two discourses and grouped the techniques that are deployed to form these discourses according to this link.

By studying the communications of people and organisations, a pragmatic way to deal with the impossibility of observing reality objectively (Fuchs, Against Essentialism, 2001) is formed. By using the constellation of both formal and informal rules as a starting point it becomes feasible to start making sense of how things work. These rules and circumstances can be interpreted differently, and the events can be given a different meaning, based on a different viewpoint of society or reality. The act of constructing meaning is a form of power because it shapes reality, that is to say, the discourse. Everyone is practicing power and power is performed from different viewpoints. Power produces in turn actions and communcations. (Flyvbjerg, 1998) (Foucault, 1998)

These actions and communications can be called discursive means, tactics, methods or techniques; they constitute a technique that uses language to understand and portray reality. These discursive techniques are used and produced by people, sometimes consciously, sometimes unconsciously (Bourdieu, 1988, cited by Duineveld, 2010). Together they form ways to construct the formal rules, the informal practices and the circumstances. These ways can be grouped in “Pro” and “Contra” the law, as it will become clear that there is a relation and an interaction amongst the techniques that allow for this grouping in the next chapter, Analysis. The terms are chosen to remain as neutral as possible. These discourses also give meaning to eachother, as discursive techniques begin to produce meaning if they are contrasted with another in a dialectic fashion (Van Assche, Beunen & Duineveld, 2013)

The “Pro” techniques relate to the law and the practice in Spain in a positive way, and seek to support and to legitimize the law, while at the same time weakening the opponents. The “Contra” techniques relate to the law and the practice in Spain in a negative way. The techniques aim to fight, reduce and weaken the law. Both these examples can be understood as ways to acquire power and influence, keep power and influence, and to use it to win the game of politicized planning. The Pro and Contra labels are not a 100% match for one or the other group or interviewee. The techniques constitute only a handful of all possible observed techniques in Spain for this thesis, but are the most prominent.

What is described in this part should not be taken as final or definitive. Rather, these two discourses are an attempt at a description of two different viewpoints that give meaning, and offer two modes of understanding in order to relate to the world, and the actual practices, as found in Valencia. They are open and inclusive to more discursive techniques, and the described techniques themselves may include more practices than those cited. More modes of understanding might exist, but were not found in this study.

Discursive powertechniques “Pro”:

Discursive powertechniques “Pro”:

- The law is misunderstood
- Defining the debate
- The law is innocent
- Straw man: local landowners

- Straw man: international speculation capital
- Creating a positive image
- Villification of opposition
- Misrepresentation of effect of law on speculation

The law is misunderstood

What is meant by this technique, is that another 'side', or person, who is against (part of the) the law, is not fully understanding the law itself. These type of statements are usually made by people who are in favour of the law. It implies that the side that makes the statement knows the truth about how the law should be interpreted, the 'correct' use.

When asked about if expropriation should be considered as an incentive to work with the planning system, the reply of a planning professional wasas following:

> "But the problem is that the policy is by default land readjustment, not expropriation. Apparently it was closed by default to support homeowner or landowner from expropriation. Why? Because, if you ask late [in the process] for expropriation, you are in land readjustment. What happened? Suppose you are a Dutch family that owns a house in Spain, you are talked to about development, you are in the middle of that. The last thing you think you have to do is ask for expropriation of your home. […] Now they have this course by default [of land readjustment] because it was thought to be more protective of the landowner. No-one thinks of this possible solution. […] It was a national law from 2007, is still in effect. It turned the system [...] so in the end it is more logical."
> (interview #1)

> "The counter-intuitive procedure consists of asking for expropriation when you do not agree with the spatial plan of the municipality, or you do not wish to be forced to contribute to the plan. It is not only claimed to be the more logical solution, but also, later in the interview, only understood well by Spanish lawyers. If foreigners come and hire their own lawyers who are not familiar with this route of expropriation that has to be asked in the beginning of the process, it is their own mistake. If they do not understand how the law works – and how the informal rules work –, the law is not to blame for their problems."
> (interview #1)

> "Het is van belang om te onderstrepen dat hoewel deze kritiek op de LRAU mikt (het uitvoeringsinstrument van ruimtelijk beleid), in werkelijkheid is de kritiek gericht tegen het ruimtelijk beleid van de gemeenten (sinds grond wordt aangewezen als bebouwbaar in het Algemeen Bestemmingsplan, reeds geïntroduceerd door de Spaanse wet van 1956) en tegen hun gebrek aan expertise. Deze verwarring tussen het uitvoeringsinstrumentarium (de LRAU) en het ruimtelijk beleid (inclusief de onderliggende ideologisch/politieke keuzes) karakteriseert het huidige publieke debat." Het Valenciaanse model voor locatieontwikkeling
> (Munoz Gielen, 2006)

Here we find a straw man argument: the law is claimed to not be well understood because any criticism is confusing the law with the appropriate responsible policy, the municipalities' land use plans. However, the criticism on the LRAU [and LUV] is appropriate because it is not limited to practical matters of which owners whose land is to be compulsory readjusted. These arguments made are also discursive because it focuses on the power of words and on

the meaning of the other viewpoint. This technique aims at deflecting counterarguments from the other side.

The effectiveness off the discursive technique can be understood because it adds credibility to the Pro discourse while it takes credibility from the Contra discourse. It starts with the premise that there exists a correct interpretation, and that this side knows the correct interpretation and the other side does not. This argument is made under the assumption that there is a correct interpretation.

Defining the debate

What is meant by the technique 'Defining the debate', is that the law on land readjustment is called by a different name. The LRAU from 1994 translates as 'the law on regulation of urban activity'. The LUV, the update-law from 2006, translates as 'the law of Valencian urbanism'. Planning professionals speak euphemistically about the "Valencian Model". In "Lessons from Valencia" (Munoz-Gielen 2007) the term Valencian model falls 12 times to describe the LRAU.

In both cases, this is actually a law on land readjustment. What the law actually does, is providing a process for land readjustment, compulsory land readjustment and the transfer of building rights to the municipality to pay for social housing. The law does ofcourse not regulate all urban activity. In Spanish, 'Actividad Urbanistica' refers to the process of building houses. However, this is a conscious choice of using the container term of urban activity, while the actual policy is land readjustment:

> "The policy [made possible under the LRAU] by default is land readjustment" (interview #1).

> "5.2 capturing value increase through the land readjustment regulation
> Urban regeneration is implemented almost always through the Land readjustment regulation (Reparcelacion), [...].
> 5.2.1 Landowners lead land readjustment: 1956-1994
> [...]
> 5.2.2 The urbanising agent leads the land readjustment: 1994-onwards"
> (Munoz-Gielen 2010).

> "But maybe what was important is not the public contest, but the fact that a private partner, aaa private partner, figure, have the possibility to manage the proces and has the possibility to assume financial responsibility of the process. And to promote and to manage the land readjustment."
> (interview #1).

This technique formulates the debate in terms of urban activity and urbanism. This gives an impression of dealing with bigger interests for the city and society as a whole. In practice the major component of the actual policy is land readjustment. This is discursive because it aims to shape the debate by way of defining under which terms the debate is held. That works, because by defining one of the key terms in a way that is positive for the Pro discourse, the arguments for the Pro discourse are strenghtened. Regulation of urban activity, urbanism or the Valencian model as descriptive terms distract from a neutral ground for a debate that could be held under the term of land readjustment, and it distracts also from other, more negative interpretations.

The law is innocent

The ‘the law is innocent’- technique makes a claim that the law is applied out of the intended context than that it was designed for. The regional law was designed in 1994, under the circumstances of the 1992 national Planning Act (Ley del Suelo). The national planning act provided a strict interpretation of which land was developable, which was repealed later. This led to the interpretation that all land is developable, unless it is specified in a different way.

> “What happened was that the Valencian law in 1994 was thought to be a piece of the mechanism of the national law. It was not possible to understand it isolated from the legal context of the national code that was in force at that very moment. With the adjustment of 1997 the problem was that you cannot understand the Valencian law by itself. It was impossible without its context.” (interview #1)
>
> “But [for] the practitioners it was very confusing. They read the law, and don’t understand what it actually means (haha) because they have no references in the national code. So, it was very unfortunate for the application for instance with the problem with the houses that were built before the development [of the infrastructure] and things like that. There was nothing more than that, no context for the references of the law.”
> (interview #1)
>
> “But it was in the philosophy of the code of 1992. But in 1998 the philosophy was inversed, and there was a national law that said that all the land that was not protected with environmental rules from the European Union, that could be developable.” [...] So the mechanism was applied, far away from their natural frontiers, natural limits, that were established in its origin.”
> (interview #1)
>
> “the Valencian model was absolutely destroyed because it was thought for very different coordinates [circumstances] ”
> (interview #1)

This is discursive because it deflects or redirects criticism on the law itself. The argument is that because the Valencian law is now used outside its intended boundaries, it cannot be held responsible for the actions it makes possible. The law is framed as having ‘natural limits’ beyond which it ought not to be used, which certain people fully understand, and others who have criticism on the law, do not. The intention of the law is via this argument claimed to be known and widely spread, while the controversy shows otherwise. It aims to strenghten the Pro discourse by interpreting the actual practices with regard to urbanisation in such a way that any negative views on the law are not of a correct dimension.The difference between the ‘the law is innocent’ and ‘the law is misunderstood’ – discursive techniques are made in the assignment of the blame to either circumstances or opponents. In the ‘law is innocent’ technique the circumstances are blamed for a wrong use of the law, and in the ‘the law is misunderstood’ technique, the opponents of the law are blamed for a wrongful interpretation of the law.

Straw man: local landowners

In this technique the local landowners are portrayed as the real cause of the problems with property rights. It were the local landowners that became greedy and wanted to develop more and more land. Since landowners call the shots in the small municipalities, they are the ones responsible for making general plans that suit themselves to gain money from development. This is the cause for the criticism of the law.

> "Everybody is a landowner in Valencia, it is a very democractic property of land, because we have very small parcels. Landowners have no money, So who was the developer agent? It was the financial partner who put the money for different structures. And the landowners give him some part of the land or part of the final plot in exchange for the investment in the development in infrastructure and so on. There was the possibility that the landowner could contribute with money. And ehm financial investment. But it was not thought that was their role. It was thought that most of the people would pay with land. And what happened? It functioned until 2002, after 2002, ehm, from day to night, every body has money. If you have land, you only have to go to the bank and say 'I have land, and developments, so give me credit'. And it doesn't matter if you solvency background of if you have savings. It was no problem. You have land, you can have money."
> (interview #1).

> "But what happens in small communities at the coast. In the beginning it was not thought that they would have developments. It was there that developments were copied and they applied a planning tool where it was not deemed that this planning tool was created.
>
> [why did the small municipalities then agree to that?]
>
> That's very easy, they are landowners, and landowners are everywhere here in Valencian Community, it is a very democratic property of land, very well shared amongst the population. So in a small community everybody is a landowner. If you talk about who is the municipality, and the mayor, is the representative of the landowners, clearly. So the farmers, everybody has farming land. What do they want? Development. And the banks give you the money for development. It's perfect."
> (interview #1).

> "Who was the minority who were prejudiced by this establishment, in this situation, foreigners! With houses! Who are not farmers! (hahaha) Who have a small plot in the middle of the country [in areas zoned as rustica, not areas inland], they are a minority of voters, they are a minority of landowners, they have a small area of land, which is built up, and have a neighbour that is a farmer, that has a large plot and that wants to make a development. Actually a conflict of interest."
> (interview #1).

This is discursive because it partially deals with criticism and partially redirects or deflects the criticism on the law. The argument is that a landowner, who holds undeveloped land and acts as a Homo Economicus, wants development, because property that is developed (has infrastructure) is worth more. The development in small communities along the coast affects a) other homeowners already living with built-up property and b) the farmers-landowners that hold the majority in municipalities. Thus, according to this discursive technique, the responsibility for the problems comes from the desire of further profit by farmer-landowners, and the negative effects happen because the farmer-landowners do not respect the property rights of homeowners in a municipal plan. As an argument, it works because it implicitly supposes that the problems with property rights have nothing to do with the law, but the problems with property rights are there because landowners that want to develop do not respect property rights. It works because it strenghtens the idea that the law has nothing to do with the actual policy as it is executed, and thus defends it the Pro discourse.

Straw man: international speculation capital

This technique supposes that international speculation capital came to Spain to make profit out of the Spanish situation. The law in Valencia for development made it possible for third party investors to make a lot of money. This would not have been a problem if Spain had not been hooked up to the international capital market via the Eurozone constrution. The international capital market made it possible, in conjuncture with the (until then) known security of Spanish mortgages, to very easily loan money. In an alternative variant, international "occult forces" were responsible for the speculation.

> "Possibility for the financial and banking contracts is the clue. "
> (interview #1)

> "Interest rates before going into the Euro were very high, like now (hah). At this day [the height of the boom] it was 1%, 1.4%, against the Bundesbank, and with the Euro, it disappeared. Overnight, suddenly you have easy money."
> (interview #1)

> "Lisa: the interest rates were so low, that people could not afford not to borrow money-
> Chuck: so they borrowed, borrowed, borrowed, spent, spent, spent-
> Lisa: they bought 2nd houses, 3rd houses, fancy cars-
> Chuck: all on mortgages"
> (interview #3)

> "They were developing everything. At the same time, real estate was a money making machine, and all the credit was flowing into Spain, all the banks were offering credit. And everything at the same time. A perfect storm. "
> (interview #1)

> "C: It always became of some "International black plot" by the socialists, the communists, the forces of darkness out there
> L: "interesses oculto"
> C: it is interesting when you go back and read the stuff from the civil war and how they use the same phrases. The same expressions, depending on which side, it was either the Church, the Falange on one side, or the Communist or International socialist movement, they always find some occult indefineable mass who is arrayed againt them, same expressions. When Edward McMillan Scott was here, back in the eighties, looking into scams with respect to property, he was one of the first MEPs, he's still there, they came up with all sorts of stuff against him, getting involved in illegal money exchanges, all of it was complete fiction!"
> (interview #3)

> "But it doesn't explain the final course, the reason of the boom. The reason of the boom is an economic reason.
> [You can say the reason of the system is bust to boom, bust to boom]
> You have a very cheap loans for building, for particular for houses. During the first decade of of the century, are no kind of investment. Why? Well, I think that the securitisation of the mortgages, mortgages in Spain are very prestigious, or were very prestigious in the financial markets, rather than the nature of mortgages of the states. The legislation of mortgages, or more the legislation of the securitisation of mortgages is very strict in Spain. Very secure assets. "

(interview #1)

> It is irrelevant if there was an actual increase in international capital coming to Spain, as a discursive technique is not necessarily based on factual correctness of an objective reality, but on representation and interpretation of events.

This is discursive because it deflects the criticism on the law in a straw man sophism. There were forces beyond the control of the municipalities and the region that could not be helped. It were these outside forces that had a negative impact on the circumstances of urbanism, and the law itself is not to blame for the circumstances. In the argument, blaming the law must be considered unfair since the law had nothing to do with these forces beyond control. It works because the law is not to blame for the tsunami of speculation that happened, but instead international speculation capital and occult forces that want to destroy Spain went wild. This works for the Pro discourse, because it absolves the law for the negative effects that might have happened.

Creating a positive image

Creating a postive image entails a set of PR activities that support a beneficial view of the law. At the time of the Members of European Parliament visit in the Region Valencia in may/june 2005, the region actively sought to portray the good sides of the law and they showed willingness to comply with EU regulations. As a token action, there was the proposal of the 2006 LUV incorporating some of the criticism. The region said that they would have been willing to listen, if there had been any disagreement from citizens. On the mission, it became clear to the Members of European Parliament, just from visiting the Ombudsman, that there were 15.000 complaints against this law that had not been handled by the region or the municipality. The eventual report of the factfinding mission in Valencia was shocking and the Spanish governments at the regional level were seriously admonished to comply with EU principles, as had been ratified by national governments. This was the Fourtou report (A6-0382/2005), which was voted on in December 2005. As soon as that became clear to the regional government in Valencia, the PR activities focused more on damage control.

> “Chuck: In Alicante, the reporter who was following the case, following the [MEP] visit, her boss got a phonecall, from Valencia, from mr. Blasco, [regional deputy for urbanism] [...], called the director of El Mundo Alicante and said “off the story [on the MEP visit], no reporting, none, stop it, get your reporters out of there, you’re not to report the story. A direct order from the Valencian government. They wanted nothing in the press.
> Lisa: nonono, there was a press conference in Alicante which El Mundo and El Pais attended
> Chuck: but the people in Valencia said “no coverage”. They had a film crew that they pulled out of the story. There is not to be any press coverage of this at all. El Mundo Alicante covered the story.
> (interview #3)

This technique makes it clear that the Pro discourse is aware of the power of words and of communications about the law. It is thus a consciously used discursive action. As a discursive technique, it aims to strengthen the legitimacy of the law in the eyes of powerful

actors, the MEPs, and once that doesn't work, the bad press that comes from it will have to be reduced. To do that, journalists are instructed not to report on it, so that the rest of the citizens will not take notice of what is happening. This functions well for the Pro discourse because when they portay the law and the region as willing to be adjusted, it shows how reasonable the Pro side is.

Villification of opposition

The technique of the villification of the opposition can be described as an active campaign to discredit the opposition and the critics of the law. By painting the critics of the law as people that are selectively fighting and selectively making use of the law (and also by having illegally build their own house and pool) this technique can be considered as the most direct ad hominem attack. The vice-president of the most influential citizens group who was speaking out against the law, was slandered, just at the time the Members of European Parliament visited in May and June 2005.

> "The next day, when we got to Valencia, there were two of the local papers, which had a half page picture of our pool, and our house. Saying our pool was illegal, our house was illegal, This is the house of Charles Svoboda who brought all these people here to investigate [the MEP fact finding mission] and he's not innocent because he's violated all these building things, which is all bullshit because we have the documents to back it up. In case you missed the connection, there was at the bottom was a little thing like "Mr. Svoboda was organising the visit from the European Parliament, and how can he do this to us when he commits all these crimes himself. So two or three papers with a picture of our pool etc.
> Lisa: and how do we know the guy crawled over the fence, we could tell from the palm tree we used to have, we could tell the time of day from the shade which it threw
> Chuck: we know exactly within 15 minutes from the time we had left.
> Lisa: and this is what they do, they discredit anybody that wants to smear the image of Valencia
> Chuck: not smear, if you tell the truth is the problem."
> (interview #3)

El presidente de Abusos Urbanísticos No, expedientado por ampliar su chalé sin licencia

El inspector de obra dice que Svoboda tiene registrada la vivienda como "casa de labor en ruina"

Charles Svoboda, presidente de la asociación Abusos Urbanísticos No, ha incurrido al menos en cuatro infracciones urbanísticas desde que adquirió una parcela en Benissa en 1982. Así lo indica el informe del inspector municipal que detalla que el Ayuntamiento del municipio ha abierto un expediente de infracción urbanística por estos hechos.

L. NADAL ■ VALENCIA

El Ayuntamiento de Benissa ha abierto un expediente de infracción urbanística a Charles Svoboda, presidente de Abusos Urbanísticos No, tras verificar que realizó una ampliación en su vivienda de la que no consta que haya solicitado licencia alguna.

El informe del servicio de inspección urbanística en la parcela situada en la partida Fanadix, perteneciente al representante de esta asociación, relata que Svoboda ha realizado cuatro actuaciones urbanísticas que no se ajustan a ley. De todas ellas, sólo la última puede ser objeto de expediente, dado que las anteriores han prescrito.

Última reforma

El Consistorio que dirige Joan Bautista Roselló ha incoado estas diligencias por una ampliación de 4,50 metros cuadrados en la vivienda, acometida en los últimos años. El técnico municipal detalla, además, que el representante de los afectados por abusos urbanísticos "no ha declarado su propiedad, que aparece en el Registro de la Propiedad como casa de labor en ruina".

La piscina del chalé del presidente de Abusos Urbanísticos No, que tiene licencia provisional desde 1999. /EP

Svoboda adquirió en 1982 una finca agrícola en Suelo Urbanizable No Programado de Benissa. El informe al que ha tenido acceso LAS PROVINCIAS indica que la propiedad que adquirió Svoboda "tenía una superficie de 4.054 metros cuadrados y una vivienda rural en estado ruinoso".

Según el documento, Svoboda solicitó licencia para rehabilitación, reforma y ampliación de la vivienda ya existente, licencia que se tramitó. "Sin embargo, falseó la realidad ya que, al margen de la licencia concedida, procedió a la demolición total de la antigua vivienda y la construcción de un nuevo bloque de vivienda de dos plantas, con una superficie de 163,56 metros cuadrados por planta, que era ilegal en aquel momento".

El inspector detalla que en 1991 Svoboda solicitó licencia para la construcción de un garaje de 30 metros. "Al igual que la anterior no podía obtener licencia". En 1999 solicitó otro permiso para la construcción de una piscina y obtiene una licencia provisional con la condición de que cumpla con una serie de compromisos "que no ha acatado".

El informe del inspector de obra detalla que **Svoboda "ha incurrido desde 1982 en cuatro actuaciones ilegales"**

La UE dice que ve "problemas" en la ley Urbanística Valenciana

E. P. ■ BRUSELAS

La Comisión Europea ve "problemas" en los aspectos de contratación pública de la nueva ley Urbanística Valenciana (LUV) que prepara la Generalitat para sustituir a la actual ley reguladora de la Actividad Urbanística (LRAU).

Por ello ha pedido a España nuevas aclaraciones sobre el anteproyecto antes de decidir si sigue adelante con el procedimiento de infracción abierto el pasado mes de marzo, según explicó ayer una alta funcionaria del Ejecutivo comunitario.

Bruselas abrió el pasado 21 de marzo expediente contra la LRAU por no respetar la legislación europea en materia de contratación pública, especialmente en lo que se refiere a la obligación de transparencia y publicidad y dio dos meses a España para presentar alegaciones.

Las autoridades españolas y valencianas respondieron con una carta el 3 de junio e incluyeron una copia del anteproyecto de ley.

"Nuestros servicios están examinando esta respuesta y el proyecto de ley, y hasta ahora hay algunos aspectos en los que tienen algunos problemas. Aunque las autoridades valencianas han declarado su mayor voluntad de enmendar estos aspectos", señaló.

"Estas enmiendas no están todavía reflejadas en el texto y hay otros que pueden conducir a diferentes interpretaciones", explicó una responsable del Mercado Interior de la Comisión en una comparencencia.

A real story; Las Provincias newspaper of june 2005 featured the slander including the illegally taken picture from within Mr. Svoboda's garden. See also Levante, 18 june 2005, Costa Blanca Nachrichten, 6 october 2005, Costa Blanca Friday, 7 october 2005, etc.]

"When Edward McMillan Scott was here, back in the eighties, looking into scams with respect to property, he was one of the first MEPs, he's still there, they came up with all sorts of stuff against him, getting involved in illegal money exchanges, all of it was complete fiction!" (interview #3)

"about three years later [2008] there was a mayor giving an interview to a local paper, the costa blanca nachrichten, the question they asked the mayor, first question was 'how are your relations with the Svobodas' he said 'oh we get along, we talk, see each other, we consult eachother.' Which was a complete lie, we hadn't talked for six months at that point. Somewhat later in the interview, three paragraphs later, 'what about illegals houses in Benisa?' 'well there's the Svobodas house'. (pause)" (interview #3)

This technique is discursive because it is driving a narrative, not just once, of what the discussion is actually about. By discrediting the authority of the critics, it claims by association that all of the critics of the law are illegal. The suggestion for an uninformed reader would be that the law is lawfully executed in normal conditions, that the rule of law is being upheld and defended against persons who do are hypocrites. This works as a technique because it calls into question the reliability of the opposition, thus their own side must be considered more justified. It detracts from the power of the Contra discourse and thus strengthens the Pro discourse.

Discursive powertechniques: "Contra"

The following discursive techniques can be grouped together. This linking will further be discussed in the Analysis chapter. The grouping has tentatively been called 'Contra' because although the techniques may differ in form, source or method, they have in common that they form an opposition to the law for urbanism in the region Valencia.

Discursive powertechniques "Contra":

- Frame the issue: 'land grab law'
- Creating a negative image (of LRAU/LUV abroad)
- Reducing the power of authority
- Litigate and contest
- Organize resistance
- Enter [olitics
- Higher Echelons

Frame the issue: 'land grab law'

In the discursive technique 'frame the issue: 'land grab law", the opponents of the law try to frame the debate. By using a word with which people have a negative connotation (grabbing, taking something from someone unlawfully), the way in which the public debate is viewed changes. No longer is the issue at stake (just) a land readjustment law, but the implication is that a land grab law is about to take your property rights unlawfully from you.

> "Land Grab - What's Spanish for 'confiscate'?
> Thousands of homeowners have been affected by Valencia's "land- grab" laws, and the problem is spreading as other regions, including Andalusia, Murcia and Madrid, adopt similar town-planning regulations."
> (Financial Times, 12/13 may 2006: Abusos Urbanisticos en Valencia)

> "They come with a plan, they get their friends to vote it in the town council, they take your land and they charge you for the development"
> (interview #3)

> "It is my land, they've basically stolen it from me"
> (interview #3)

> "Concrete jungle case dismissed"
> Landmark verdict means land-grab victory for expats who fought to save their homes...and won
> UNTIL now, thousands of homeowners faced with being stripped of everything under the Valencian region's controversial land laws have felt like crusaders of a lost cause. Far from being a dark decade in Spain's history, the so-called land-grab is, sadly, alive and well, albeit diluted somewhat by the property market crash.
> […]
> The *Costa Blanca News* spoke to some of the Pedramala 2 residents who fought against the system until, finally, their voices were heard and the land-grabbers forced to eat their words."
> (Costa Blanca News 23 - 29 Dcember 2011)

> "Spanish Land Grab Threatens to Undermine Second-Home Gold Rush

> On April 11, the European Parliament's Committee on Petitions issued a report detailing a laundry list of concerns uncovered during a trip to Valencia, Andalusia and Madrid. They range from the limited public interest of some developments and arbitrary costs for infrastructure to a lack of recourse for property owners and destruction of national parks, according to the report.
> "Town councils have concocted urban development plans less because of their real requirements related to population growth and tourism, and more because of what often appears as their greed and avarice", the committee said. Victims of the land grab law, including Spaniards and foreigners, number in the "tens of thousands," it said."
> (Bloomberg News, 18 april 2007)

These arguments are discursive because they shape the debate. It reinforces the idea that the law is not just, that it is an opportunistic stratagem. Similar words, like opportunistic and arbitrary costs, all together help frame the debate on the law and practices. It is worth noting that the media are very influential, because they repeat words endlessly, and once a side manages to frame the debate in their own terms, they will set the stage up for solving their problem, not the opponents' problem. This framing is used in many instances because the term Land Grab Law pops up in the titles of 7 out of the 10 first results if one googles "LRAU" (without area filter, or language preference).

Creating a negative image

Creating a negative image about the LRAU/LUV is the corollary to the discursive of creating a positive image, amongst the Pro discourse. It consists of shedding light on the negative sides of the law and practice abroad. The practice of spatial planning in Valencia, and the laws that govern them are highlighted in order to put pressure on the government to act according to the rules. It differs from the framing technique because it is not only about using negative words as Land Grab to describe the public debate about the law. Instead, it is broader and includes generating a negative idea in the minds of outsiders of the investment opportunities in Spain:

> "Well part of our game, our strategy, was essentially to protect the people who are here, as long as we could, waiting for the crash to happen. We knew the crash was going to happen, there was no doubt about it. It was a question not of if but when. When it was going to be in 2007 or 2008, 2009, the longer it was held off the worse it would be, now you see what happened, there is no property market here whatsoever."
> (interview #3)

In order to protect people, the abusos group actively lobbied the EU parliament and invited them over, as will be clarified later in a separate discursive technique "power from above". By inviting members of the European Parliament, they put pressure on the regional government to take their concerns seriously, or risk bad press.

> "[The European Parliament] is a hollow threat. We knew that at the beginning, it took them [the spanish governments] about 5 or 6 years to find that out, and in the meantime we got the benefit of the concern and the publicity. And they did change their laws, they didn't got better necessarily, they got rid of the LRAU and they brought in the LUV and a bunch of other laws here, and now they're simplifying it, not in the direction we would like, but at least they are paying some heed to it. And they're saying we need to look at it at a regional level, we can't just look at it town by town. ."
> (interview #3)

> "Part of what we accomplished in the press and in Europe was we helped kill the market. We knew it was going to die at some stage.. while this [the fact finding mission by the European Members of Parliament] was going on, since they were nervous about what might happen, some of the worst things didn't happen. They stopped doing some of the really bad things because they were afraid they might actually get caught and get punished for it. And they stopped. ."
> (interview #3)

This technique is discursive because it is an active application of the power of words and communication. Not only is it clear that this process is consciously reinforced by the Contra discourse, but it also reduces the authority of the Pro discourse. This technique is clearly successful because it has 'won over the crowd'. It can be stated that due to the negative attention, this conflict became interesting enough to report on, and to research (by the European Parliament). This technique has an effect on Spain that is unquantifiable – it can't be calculated how many houses were not sold because of this campaign. But still, it is reasonable to assume that at least some people were put off by reading about the poor property laws in their region of interest. This puts the discourse Pro on the defensive, because they have to make an extra effort to counter the negative press caused by a bad image.

Reducing the power of authority

By speaking out against authority in a public space, and to challenge authority on the correctness of their statements, this technique aims as a war of attrition to reduce the status of the powerful. If the opposing side is very status sensitive because they hold a position of authority, this is a powerful weapon. This discursive technique consists of speak out at public meetings against the dealings of municipal officials.

> "[...], there was a meeting with the mayor and he mentioned something about lies, and you [Lisa] stood up and said, "Mayor, you're talking about lies, and you said this about us: you said we didn't have papers about our property", and the people invited you up to speak, you went up to the front and said "well here is the paper, signed by the town hall, here the license, here is this, here that. And how can you say they don't exist when these are the papers from the town hall, let's talk about that" and he went pssssh Red from top to bottom.
> Lisa They don't like it when you do that
> Chuck That was perfect when she embarrassed him in front of all these people. "
> (interview #3)

> "Lisa "innocente, completemente innocente!" Seven years ago there it was campaign season and there was an open PP meeting, as we might have done in Canada, we went, hear what the guy [the regional deputy] has to say, expecting that we [could] ask some questions. The Mayor [of Benisa] was there, his supporters were there, he said a few words, the mayor said a few words and that was it. No questions, nothing, he was lead out of the room. There were two exits, he went to this one, I went to that one, so we covered the exits. As the mayor saw Chuck over there, he guided him [the regional deputy] to the other direction, he didn't count on my being here. As they approached the exit, I stuck my face out, the mayor had just passed by so I stuck my face out so he thought he should kiss it. And I said something, I used about three words. Something like "what about the land law". And he didn't

> react until about five steps later and he said “Lo a rremos insigida”, in other words “we are going to change it soon”. (haha) and they did change it, about four years later
> Chuck (hehe) he wasn’t too happy about that (haha)”
> (interview #3)

This is a discursive technique because it clarifies that they are aware of the power of public action. By challenging authority, the performative process in the region is not able to dominate the ideas about the land law without question. Thus the performativity of the officials – the landlaw in the region is just business as usual - is not guaranteed to continue. It attempts to disqualify the arguments the other side makes by undermining the authority of the municipal officials and developers, and that helps the Contra discourse.

Litigate and contest

The idea of litigate and contest is to challenge general plans on mistakes, or omissions, and face them in court. Very simply put, if you are adversely affected by a development, you go to court to delay, and potentially even win.

> “There were something like 20 urbanisations planned here, if every case they’ve done something wrong, what we try to do is focus on what they’ve done wrong, animate the people who are most concerned about that, and get them to start legal action. Not that legal action actually stops anything here, but it does complicate their [the official’s] lives.”
> (interview #3)

> “They got into the court, the Valencial superior tribunal. *Contentuoso Administrativo* It doesn’t stop anything from happening, but if you win, maybe sometimes retroactively they can do something about it. And if it takes long enough you can actually stop it. So I looked at it and said ‘well this is crap, they have not got the waterreport’. So I said ‘put in another paragraph they had not received a waterreport [...] and on that they threw the case out.”
> (interview #3)

> “That is just an example of what we do, and we have done, we find a tactical flaw and stop it. And we do in another case here along the coast. It was all approved, but the water report. I’ve now made contact with the people in the waterboard, and they’ve written me a letter saying ‘the town hall never asked or has received this water report, therefore they cannot proceed.’ But that’s what we’re doing here at the tactical level.”
> (interview #3)

This can be classified as a discursive technique because whether or not it is consciously used, it has an effect on the process (see Beunen, Van Assche & Duineveld, 2011) . The aim is not purely the practical stopping of one plan: Repeated challenges can reduce the trust people have in the quality of the plans that are put forth under the law. With less trust in the law, the law will less likely to be seen as a success by its proponents, and it can move them to reconsider the usefulness of the law. Such techniques can increase the influence of the Contra discourse. This technique points out the unreliability of the law, and as a bonus, because it uses delay tactics by challenging in court, it reduces the likelihood of the continuation of the development.

Organize resistance

This technique focuses on an empowerment of citizens. The organisation of an abusos network, the founding of a Federal abusos to lobby at the central state, the organizing of a demonstration, all tap into the idea that with more and better organisation, the argument for Contra is strengthening.

> "The federation exists more on paper than anything else, it was just a way of giving us some access to the national government if we need it. Until we had registered it as a national organisation, everything we wrote to Madrid would bounce back and say "no, deal with this with the region" so this way we have a legal association that allows us to write a letter and complain to the ministry but they almost never answer anything, there is no requirement for a minister or anyone else to answer you. . In Canada there is a rule if you get a letter, it at least has to get an answer within a week, and a substantive answer within a month at the absolute maximum. Here there is no rule at all, you may as well piss into the ocean, it makes no difference whatsoever."
> (interview #3)

> "Chuck It was on the other side of town and didn't really affect us very much. I barely knew the people over there, I only knew one or two foreigners with property over there. Because I knew them, there was someone who actually works in the town hall, and he's the town hall building inspector. He called me up and asked 'can you come over because we're holding a big rally and maybe you can help us'. So I went up there and there must have been 100 Spaniards and maybe 2 foreigners. None of the foreigners would stand up to the mayor, so I got pushed up to the front so I was Nose to Nose with the mayor, trying to protect their property, including that of the town building inspector. And then afterwards, because this was going so well, we organised a big rally in Benisa, we got about 2000 people-
> [out of the 14.000?]
> Chuck Well no that includes- half that population is foreigners who don't care much about what is going on in town. These are all Spaniards, who really got up the mayors nose in a big way. Anyway, that demonstrates what you can do if you really need to do it. Stop that Plan. That just died.
> Lisa it was interesting, cause everybody gathered in the town square in front of the ayuntamiento, and at some point someone among the demonstrators said "but where's mayor?, Donde esta l'alcalde?" and they said "En el Banco!" (hahaha)"
> (interview #3)

This is discursive because the practice of demonstrating had apparently been sidelined. By opening it up as an option again, the debate had changed. This is also discursive because it puts a different tag on the formally local protests, and thus opens up another actor, the national government. It works because it gives a shot at talking to another, perhaps more cooperative, level of government. As an aside, it causes the Contra discourse to be taken more serious, because the problem looks bigger. The law looks more controversial this way.

Enter politics

This discursive technique aims to empower local citizens who are adversely affected by the law. By entering into the formal form politics, the hope is that a solution can be found and the law not be applied with negative effects.

> "Lisa: the politicians, they have good arguments in the town council, for sure, but I mean I talk about people who have the vote. They think 'this is how it is and I can't change anything'. But you try. It is really hard, I mean I was really keen on joining an opposition party, but when push came to shove, not really a whole lot I could do. I mean I found it a useful, interesting experience, to see what they did or didn't do, so from that point of view it was a good experience." (interview #3)

This is discursive because it gives nominal access to the political debate in the municipality, debate, that can be used as a platform for spreading the discourse. It works because it makes it possible to have the problem being taken serious, and worthy of reporting in the news, thus spreading your discourse farther. The Contra discourse is helped by questioning the plans formally, in the municipal council. That reduces the power of this specific law, while it strenghtens the rule of law. The government will have to be held accountable every election.

Higher echelons

In an attempt to lobby and inform members of the EU parliament about the issue, this discursive technique calls on authority and a higher force. The EU parliament is the highest elected body within the European Union and can thus be seen as the highest level of legislation. It also carries the most prestige and status.

> "We knew at the beginning, I'm not a fool, I know what "power" in quotation marks has, it has no power. It's a talk shop. It may as well be the General Assembly of the United Nations, I know because I spent a lot of time there, I know how useless that it. But it is an embarrassment factor."
> (Interview #3)

> "[...] the conclusion that I had come to at the beginning, that the European Parliament is basically a waste of time. Except. As a bully pulpit, as a way of attracting attention. It is basically hot air."
> (Interview #3)

> "We got out of it what we want
> [Which was?]
> which was Basically publicity, attention, a whole lotta other things. But we never expected that they were going to send some troops down here to fix the situation."
> (Interview #3)

> "The point is it is a hollow threat."
> (Interview #3)

This technique is discursive because it makes it possible for setting the scale on which the debate about the law and practices takes place. It is an Ad charta argument: a claim on your european charter of fundamental rights to be respected. Despite the estimated non-effectiveness of the EU parliament to actively intervene in the matter, it remains a success because it has provided the platform for the discourse to spread. The practice works because because it can set the stage for the scale on which the debate about the law and practices takes place. The Contra discourse is not directly affected by this discursive technique, but since the other side was a lot more concerned about possible negative press, it did turn out to be a well functioning technique.

Analysis

In the previous chapter, the formal rules, the informal practices and the discursive techniques that play a role in Valencia, Spain have been laid out. It can easily be understood that all three play a role in the planning process. The formal rules and the informal practices make up the procedures under which planning takes place. Of these two, the formal rules, constitute the way the process is supposed to work. The informal practices are the lubricant that make the formal rules work, the practice on the ground. Together these form the rules of the game. The discursive techniques influence those rules of the planning game. The discursive techniques are as kids arguing over what the rules actually mean, but they do so while they are already in the middle of playing the game.

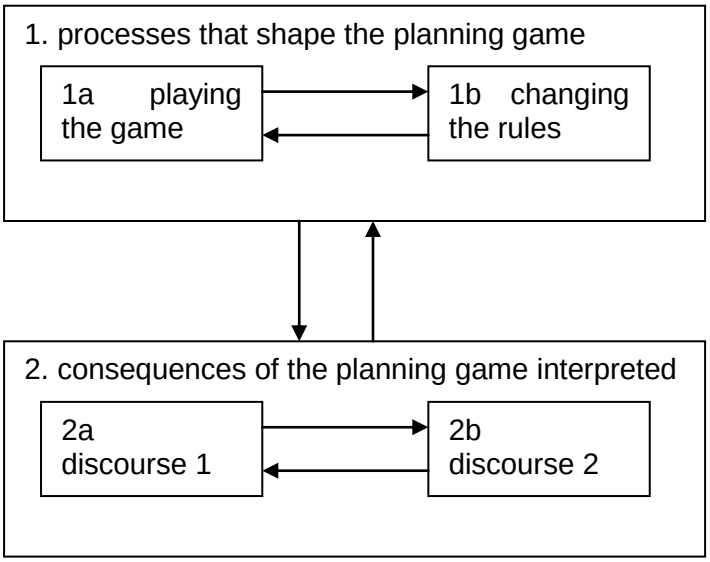


Fig ## The discursive techniques constitute how the planning game is interpreted by the different discourses. They have an influence on the processes and rules of the planning game.

The seven discursive techniques that were tentatively grouped under the “Pro” discourse have been shown to support the legitimacy of the law, lend authority to those supporting or attack the counter-arguments or deflect them. The seven discursive techniques that were grouped under the “Contra” discourse have been shown to dispute the legitimacy of the practices that are held under the law, attack those supporting the practices, or give a constructive view of the counterarguments.

Discourses

We can distinguish two discourses on the land readjustment laws in the spatial planning game in Valencia. The pro-discourse is found amongst the planning professionals, the practices of mayors. In other words, those who have a vested interest in maintaining the status quo (the laws and practices). The contra-discourse is found amongst the citizens’ groups, europarliamentarians and journalists. This sums up the groups that have a different conception of property rights (than those propagated by the LRAU, LUV law) or who do not agree with the practices and distribution of power with regards to property rights. Neither the labeling of the “Pro” discourse nor the labeling of the “Contra” discourse is intended to discredit either one of these groups. Rather, these groups work with what they have, their power, influence and believability is served by respectively keeping up the status quo, or challenging it.

The Pro discourse can be said to consist of both PP and PSOE politicians of respectively the conservative and social-democratic party. The moment of ‘dominance’ of the conception that indivdual property rights are beholden to collective interests, came about in 1994 under the PSOE. When the PP gained power in 1995, they did not roll this law back. From here on, the formal political opposition to such a conception was ended by the biggest opponents (for whatever reason) and any remaining opposition was sidelined in the Spanish political arena.

A discourse constructs an interpretation of the state of power and influence, and with it laws, institutions and practices. This interpretation perpetuates that state of power and influence (Luhmann, 1995, Social Systems). A state of power and influence can in turn reinforce the discourse. Flyvbjerg calls this that power produces rationality (Flyvbjerg, 1998). However, the discourse itself is less interesting than the discursive techniques, as those are the ways to influence the constellation of power, in all its forms.

If we look more closely at these discursive techniques, the influence they have on the process, on the rules of the game, become more apparent.

Discourse: “Pro”

- The law is misunderstood
- Defining the debate
- The law is innocent
- Straw man: local landowners
- Straw man: international speculation capital
- Creating a positive image
- Villification of opposition

Discourse: “Contra”

- Frame the issue: ‘land grab law’
- Creating a negative image
- Reducing the power of authority
- Litigate and contest
- Organise resistance
- Enter politics
- Higher echelons

The following narrative attempts to shed light on how these techniques work and clarify how the practices around the landlaw, in the form of the position in the public debate evolved.

Narrative: influence of discursive powertechniques on the LRAU/LUV

The start of a fight of property rights

Land readjustment had been formally arranged since 1956. But from 1994 onward with the LRAU it can also be a third party, for instance a private developer, who can initiate the process for compulsory land readjustment and expropriation. At some point after the law was accepted, land was readjusted in a development plan, and the first owners disagreed. They undertook an action that is perfectly normal in the planning world, they challenged the development in court. Here we have the first technique already in play; litigate and contest. This is a discursive technique because litigating affects the process: it is a way to influence the meaning of the law by attempting to redefine the distinction between legal and illegal actions. The litigate and contest aim arises because of a need to not contribute or lose land.

At first the process of litigating and contesting remained an isolated instance, there are not many cases because it is an unknown issue. It was not widely known that land readjustment or expropriation could happen to a property owner. It took some time to spread through society. The media are not very likely to report on an isolated case in court. Added to that, not every person that land readjustment happened to, may be able or willing to undertake action.

As the readjustments happened more often, and more people were negatively affected, the perceived need for dealing with the process organised by this law grows bigger, and more urgent. Then in 1998, when the land was liberalised and most of the restriction on where building was allowed were repealed, more and more plans popped up. More people were/became affected. These affected owners band together to form an organisation and start to write letters to the municipality, or regional governments, appealing for help. Now we see a second discursive technique appearing, the organise resistance technique. Apparently the previous technique was not sufficient or effective enough. This does not automatically mean that the organising of resistance is the next step. It is a step that is seen by people with the Contra discourse as a possible avenue of gaining influence and exerting power over the process.

In a regional newspaper a report was made of a new civic organisation that has been founded: “Those affected by the LRAU ask [Joan Ignasi] Pla to reform the urbanisation law” (El País Alicante, 25/08/03, Joan Ignasi Pla was Secretary General of the then ruling party in Valencia, PSOE). When this civic organsiation requested a response from a planning professional, the answer was that the law is not correctly applied (interview #3, discursive technique “the law is misunderstood”. It was not the intention of the land readjustment law to be applied everywhere, it was supposed to be applied only with severe restrictions from the national or regional level. The professional claims the law is innocent and taken out of context. This third discursive technique (“the law is innocent”) opens up a second dimension to the public debate. The technique of the Pro discourse is opened up as a response to both the change in formal rules (the land liberalization law in 1998), the change in informal practices (every municipality starts developing, whether by themselves or via an urbanizador), and as a reaction on another discursive technique, the organisation of resistance.

Now it became apparent that the planning professionals are backing the law. They may not agree with the effect that it has, but they construct again that the law is useful and necessary (for other reasons). Via supporting the land law, they legitimise the practice of land readjustment. In turn the organised protest has to take it one step further, because they are still fighting for influence and their discourse. Recognizing that the local government is

perpetuating the practices, and that the regional government is not willing to undertake action with their complaints (this also constitute informal practices), the civic action group is seeking ways to pressure those in power to change things. Unsatisfied with the continued neglect for their property rights, owners send articles in local newspapers and letters to national newspapers with more firm words. Instead of protesting *for* justice and human rights, the campaign turns to fighting *against* the land readjustment law, what they term the "land grab law". This is the fourth discursive technique, and we can see a clear escalating of the conflict. No longer are both sides talking about the issue in the same vocabulary, but in order to take charge of the debate (whether consciously or unconsciously), the Contra discourse starts framing the debate with their own words.

Escalation of conflict

Foreign newspapers picked up on the events, and published critical articles:

> The Sunday Times on 24/04/05 "Tide of property scandals affect Brits in Spain"
> The Telegraph on 18/09/06 "My pain in Spain ",
> The Observer, 06/05/07 "Bribery scandal blows a hole in Britons' Spanish home dreams"
> And many, many more.

A lot of foreigners, the pensionada's, have been affected. A deliberate action is made to frame the debate, and foreign medianetworks come to shoot dramatic documentaries on these – for the Contra discourse – unlawful practices. Slowly it starts to sink in the minds of those with the Pro discourse that this bad press is hurting the practices which are beneficial for them. In response, they acknowledge that some bad practices have hurt reliability in the Spanish real estate market. This is important, as it signifies that an action by the Contra discourse is having some effect on the Pro discourse. But instead of fixing the problem, the local landowners who are blamed by people in the Pro discouse (interview #1) for initiating too many developments. Because of Spain joining the Eurozone on 01/01/2002 credit was cheap, after all, and no landowner could afford to not lend money. This is an obvious effort to deflect the blame from the law.

Because there is no sign of change to the LRAU yet in 2004, the citizens' groups started looking for other ways to amplify their influence. They find such a way in the European Parliament. They collect signatures in the region and write and email to EU parliamentarians, and reach the European Commission's Petitions Committee. This way of finding new outlets for your message is also significant for a discursive technique. In order to act on a perceived need for the discourse, as many ways as are necessary to 'win the public debate' will be developed to gain influence. The civic action group claims it doesn't matter much what the expected returns will be of reaching out to the EU (interview #3). They were not expecting the EU to enforce compliance with the EU charter of fundamental rights. However, this discursive technique of the Contra discourse had an unintended effect: the Pro discourse would be investing time and efforts in activities that did not yield good results, as we will see next.

The fact that the Contra discourse appealed to the EU parliament and Commission caused the Pro discourse to try another discursive technique, namely to improve the image of the law by showing the Members of European Parliament all the good intentions of the law (Interview #3). By showing their willingness to adapt the object of contention, the law (the formal rules) in response to the criticism, and fearful of the newfound power of the Contra discourse, obviously the hopes were to avoid any stricter punishment. The Pro discourse side tries to reverse this negative image and instead uses other words to describe the law. The discursive idea is that by using words that have less negative connotation, the content of the discussion (the law) will be viewed less negatively. Thus people who hold the Pro discourse argue their point in the debate by using the words Urbanism, or euphemistically

the Valencian Model, and not using the vocabulary of the Contra discourse. The law is now named LUV, a new sticker is printed and pasted on elements that still allow the same practices, the same land readjustment schemes. The informal rules do not really change much for either.

But the actions that the people with a Contra discourse undertook resulted in unexpected consequences. They had not expected the EU parliament to do anything. It is important to note that a discursive technique can not be viewed as having a guaranteed causal effect to advance the interests of a discourse. Sometimes it does have an effect, and sometimes it doesn't. And unexpected events occur frequently. The EU members of parliament came for a fact finding mission, and visited the region. This turn of events was of course used by both sides to spin to their advantage, fueling each other in their zeal to get their point across to the MEPs. Unfortunately, the grapes turned sour for the Pros, as it became apparent that the MEPs were not amused by the fact that the LUV (as a formal rule) was a token effort. The planning professionals and politicians had not significantly altered the practices, and thus the European visitors were highly critical, as shown by their negative reports (Fourtou Report, 2005, Auken Report, 2009). In order to preserve good press, journalists were ordered by the Regional deputy for planning (Interview #3) to not cover the visit, or if they had to, only to report the positive sides. In effect, the people subscribing to the Pro discourse used the means that were available to them.

A discourse is perpetuated by contrast and struggle (Foucault 1998). Because there are opponents to give contrast to the identity of the discourse, the discourse is able to define itself as 'not the opponent'. The Other serves to define what a discourse means and who are included, which communications are included. The financial crisis was appearing on the horizon, and credit for development dried up. The 'foreigners' (mostly British, but of every nationality including Spanish in the civic action group) kept making trouble against the practices, and recently a foreign expedition (the European Members of Parliament visit) had denounced their ways. As an easy straw man to blame was then the 'international speculation capital', a spook that had, with nefarious intentions, sought to destroy the beautiful Costa's and the real estate industry. This technique had everything: the institutions and informal practices were not to blame, the foreigners were, and they had even destroyed the housing market in order to discredit the planning system.

Entrenchment of discourses

In a long term effort, the Contra discourse went for a tactic on the local level to influence local politics for a long time. Thus they entered the political arena by getting people elected into the municipal councils (interview #3), in order to prevent the development plans from being accepted. In Spain is the municipal councils are more often than not ruled by the party of the Mayor (interview #1, #2, #3). It makes all politics come down to a straight up or down vote. The discursive techniques are sometimes not successful. Not all ways to gain power and influence work all the time.

In the meantime, the Pro discourse had increased its support. Scientific research was published (Munoz-Gielen 2006) (Munoz-Gielen, 2007), (Munoz-Gielen 2010), that focused on other elements of the law that were innovative and popular, and that did have good effects. By talking about the positive aspects of the law, the negative sides were obscured. If there was criticism on the law, the opponents had simply misunderstood or misinterpreted the law. This works from the presumption that there is an interpretation that is the correct one, and the Pro discourse continued to reinforce that message (interview #1). This discursive technique brought back credibility to the cause of the Pro discourse.

Yet discursive events that happened after that would take that credibility just as quickly away again. The Contra discourse steered toward the confrontation on the local level. As the other methods had not yielded the intended results (the change of the law), the direct confrontation

was left as one of the few options to influence the public debate. The civic action group members were very meticulous in confronting public officials with lies they had done in public (interview #3). They called the public officials out on their lies, and confronted them in public meetings with the evidence to the contrary. This led to the public officials losing face in public places, and that was bad for their reputation, as well as bad for the Pro discourse, as that came to be associated with lying. Due to the crisis, journalists finally opened up to see what was happening for kind of speculations, and the newspapers were filling more regular with stories of councilmembers or mayors being charged with conflicts of interests (Spanish Property News: 03/10/09: Spanish property market doomed until 2016).

The Pro discourse can thus be seen as influenced by the discursive techniques of the Contra discourse. That in turn prompted a response from people with the Pro discourse, and they came up with another discursive technique. As the zone of conflict had broadened, the Pro discourse had to respond. This time the public debate was fought in the newspapers. By accusing their opponents of having a double standard, of also building illegally, of profiting from speculation too, an attempt was made to discredit the criticism on the powers that be. The result was a vilification of the opposition (Levante, 18/06/05, Costa Blanca Nachrichten, 06/10/05, Costa Blanca Friday, 07/10/05). A discourse thus has an influence on the debate about the land laws.

Reflection

By narrating the events again on the basis of the discursive techniques that were used, it becomes easier to make sense of how and why discourses are influenced. They are influenced by the object of the law, and in turn attempt to influence the object. The same goes for the influence of discourses on practices and informal rules. If the resultant effect is negligible, a discourse is inclined to find other ways to make itself powerful. The two discourses are also influenced by the relations between themselves. If events had happened that made the discourses more conciliatory, we might have seen different discursive techniques.

Since the practices did not change much in the scope of time, it remains doubtful if in this case there might have been different discourses. But external events happen, and they can be unexpected coincidences. The EU visits came unexpected, and the financial crisis did too, for some. The combination of both a privatised land development law, a liberalised land market/unrestricted zoning law, easy access to credit from European banks and persistant forms of corruption and nepotism (Transparency International, 2012) at the local scale produced, what one interviewee said, a “perfect storm” of unfortunate circumstances (interview #1).

The way of looking at discursive techniques is by no means deterministic. There were other municipalities where the expatriate pensionado’s have sizeable numbers, and they organised in such a way that they got into the city council and could co-govern. Other circumstances can deliver other results. However, the argument can be made to view discursive techniques as path dependent. With the law of privatised land development, it became to be expected that the planning situation would develop in a way that led to these speculations and expropriations.

With regard to the situation in Valencia, Spain, the discourses that do exist, once they exist, influence the parties that are engaged in the public debate or struggle. A discourse that is well-supplied with means -discursive techniques- to protect itself, will protect and perpetuate itself. This can be considered a saturated or mature discourse, in the sense that it has influence and means of power. The evolution for both discourses Pro and Contra start out from a small temporary, and direct framing. The discursive techniques are then still straightforward because the discourses are not so entrenched in everything they do. Dewulf et al (2009) call this the interactional identity and relationship framing, whereby parties

interactively construct the meaning of self, other, and relationships in the conflict situation. As the different sides repeat their points of view, and start to make sense of the situation by defining themselves, and also defining the other by way of the conflict, this changes into the framing of their own and the others' discourse. "A deep embedding in [a discourse] represent a path-dependency that makes it difficult to change the image and present alternative routes" (Van Assche, Beunen & Duineveld, 2011), which also holds true for the discourses observed in Valencia.

Conclusion and Discussion

Conclusions of this research

This thesis concludes by reflecting on the research questions and the process of writing the thesis. If we look at the main research question:

> **How does a planning instrument, as the LRAU/LUV, affect planning practices?**

We can see that this was indeed a broad question, and to answer this question fully the subquestions proved useful in answering this step-by-step.

> Which planning practices in Valencia are affected by the LRAU/LUV?

The chapter “Historical context” provides a good oversight of the formal rules of planning and the informal practices that happen in Valencia, both before and after the enactment of the LRAU/LUV. Land readjustment is an integral part of the LRAU and LUV. In an urbanisation process, a landowner must give up part of his land to the municipality for social purposes, he must pay development rights in part of his land to the developer (or pay it off with cash), and give the developer access to his land to construct the developments. Since the value of land and the local taxation with it is determined on the zoning, developers have made money by constructing a token infrastructure provision on readjusted land, while leaving the landowner with the costs of having to pay higher taxes. To study what happened in Valencia, it was necessary to look at how the dominant opinion brought about its dominance, and what happened in response to that. This dominant perpective was challenged by other conceptions of property rights, and a struggle of power and influence came about.

In order to study this game of power, a discourse analysis was needed of the land readjustment laws in Valencia. A discourse analysis looks at a combination of communications and actions, through which power and influence manifest itself. The following subquestions addressed this:

> What discourses come about as a result of a context of institutions in Valencia?
>
> What kind of actions or discursive techniques do discourses recruit for their struggle for influence?

In the chapter “Results”, two discourses have been identified to play an important role in the enactment and performance of the LRAU/LUV in Valencia. These discourses can be established as producing meaning, actions and communications. These discourses were identified as the “Pro” and “Contra” discourse, respectively supporting and legitimizing the LRAU/LUV land readjustment law and weaking its opponents, and fight, reduce and weaken the LRAU/LUV land readjustment law and its proponents. From the results it is apparent that the discourses have mechanism by which they produce meaning, actions and communications. These mechanism have been labeled discursive techniques. For each of the discourses, seven of these discursive techniques have been identified, analysed and elaborated with regard to their mechanism and goal, as well as their effect in Valencia. Each of these discursive techniques influence the processes that shape the planning game, and affect how the planning game is interpreted. These influences and effects of the discursive techniques in turn trigger other reactions, as the ‘rules’ of the planning game change, the discourses will act in response to the changed rules. This happens in a dialectic manner.

The discourses are next studied in order to investigate the dialectics of planning in Valencia.

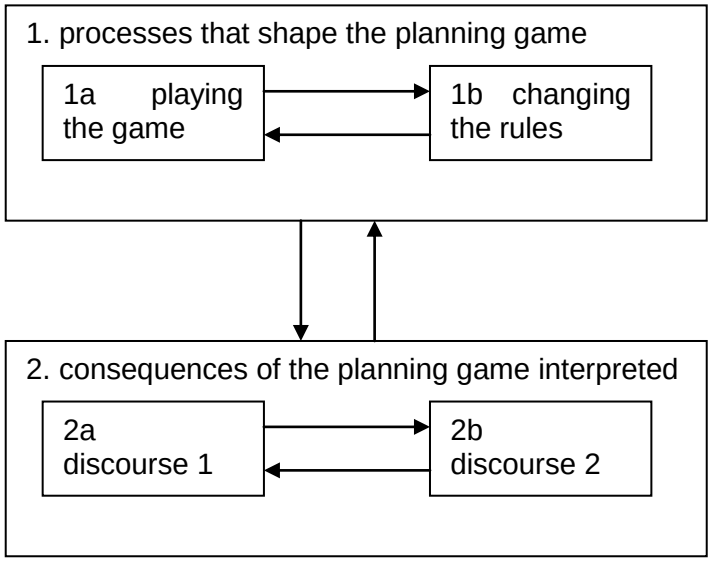
How do the discourses influence eachother?

How do the discourses influence planning practices et vice versa?

How do discourses influence institutions et vice versa?

In the chapter “Analysis” the discourses are shown to perform their interpretation of the planning game by mobilizing arguments and organizing actions as discursive techniques. The discursive techniques are shown to influence the power-knowledge relationships that construct the rules of the planning game. The reconstructed narrative makes it possible to understand the dialectic recurrences of the discursive techniques. The discursive techniques shape and solidify ‘their’ discourse, prompt actions and other discursive techniques from the opposing discourse, and also shape the context for planning in Valencia.

Discursive techniques from the Pro discourse aid the existing codified conception of property rights within the land readjustment laws. Discursive techniques from the Contra discourse detract from the legitimacy of the existing codified conception of property rights within the land readjustment laws. This means that although the institutions such as the land readjustment laws do not change overnight, the interpretations of institutions evolve. In the planning practice in Valencia, these changing interpretations affect the planning processes because planning actions and enforcement under the land readjustment law are not as self-evident as before. The response in discursive actions by the other discourse can also be seen as changes in the planning practice.



This dialectic is particularly interesting for planning practitioners, as they will encounter conflict in planning on a day-to-day basis. Although they may be competent or an expert with their phronesis, a deep understanding of underlying processes as the dialectics of discourses in planning may help them in becoming more proficient in planning. Power is not something that one stakeholder ‘has’ and another does not. Power is produced by discourses, along with what counts as knowledge, and along with the knowledge of what counts as power. A discourse can thus be said to have a power of its own.

The discourses are shaped by a combination of 'their' discursive techniques, in response to the other discourse and in response to changes to the rules of the planning system. As more and more of the discourse is reinforced by discursive communications and actions, the discourse becomes entrenched and the resultant communications, actions and context become locked in. This creates a path dependency for the planning practice in Valencia, it becomes more difficult to undertake other communications and actions.

This path dependency in spatial planning means that changing the way planning is played will be difficult: simply copying a different system of institutions into an existing system is not likely to produce results that are similar to the context from which the institutions were taken. This has profound social implications as the attempts to socially engineer a desirable situation in spatial planning will meet strong resistance by the practices of the status quo and are likely to fail. The democratic legitimacy of copied institutions can be questionable as they lack rootedness in the planning practices.

Coming back to the main research question:

How does a planning instrument, as the LRAU/LUV, affect planning practices?

To sum up the conclusions in this chapter:

The LRAU/LUV land readjustment law and its associated planning practices and conceptions of property rights have met with a marginalized conception of property rights – a view that the planning process is not allowed to do take an owners' land. This led to a conflict over how planning should be perpetrated. Two different discourses emerged in an antagonistic relation to eachother. Both discourses set different goals and had different means at their disposal. The Pro discourse supports and legitimizes the LRAU/LUV land readjustment law and weakens the opponents, and the Contra discourse fights, reduces and weakens the LRAU/LUV land readjustment law and its proponents These two discourses interpreted and (re)constructed the public debate on property rights. By recruiting discursive arguments and performing discursive actions, they provided a reconstructing and reinforcing of their own discourse and prompted discursive actions and communications from the other discourse. This dialectic process in turn changed the practice of planning, and it changed what was considered the public debate on property rights. The strong performativity of both discourses once they became entrenched led to a path dependency for both the debate on spatial planning, and the actual spatial planning: Spatial planning and the debate could no longer be seen separate from the interests that either side had. The context of planning has been shown to be not neutral. Planning research can not treat context as objective, or use an instrumentalist view on the relationship between law and planning without doing an injustice to the actual on the ground situation of knowledge-power relations. Prescriptive planning research recommendations are accidents waiting to happen because of the blind spot that an instrumentalist approach has for dialectic discursive processes of power.

Social implications

For Valencia the conclusions of this research will have the following implications. Currently the region of Valencia is going through yet another revision of the LUV law. It remains to be seen if this will again be a token change rather than that it will affect the main points of criticism and contention that give rise to this conflict. A longer term research with dedicated funds might make it possible to discover the longevity of the discursive struggle.

A complex law such as the LRAU/LUV is a strong means for powerful groups to continue to take advantage of the planning system. A nation such as Spain that is suffering from corruption would do better to enact simple laws and via simple laws first restore a sense of the rule of law in all actors concerned. A sense of the rule of law by all actors has a more lasting influence, and more beneficial on spatial planning than a shortterm gain in income.

From the results it is clear that combination of circumstances existed in Spain that led to real estate speculation. Several conditions coincided to create negative circumstances. The LRAU/LUV caused a simple way for land readjustment and expropriation. The Land use planning and appraisal act liberalised the land to make a lot of land freely developable. The easy credit available by the introduction of the Euro. And most important of all, an enduring governance situation in Spain that facilitates backroom deals between developers and town councils.

The Coastal Law faces the similar issues that the LRAU does with respect to interpretation and a legitimacy that is questioned in the public debate. However, this fell outside the scope of this research. For the future social implications of the Coastal Law, it is relevant to study these mechanics with a discourse analysis as well.

It is no guarantee that in the case that any of these circumstances would not have existed. The most persistent of these circumstances, the governance situation and the rule of law are weak in Spain, and these are unlikely to change, as fighting corruption remains difficult. Results for that, if they can be expected at all – there are serious doubts on the feasibility to affect social change, (Duineveld et al, 2008) – will have to happen over the span of decades, as the culture of business has to change with it.

Of course the credit that became easily available from Europe might have acted as a catalyst for the speculation. And the liberalisation of spatial planning has had a big effect on how often land readjustment and expropriation could happen. This effect has not been quantified in this study, but could yield alternative, more deterministic answers for the planning problem in Valencia. However, even without the law of land liberalisation and due to the governance situation at the local level, the laws in Spain on where it was allowed to build would never be very strictly followed. In effect, the LRAU/LUV still caused a simple way for land readjustment and expropriation for other private parties to enact development. The economic and financial causes can also be researched for an improved understanding of the Valencian situation.

Still, the LRAU/LUV remain the main cause for the violation of property rights as identified by the Spanish constitution and the European Charter of Fundamental Rights. Thus, if it had not been for the LRAU/LUV, these practices would not have happened. The ultimate judgement on a law is not how it is intended, but how it works out in reality. For this it pays to investigate groups that are marginalised, as they will be the ones who would be be hit with the most negative effects, in the same way that Foucault (1982) recommends to investigate the center of power: that is at the place where power is marginalizing the underpriviliged and the oppressed.

In a more general sense, the conclusions of this research have the following social implications for planning practices elsewhere. From the ways in which the discursive techniques shape the context of planning in Valencia, it can be understood that the planning practices are continually part of a struggle for power and influence. The current dialectic of these discursive techniques works with the aim for either discourse to achieve more power and influence over the other in the public debate: the goal for a discourse is then to be able to define what counts as property rights, by way of becoming the dominant interpretation.

The biggest change is that from a stable knowledge-power situation where rationality is not questioned but following the dominant discourse, to an unstable knowledge-power situation where rationality is contested. As it is shown, the existing Valencian situation contributes to the decisions on what discursive techniques are considered an option, and what actions are taken in this dialectic process. That means that the rationality of actions is partly shaped by th context. This has additional effects for scientific inquiry: it means that a research cannot treat context as objective and independent. Planning research that desires to have an effect for practitioners and not merely theory cannot be satisfied by an instrumentalist approach to law and planning.

As the investigation into the planning situation in Valencia shows, knowledge-power plays a role in defining what exactly is being contested in planning. It also plays a role in defining what counts as the activity of contesting, and what counts as a solution for the planning question. If a planning research would be prescriptive in its recommendations, it would yield decisions that would not be in agreement with the dialectic discursive processes on the ground that are continually happening – a potential pitfall that an instrumentalist approach has a blind spot for. For transplanting an institution from one context to another, because of perceived advantages present in that institution, this thesis yields powerful arguments that such an instrumentalist approach is not the right approach. The instrumentalist approach is blind to practices that are shaping the institution as it is originally found, and are an inherent part of that institution. When transplanted, these practices cannot be assumed to be present in the new situation. Rather, informal practices and the already existing discourses have to be addressed and steered incrementally, by recurring discursive actions and communications toward the desired context for that institution.

The path dependency that exists in the Valencian planning game must not be understood as a guaranteed outcome of the dialectic processes. Take for instance the case in the US, Kelo vs City of New London (US Supreme Court 545 U.S. 469 (2005)). This case also deals with the use of *eminent domain*, or land expropriation. Since then 44 out of 50 states have enacted legislation against eminent domain, curtailing the possibilities. In contrast with Spain, the system of governance in the US has proven open to change the formal rules of planning – the dialectic process has had a different outcome of the powerstruggle.

In 2005 the decision by the Supreme Court approved of expropriation on economic grounds. But the states, the President (Bush 43), and civic action groups at the time were worried about the power that this piece of law could have for less well organized people. Although by the letter of the law, eminent domain was legal, it created a high backlash because property rights were considered very important to the American public. The civic action groups organised protests and undertook lobbying activities to change the law. This resulted in state laws that ruled that eminent domain was not a good enough reason for expropriation in their particular state – even though it federally is. The 44 states that have since enacted legislation that considered property rights important enough to prevent the use of eminent domain (Mississippi.gov, 9 november 2011; www.ij.org, 9 November 2011).

This teaches that also laws in other locations are subject to debate. Whichever constellation of property rights ends up as the codified version in law does not guarantee that it is

permanent and universally so. In a social constructivist research, this becomes all the more apparent. Other epistemological types of research (postpositivistic) may be possible to gain partial answers but reductionist conclusions are not contributing to scientific phronesis for a comprehensive understanding.

But discourses and discursive techniques would not have been constructed and functioned in the particular way that they do in Valencia, if there had not been a law on land readjustment. The policy that the LRAU/LUV helped enact in the situation of land readjustment provided the conditions for speculation and a violation of european fundamental rights. In the situation of weak governance in Spain, a complex law like this disempowers risk groups like the poor or minorities. Those who have little access to the power of planning enforcement and decisionmaking in municipalities, like the expatriate pensionados are not included in the decisionmaking system of the Spanish planning practices. The real point of the matter is not whether a discourse is marginalised, even though there are discursive techniques that point in that direction (the vilification of the opposition) but if the government can be relied upon to act fair and just with regard to the legal certainty principle, and not merely work for their own interests or for the ties they might have to the local construction industry. A government that can be held accountable considers the interests of all its citizens more carefully, and that consideration inspires trust in citizens.

The lack of a strong rule of law in Spain (Transparency International, Corruption risks in Europe, 2012) is to blame for these circumstances. It has to be taken into account that Spain has only been a democracy for 34 years. A conflict of interest is facilitated by this law because of strong local cooperation between municipalities and urbanizadores. Conflicts of interests by politicians do not constitute a good practices of governance and are best to be avoided in the legal framework that make up planning. For a party to voluntarily give up an advantage, or a means of enacting influence in the form of a discursive technique, other factors have to be present. A detente of conflict or easing of tensions require interests that support changes, and a willingness to compromise. That is currently not in the cards on account of the entrenchedness of both discourses, and has also not been researched in this thesis. That could be added in further research.

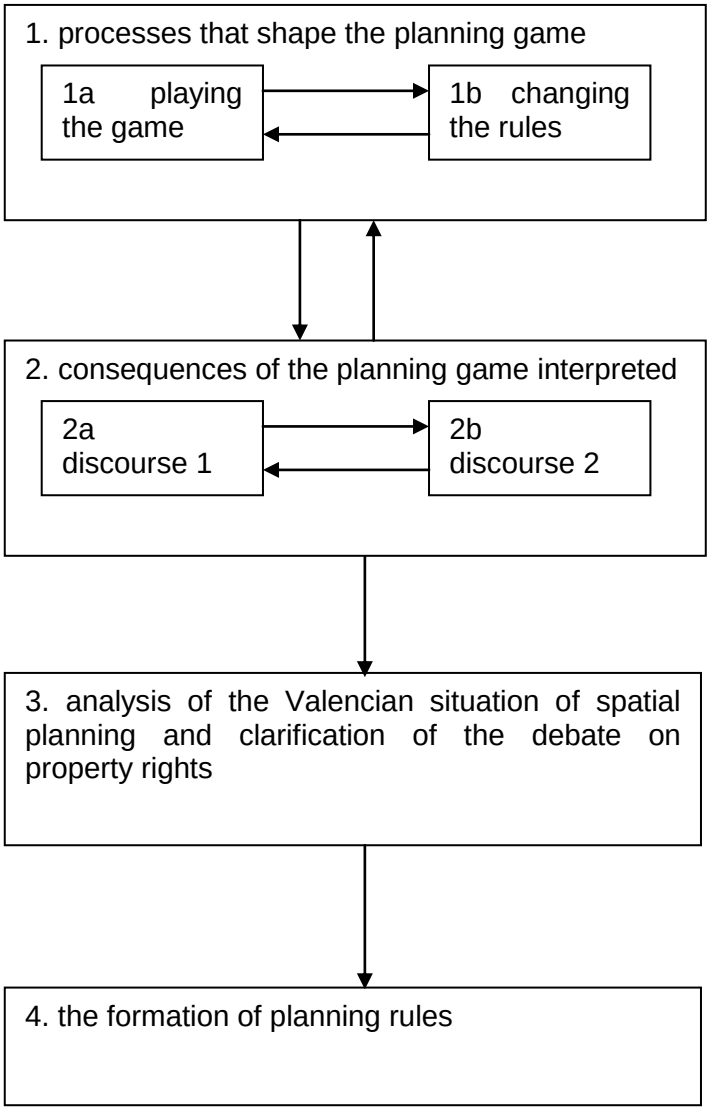
Reflections this research

An observational bias in common to every person, and a researcher is no exception to that rule. Every researcher has a certain background, or interests which guide him to investigate particular cases and particular problems. As a spatial planner from the Netherlands, with a strong preference for the political and the contested, the direction my research took was not surprising. This means that in an social constructivist view, the fact that this public debate was described as an planning issue, is partially caused by my own interests.

However, as a planning professional, I am also capable to discard my own personal interests during the research, and focus on what is, rather than how I think it ought to be. That is the hallmark of an academic machiavellist who studies the workings of power.

I was also influenced by the people that I encountered during the research. I am not capable enough in Spanish to conduct a deep interview, and was thus limited to speaking with those who are also capable of English. This might have limited me to the well-educated and expatriate portion of society. I also encountered people that were recommended to me by others. This might have led to a bubble, but I have attempted to counter this by using my interests in conflict to look for the constrasting opinions.

Lastly, I have focused most on people who are already conscious about the laws that are under debate, this also means that I spoke with informed people and not with the laity.



The fact that there is a debate about what should constitute property rights is also influencing again the discourses. Now that some of the property rights are being questioned and have become up for debate, certainties will be reduced and a new instability of power relations have the potential to shake things up and change the discourses, and again the rules of the game [3 -> 2 -> 1]

The dialectics processes that were identified were deliberately closed off in the box 1 and box 2. The case can also be made that analysing the Valencian situation (box 3) has a recurring influence on box 2 and box 1. This could mean that in an even more complex fashion, everything influences everything else. However, a researcher has to draw a line somewhere, and a meta-study of planning studies is not in the scope and time of this research.

Scientific implications

Research on ways and means for governments to gain assets fail to take the situation of power into account. Earlier conclusions on public interests such as “the fact that infrastructure provision is defined as a public task [...] does not automatically mean that landowners have lost some of the powers over their property” (Munoz-Gielen, 2010 pg 148), are disputable since they depend on a specific conception of what constitutes property rights. The ethical dimensions of the consequences that a law might have are not regularly studied (Gunder, 2011).

Furthermore, there still is a lacuna of research in spatial planning. Van Dijk & Beunen (2009) already identified this, but this research shows that it is still not being filled. The research that is available is instrumentalist or highly paradigmatic about either the legal field, or the planning field. It can be seen in this study that there is a lot to gain of studying issues that lie on the border of a field of study. A planning researcher already benefits by drawing on toolboxes of different fields of study, as planning, ecology, economy, the law, sociology, communication studies, politicology, and so it may be recommended to study a planning situation comprehensively and in combination with all the related fields.

For doing research, it shows once again that the real effects of a change in policy or law are hard to study. They can only be seen on the long term, and in hindsight. Changes are only partially visible and thus only partially available to study. Changes in society are really only for a small part enacted by law and bylaws, and for a greater part constituted by informal laws and practices. The practices are harder to change than a cosmetic institutional change: people’s behaviour is not easily altered, and it is behaviour that constitute the practices. For planning research that wishes to have an effect in the planning practice, it is important to look at the actual behaviour of people instead of the professed behaviour. For planning researchers, acknowledging the difference between what is legal and what is actual – between the institution and the practice – is essential.

It remains so that the planning process in Valencia, Spain, is legal from a narrow point of view that only looks at formal rules, in an instrumentalist view of law. In practice, in taking into account what actually happens by looking at the powerstruggle in Valencia, Spain, it is apparent that the law itself is under debate. Can it be stated that a law is not always the neutral instrument that some discourses suppose it to be? The conclusions of this research certainly point in that direction: some discourses benefit from having a law appear neutral, but it is to their purpose, and as such it is an act of power to make its viewpoint more amenable. If the researcher wishes to investigate the role that power plays in the spatial planning arena, and wishes to take into account the vying for power and influence, then the discourse analysis as a method for spatial planning research is extremely useful.

Lessons to learn

This thesis can teach planning experts, practitioners and students many things. For one, **the intention of the law is of low importance.** Formulating and introducing a law can be done with all the good intentions in the world, but it is its effect in practice by which people define its quality. One might study the law for one particular beneficial effect. This is an instrumental view of the law, and that basically has blinders on with regard to power. A research like that fails to take into account unintented consequences and real effects following the introduction of the law.

Planning and planners are not neutral in struggles for power. Planning is a means to an end, a goal in society for a group or an individual, and planners can be employed as means or mercenaries to that end, whether that is by intention or not. We all play a role in the world by our communications and actions, and the communications and actions of experts lend authority to arguments. Planner are experts in planning, and thus lend authority to a cause. A neutral planner would have to step very lightly if he wanted not to take part in the struggle for power, but a neutral planner would still have to make a choice whether he acts on behalf of one side and changes the power balance, or if he does not act and keeps the power balance as it is, and via that favour the status quo and the current powerbalance.

Public interest and a public cause as a reason for planning action are not as neutral as they seem. A public interest is only as strong a reason as a civic society allows. Other times, it might be employed by a discourse as a technique to gain power, because who would stand against a plan if it is in the public interest? Only logical and commonsensical thought, a critical view, and a willingness to act are the weapons with which to defend against misuse of a such a term.

A law is not solely interpreted by discourses. It is constructed by them: if there is a discourse arguing for the need to develop – because land owners have blocked development or were speculating with the land – it becomes logical for a proposal for a law to include ways to dispossess land owners, and to make development easily available. This is again not by way of individual entities, but by a discourse bigger than themselves to which the individual entities also ascribe to.

For a well functioning form of planning, inclusiveness and a reliable and accountable planning practice are necessary. A trust in institutions to act fair and balanced and a trust in the rule of law are the keys for that inclusiveness and reliable planning practice. Planning professionals would do well to always study the influences, including the unintended influences, of planning laws to ensure that it does not undermine these factors for reliability. Good governance does not only consist of having the right laws, it is given body and mass by having the correct practices adhered to by all. Even a academic machiavellian can agree with that as a goal.

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Appendix 2: List and description of interviewees

#1 - Francisco Blanc – One of the authors of the Valencian model of spatial planning, in other words co-author of the LRAU in 1994. Works today as a lawyer for spatial planning cases with his company and is a consultant, predominantly for private parties.

#2 - Catherina van Delft – A dutch pensionada and expatriate in the region of Valencia. As a layman, has experience with the planning practices and governance situation in small villages.

#3 - Charles and Lisa Svoboda – A Canadian and Swedish couple pensionadas in the region of Valencia. Charles Svoboda is Vice President of the Abusos Urbanisticos NO civic actiongroup, and has extensive experience with the Spanish system of governance, and a long memory.

#4 - Ularel Nerdefel – A editor of a Spanish news-aggregate site. Is politically conscious and was able to provide valuable background information about Spain.

#5 - Demetrio Munoz Gielen – A dutch researcher that wrote his PhD thesis about the LRAU/LUV and its potential for value capturing. Was already familiar with who's who in Valencia and provided a further list of interesting people to interview.

#6 - Brice Malafosse – A french expatriate and bartender of the Radio City bar. Provided a different view on planning in the urban region and more local knowledge, including where to find local civic action groups.

#7 - El Gazza – Journalist "24/7 Valencia".

Appendix 3: Interview questions

The interview questions asked differed from person to person. If the situation allowed itself, I tried to get the most extensive answer possible, rather than hurry onward to the next question. This led to a deep understanding of the discourse and discursive communications.

In the situation of the 1994 model, it consists of land readjustment, using the 1976 innovation for Urbanisator, and based on the 1956 innovation of expropriation. Why this model?

What did it aim to do?

Did it work?

How was the model perceived?

How was it perceived by the population?

Can you clarify how this model was promoted (why this was perceived to be the solution)?

- To other parties in government?
- To citizens?

What happened after this model was implemented?

- Politically?
- Societally?
- In the media?

Did the model have enough local support?

- How do you know?
- Why?
- What was the extent of the local support/ of the opposition?

What was done with this opposition?

Were there any interesting interactions going on?

How was this change in property rights viewed?

- By citizens
- By government
- By private contractors

Now that a process of expropriation (or forced contribution) can be initiated by another private party, what does this mean for property rights?

How was this change in property rights portrayed?

- In the media?
- In government information?

How does the law function now?

How well does it regulate that which it set out to do?

Is there still resistance to the law?

Is this law always followed?
Are there interesting situations where it is beneficial for all parties to not follow the procedure?

How do you view it now, working as a consultant?

Some say (Transparency International) that laws in Spain are a cause of business and politicians to be too closely connected, how do you view this?

Are some of these laws perhaps unethical?

What about the principle of legal certainty with regards to property rights?

I understand that the European Committee has also protested against these type of laws, what has happened when some of the members of the European Parliament came to visit?

Why is it necessary to do this work, what is the rationale?

How is the LRAU/LUV/Coastal law viewed by citizens?

- By Spanish landowners (farmers)
- By other Spanish (further categorization?)
- By homeowners with no further land

Are some laws viewed differently?

What happened in the media? (broadly)

- With regard to the law?
- With regard to the abusos?
- With regard to corrupt local government?
- What media did this happen in?
  - national
  - local
  - english spoken or spanish

On what level of govt are you working on influencing?

What kind of practices do you encounter on each level?

Is it purely a british (foreigners') phenomenon?

Is the influx of speculators (foreign big money, not individuals) a real problem or imagined?

Is the administration (town hall) ready with regard to freedom of information?

How do you get to know about ties between government and business?

What about the contracts given to friendly constructors (family or such)?