



Transcript Ep.74: In Conversation with Jean-David Gerber (The Urban Lives of Property Series III): Property, Planning and Institutional Power: A view from Switzerland

[Intro] *This is the Urban Political. The podcast on urban theory, research and activism.*

[Hanna Hilbrandt] Welcome to the Urban Political Podcast. Today is the 23rd of January, and we're recording our fourth episode in the series "The Other Lives of Property" thinking about appropriation, dispossession, and expropriation in theory and practice. In this series, we advance conceptual and theoretical groundwork on the notion of property shaping everyday urban lives and political discussions about the city. My name is Hanna Hilbrandt, and I'm a professor at the University of Zurich in social geography and urban studies.

[Markus Kip] I'm Markus Kip and I'm a researcher at the Collaborative Research Center: Structural change of property at the University of Jena.

[Hanna Hilbrandt] In this episode, our guest is Jean-David Gerber, professor of political Urbanism and sustainable spatial development at the Institute of Geography at the University of Bern in Switzerland. He has worked and works on land use planning, also in housing policy, and the commodification and de-commodification of resources, on land grabbing and on regional developments. We invited Jean-David to join our series, on the one hand to think property from Switzerland (but we hopefully also go a tiny bit beyond Switzerland), and also to include a perspective more focused on regulation and planning. Jean-David, thank you so much for joining us. Welcome to our podcast.

[Jean-David Gerber]: Thank you very much, Hannah and Markus, it's a real pleasure to be here with you today.

[Markus Kip] Great to have you, Jean-David. To cut right in, could you please clarify your understanding of property and how you approach it?

[Jean-David Gerber]: Yes. Thank you. This is a big question. I think the first thing that needs to be said is that I'm not alone on this journey studying property. Basically, I could maybe start by explaining a bit who inspired me also theoretically. The first thing that I would say is that there is no single author. There are multiple. The literature on property does not only cross disciplinary boundaries, it also crosses geographical boundaries. Property has different

meanings depending on the geographical location. One major difference that we can observe is between Anglo-Saxon countries, which are organized according to the principle of *common law*, and continental Europe which has legal systems based on a civil code. Now in academia, the discourse is dominated by the English language. Much of the concepts about property in the scientific literature is somewhat connected to the Anglo-Saxon perspective to it, that is, basically to common law. Probably, many English speaking scholars do not even notice it because they are in this dominant position. And this does not make the life of geographers or other non-legal disciplines working on property easy, because there are lots of differences between common law and civil law.

[Hanna Hilbrandt] Could you go a bit into detail explaining these differences?

[Jean-David Gerber]: Yes. For example, the difference between ownership or property. We don't have this distinction in French or in German. Then, there are many institutions of common law that do not even exist in continental Europe, and vice versa. A trust is something that we hear often about [but] is not something that we know in civil law. The idea also that the lands ultimately belongs to the King of England, such as it is the case in countries of the Commonwealth is very strange to us. Even concepts like the bundle of rights comes from common laws countries. It's been introduced now in civil law countries, but this understanding is not a civil law understanding. Therefore, words do not mean the same in other languages. Property is not "propriété" in French, it's not "Eigentum" in German... the meanings behind the words are different.

I remember as a PhD student, it took me quite a while to realize that. I was reading text in English and not fully understanding what they were referring to. Because the English language is so dominant, English speaking scholars often take their own reality as granted. This is a bit to say that as a young researcher, I spent quite a lot of time reading also the French speaking scholars. In law I read François Ost in legal anthropology, Etienne Leroy, and many others. I'm not a legal scholar, but I find it very interesting also to read the law. The law is the product of a social political compromise. It crystallizes in space, in time, the complex power relationships about our environment and about how resources are to be used. So my understanding of property is connected to the law but it's not the only discipline I'm interested in. My background lies in human geography, with strong influences from public policy analysis. ecological economics, institutionalism, and also social anthropology. So, there are many of these different authors from different disciplines that shaped my understanding of property.

And here I think original institutionalists (they are also sometimes called old institutionalists) played a major role. The founder of old institutionalism is John Commons, Veblen, Thorstein Veblen and Wesley Mitchell. However, there are also more contemporary scholars who are called old institutionalists or original institutionalists, and one of them is Daniel Bromley. I rely on his understanding of property. Then there are not only the old institutions, but also the new ones, the new institutionalists, and they also played a major role. Therefore, Elinor

Ostrom and her followers play, I would say, a structuring role in my research. Simultaneously, her work also raises lots of questions to a geographer, to a social scientist.

This is what was a bit of an introduction. I think this makes it possible to go back to your question. What is *my* understanding of property? My understanding builds on that. My understanding of property is a relational understanding. And building on Daniel Bromley, I see property as a triadic social relation. It connects basically the user with the State and third parties. Bromley talks about property as a benefit stream, or he also uses the word income stream, and then the property right is a claim to this benefit stream that some higher body (it's usually the State) protects against other who may interfere with it. So with this definition in property is not the object, property is the relationship, and it's not the relationship between the owner and the object. It's the relationship between the user, the State, and third parties.

This is really interesting because it shows that understanding property relations is not limited to the owners. It includes a whole range of relationship. It's the relationship between the owner and the non-owner. I think this is very important. It's also the relationship between the owner and the State and it's the relationship between the state and the non-owner. All of these relationships are parts of the property relationship.

[Hanna Hilbrandt] Could you say a bit how space plays out in this relationship because you were also speaking before that your understanding is a particular geographical one. How does the geography define this relationship between these three parties?

[Jean-David Gerber] I think space and time play a very important role here. So this relationship and the way it is protected by... So, the resource itself is usually spatial. It's a piece of land. It can be a forest... When I say resource it's a quite broad understanding of it. Urban land is a resource, housing is a resource, the forest is a resource. Many resources are also manmade, et cetera. But most of the resource have some spatial dimension. And then, there is a relationship between these spatial objects and the owner that the State accepts to protect. There again, space plays a role because as we said, depending on the countries you are in this relationship is protected differently. More strongly maybe in Switzerland than in other countries, et cetera... Then space plays a role, but also time. This is also part of my understanding of property. Property has not always existed and does not exist everywhere, I would say.

In the Middle Age in Europe there was a system called *Plura Dominia*, which was fundamentally different from property. The feudal system is characterized by a pyramidal system of lords: the suzerain and subordinates, the vassals... And so on the same plot of land you had as a superposition of rights. You could have somebody having a right to use the water, another person able to use the forest... There were temporary uses, for example, to collect the acorns in the fall, to feed your pig, the right to collect firewood, et cetera. Therefore, all of these different persons could have a right on a given plot of land. Obviously the system was extremely complex, but this system was not based on property.

I can also take examples from Ghana, where local chiefs are supposed to be custodians of the land. They're not landowner, they're custodian of the land. However, due to legal pluralism, many of them try to depict themselves as owners of the land. This is a big shift from custodian to land owner. We can maybe discuss that later, if you're interested. I think many societies are not based on property, but on possession. This is an important distinction between possession and property. It goes back to scholars like Hazen and Steiger. Possession is the effective control over a thing. Possession is also defined in the Civil Code, it's defined in the Swiss Civil Code, for example, as the effective control over a thing. So there is no triadic relationship here with the State or with third parties. If you have possession, you just have the control. You take what you need in the environment for your personal consumption. The focus is on the use of an object. If you don't use the object, then you give it back. You don't accumulate, you don't mortgage your piece of land, et cetera. A regime of possession is fundamentally different from property.

Therefore, this makes it possible now to define property. As I said earlier, I rely on the law first to look at how it is defined. What does the Civil code tell us about property. We can take the Swiss Civil Code. It's defined in article 641. It says: "the owner of an object is free to dispose of it as he or she sees fit". So, the Civil Code tells us that a property rights is the right to dispose of the objects that you own, as you think it is right or appropriate.

[Hanna Hilbrandt] Isn't this more proximate to what you previously defined as possession?

[Jean-David Gerber] No... I mean, the civil Code is from the State. Therefore, the State acknowledges that some individual have the rights to dispose of an object of the environment as they want. This is the absolute definition of property. It's summarized, maybe you're familiar with this Latin formula, "usus fructus et abusus". The right to use a resource is *usus* the right to appropriate the returns, the fruits of the resource is *fructus* and the right to change its form, to change its substance or to sell it or transfer the resource, even to destroy the resource is *abusus*. The transfer dimension here is very important, *abusus*, because it opens the door to money creation right through mortgage. Therefore, land can become a collateral to borrow money from the bank. This is a key mechanism of capitalism. This is why property is a key institution of capitalism and it's why it's very different from Plura Dominia in the Middle Age or customary land in Ghana. Just to make things clear, I didn't quote the entire article 641. The article says: "the owner of an object is free to dispose of it as he or she sees fit", but then adds: "within the limits of the law". This is very important.

The property rights protects the interest and the freedom of the landowner. But, in reality, this absolute property right does not exist. Absolute property is a myth or a fantasy because in reality it is also shaped by the law. It is shaped by the State, by public policies which are there to protect also the public interest. This is basically my understanding of property. These two layers, you have one layer or two layers of legal constraint. On the one side, you have the public policies such as planning, agricultural policy, et cetera. On the other side, you have property, the titles, such as they are defined in the land register and the cadaster. These two

layers basically function according to a totally different logic, the property rights, they protect the private interest against the State and the public policies they protect the general or the public interest. The property rights are quite permanent, they hardly ever change in their definition. The public policies, they keep on changing according to political majorities, et cetera. But both of them impacts the way you can use the resource, and this creates a tension between the individual and the collective, between the private interest and the public interest between property law and public policies. This is what I find so interesting in the notion of property.

[Markus Kip] So, what you've already started to develop relates to what I understand the institutional resource regime framework to elaborate on or to build on. It's a framework that you've been working on for many years now that you've been developing with colleagues and so precisely, one of the insights is to look at the combined effect of public policies and property rights on resource users and uses. So could you maybe, to give it a clearer contour, elaborate on this a bit further and maybe distinguish this from other relational property approaches, that we've also come across throughout the series in previous conversations with Nick Blomley for example, or Vera Smirnova.

[Jean-David Gerber] Thank you very much for this question. You're right. I mean, the IRR, this Institutional Resource Regime framework plays an important role in my research. The framework has emerged in the research group of Peter Knöpfel, he's a political scientist also with a law background. He is one of the pioneers of the analysis of environmental policies in Switzerland and abroad. I joined his group a few years after the first ideas on the IRR emerged, and my initial contribution was to publish the framework in an international journal. I kept working together with colleagues on this framework, and it's at the background of most of my research activity although it's not always explicit. The main idea is quite simple. First, we observed that scholars in environmental policy analysis hardly acknowledge the existence of property and property rights. On the other side, we observe that many institutional economists use the language of property rights, but the State is only present in a very abstract way.

So, the framework basically brings both together. It postulates that in order to understand the way people use resources you have to analyze both the relationship of property and dedicated public policies. Property is not enough. Public policies are not enough. It's the interaction of both that matters. The framework has additional concepts like coherence and extent to make predictions on the potential of a regime to contribute to sustainable resource uses. There is one other concept that I find quite useful. It's called the localized regulatory arrangements, LRA. This framework postulates that these localized regulatory arrangements emerge out of the attempt of resource users to compensate for insufficient or contradicting regulations. Therefore, when you use a resource and you have contradicting incentives coming from different public policies like use policies or protection policies or between different policies which say different things or between property rights and policies, then there is room for self-organization. And resource users can try to come up with their own solution based on self-

organization. They're usually first informal, and sometimes this arrangement also get formalized. I think this connects quite nicely with the literature on the commons.

[Hanna Hilbrandt] Could you give us an example of these Localized Regulatory Arrangements, LRA?

[Jean-David Gerber] There are many of them. I would say there is always an LRA because the rules such as they are formulated in the law are general. In the end, these rules need to be translated or converted in the language of the property rights. In the end, they need to have an impact. Now I'm talking about policies with a spatial impact. But many policies have a spatial impact. In the end, you need to convert them, and planning is a major policy in that sense. You need to convert or translate the logic of the planners into the reality of the land owner. Often, these needs some discussion. You need to come up with some agreement and in much of today's planning practices, you use localized plans, district plans, *Sondernutzungspläne* in German... that are basically the result of a negotiation between the planners and the different landowners on the given area. Therefore, this would be an example of a localized regulatory arrangement.

[Hanna Hilbrandt] That's really interesting as I understand it in your work questions about power. Also really interesting to understand these regulatory arrangements. How does the IRS help you to make power more visible?

[Jean-David Gerber] I think that understanding the rules of the game gives you an idea of the legal power of specific actors. Some resource users are protected by very robust norms. This is typically the case with property rights. They protect the interests of the property rights holders. Their interests are then very well protected. Other users of resources, for example those who go to the mountains to enjoy the scenic landscape, they can only count on a very weak protection of their uses. Therefore, in Western countries, the law is an essential source of power. You can look at formal institutions and analyze the power that is embedded in them through the protection of specific interests against others. Some interests are structurally better protected than others. Power is embedded in the way rules are formulated. But this is not the whole story, of course. Actors also have some leeway. They can strategically activate some rules and not others. This is, for example, what happens when a conservation organization buys a plot of land to prevent development. They can try to shape these localized regulatory arrangements in such a way that their interests are better taken into account.

This is what happens in urban Commons, for example. They can also try to introduce new legislation. This is what happens through citizen initiatives. Therefore, I think it's important to look both at the structures and agency to understand who has the power to access and use resources. Now, this is just a brief description of legal power. The power that you have when

your interests are protected by the law. It's a very important source of power in liberal democracies. However, there are other dimensions of power which also play an important role, money, information, political support, even violence. Just to name a few.

[Markus Kip] I think that's a very interesting point. You mentioned the power of knowing the rules that go along with knowing the rules of the game. There is a great difference in the capacity of different actors to actually, first of all, know the law, the rights that exist and even if they know or have a sense of certain rights, then also the question to what extent they are able to mobilize the law and the whole legal apparatus in order to enforce these rights. I think that's a very interesting and important perspective that also accounts for the very different access to the legal system within society depending on the actors groups.

[Hanna Hilbrandt] This is also dependent on how the law itself is formulated. Is it open for this adaptation, or is it so close that the groups appropriating the law or interpreting the law don't even have the chance to really do much about it now? I think quite interesting dimensions here to also think about. I introduced in the beginning that we wanted to also think a bit beyond Switzerland and the institutional resource regime, as I've initially understood it, is based on the reading of Western or say, liberal institutions. However, you also mentioned your work in Ghana and I'd like you to say a bit more about how this framework could apply, or how we would need to adapt it to apply to Southern conceptions of property and institutions. Therefore, just in the most basic sense, like does this apply...does it help us everywhere with different conceptions of property? and maybe you could use Ghana and your work in Ghana as an example.

[Jean-David Gerber] Yes, I totally agree with your observation. This framework builds on the Western understanding of the State which regulates resource uses through public policies and the protection of property rights. The question is does this model apply to the South? I think that the Nation-State is a form of organization that conquered the whole world through colonization, et cetera. I'm there very much in line with the political scientist Jean-François Bayard, who defends that even if the State is weak, absent or corrupt (there is a whole literature on weak States, et cetera). So, even in this situation, the State plays a structuring role even in a situation where actors deliberately choose not to play by the rules. They do it against the rules and therefore they indirectly acknowledge them. I think it's reasonable to think that the State through its public policies, also plays an important role in Africa and so do property rights, which are pushed forward by land titling initiatives promoted by the World Bank and other international institutions and carried over by national governments and local elites. But you know... simultaneously the IRR is only a framework that basically puts forward some variables and it can also be complemented by others if we need more. Is the State variable important in the South? Yes I think. Is the public policy variable important? Yes. Is the property rights variable important in Ghana? Yes. Is our localized regulatory arrangements important? Yes. But still, we added some more variables in our model, for example, we also

more directly focus on informality (I think it's a topic that you know quite well, Hanna) and we maintain that informal rules appear and sometimes even thrive in the gaps left between poorly implemented formal rules. So, this is not to say that informality does not play a role in the North either, but in the South, you might be in a better situation to observe it. I think informality arises both from non-compliance with the law, but also from non-implementation of the law. Both phenomena also exist in the North. So, let's see if this framework brings some added value in the South. I think this research projects are still ongoing.

[Hanna Hilbrandt] You previously mentioned the importance of custodian use of the land by the chiefs of the land you look at in Ghana. How does these kind of use frameworks play out in the IRR or how do you account for them?

[Jean-David Gerber] In our research project in Ghana we deal with three kinds of legal norms, not only two. So, we still have the public policy dimension that protects the public interest. We have the property rights dimension, property title that protects the private interest. But, we also have the customary law dimension that protects the group's interests. That's the way to try to take into account this complexity. I think that even in non-democratic (you could call them predatory) State, the distinction between public policies and property right makes sense. However, it does not allow us researchers to understand resource use or regulation because the power of the law is weak. Without the rule of the law, without the *Rechtstaat*, other source of power play an important role: violence, money, et cetera. The IRR and the study of legal power, it's of little interest, but that's not the case in Ghana. I think indigenous property claims can be captured by such a framework. If this indigenous group organized politically, if they take part in the political process, if they try to obtain recognition from formal institutions, if they create commons initiatives, et cetera. So if they play this game, then yes, we can capture that. If they remain outside of the domain of the law of legal power then the IRR is of little interest.

[Markus Kip] Let's move to Switzerland, the focus of the greatest amount of your work and also an interesting case study within our series in which we've already gone through a diversity of different contexts and look at the property regime in Switzerland. To start off, we'd be interested in hearing you give us a very brief historical account of how the Swiss property regime has developed over the past centuries. Also maybe specifically how communal land regimes commons have played out historically and what their legacy is today.

[Jean-David Gerber] This is a tough one, right? I'm not a historian of law. I can try to give a simple overview and maybe a few milestones. I mentioned the *plura dominia* of the Middle Age, characterized by a multitude of rights and duties defined on a single plot. The transition from the Middle Age to a modern State did not take place overnight. So, the fall of the *Ancien Régime* in France in 1789 did not lead to the immediate disappearance of feudal rights in

Switzerland. Even after the Helvetic Republic and its centralized government imposed by Napoleon. After the French Revolution we have in Switzerland the Helvetic Republic and it just last five years, as we know. Then in 1803, Switzerland is transformed again into a confederation. The confederation of sovereign States, which all have their constitution, and they all also have their particular understanding of property. They have their own civil codes, and it took more than 100 years after the fall of the Ancien Régime, after the French Revolution for Switzerland to unify its understanding of property. This was done by Egon Huber is basically the father of the Swiss Civil Code of 1907.

The Swiss Civil Code is more than a compilation of the cantonal codes. It's inspired by the German Civil Code and also by the French Civil Code. Here I think it's quite interesting because the German civil code gives much more room to collective forms of ownership than its French counterpart. Therefore, in Switzerland we tended to find a balance between the two. But what we observe over this century, the 19th century, is the progressive centralization of civil law and the decline of collective forms of property. I mean, common property is the exception to the rule today. Typical common property institutions such as the alpine corporations, which are called *allemand* in German, and other forms of organizations going back to the middle Age are still there, but there are codified in cantonal civil code, not in the Swiss Civil Code. I think we still have one important article that remains from collective forms of property in Switzerland. It's the article 699 which guarantees the access to all forests and pastures to the population. Even if you have a forest with a fence around it, even if the owner fence out its plot of land, you are allowed to cross the fence to collect mushrooms or berries or enjoy the scenic landscape. So this collective dimension directly comes from the middle age and is still there in the Civil Code today.

[Hanna Hilbrandt] If I understand it right, this means that because the cantonal level is regulating to some extent these commons, that we have a difference in how they are lived out or the prominence or power of the commons in the different cantons. Could you give an example of the canton where this particular influence still off the commons, or where the commons play a greater role?

[Jean-David Gerber] This touches a bit of another question. You are talking about the legal form of the commons. Now, I was referring to these commons that come out of the Middle Age and perpetuated through the centuries. These commons to some extent still exist today, and they are basically acknowledged by cantonal civil codes, not the federal one. This means that there might be differences among the different cantons, but those are the old commons that you find in the Alps, the corporations, et cetera. I think now if we talk about new forms of commons, usually they don't rely on these old legal arrangements.

[Markus Kip] Could you talk about the new forms of urban commons and how they relate to this current Swiss property regime as it is in existence today and maybe give us some context

about, like how these new forms of urban commons are being contested or what role they play and how they also in turn relate to public and private land? I mean, are these at all territorial comments?

[Jean-David Gerber] As I just said, we observe in Switzerland the disappearance of common property. Simultaneously, Switzerland is a country with very strong property rights. In that sense, Switzerland is often compared to the United States. What does that mean, strong property rights? It means that there are limited number of situations where expropriation is possible. It means that expropriation is always compensated. This is the guarantee of property and then compensation takes place at market value. So, it's expensive. That's the overall pattern. Strong private property rights and does that leave some room to collective form of ownership? I mean, we need to decide or define what we talk about when we mention the commons here to be sure that we are on the same page. I like to distinguish between old and new commons. Although I acknowledge that this distinction is often a bit simplistic, but I would say the comments that you were referring to, Hanna, in your previous question are the old commons. There are those studied by Elinor Ostrom, and they developed initially independently of the state and its public policies.

As we just discussed, these forms of organization, they still play a role in Switzerland, especially in the mountains. Some are still very powerful. However, the vast majority of them are not. In an article that we wrote, a decade ago I think, on these commons, we make the point that the surviving ones, the powerful ones, are those who were able to find a role in public policies. If they get an official acknowledgement for the management tasks that they do, then they have a chance to perpetuate. There are the other commons, which are sometimes called the new commons. To me this is slightly different. I think in my understanding, the new commons, they're not necessarily long term oriented. I think there are more grassroots collective forms of organization. Their main objective is to reclaim collective uses of a resource that became privatized, or that is in danger of becoming privatized. I think that the new commons play an important role in transition phases where new arrangements are being discussed. Now, if they succeed and if they are able to maintain collective uses they can either turn into a more permanent structure that might be something else than a common, or they can disappear. Therefore, this kind of commons they play an important role in cities in connection with housing, with temporary uses, with green spaces, et cetera. However, it's another object.

[Markus Kip] Could you just give a couple of empirical examples of these urban commons that you have in mind?

[Jean-David Gerber] I mean, there are initiatives that we observe quite often. We had a case study recently in the city of Bern where a form of collective structure took over an area that was being redeveloped, and had received basically a mission from the city to take care of a

plot of land, to develop a park for the neighborhood. They did it quite successfully. But in the end, when the city saw that it was working, it took over the management of the park. So, in that transition phase, where the city was not sure yet about the future of the area, when the city had to convince the inhabitants that it was trying to create some dynamics there, the commons organization secured the management of the resource, but then disappeared. This is not the long term oriented commons that you find in the Alps.

[Hanna Hilbrandt] I think this topic and this example you just brought, we arrived a bit at the kind of question of current conflicts around land and land use. At the beginning, you already set out to describe the possibilities of planning, on the one hand, and the guarantee of property in tension with one another as property being more stable and individualized, often, and planning being kind of changing and shifting according to public policy. Could you give us a bit of an introduction into what are currently the most interesting political contestations and debates that stemmed from these tensions?

[Jean-David Gerber] I think your question relates back to the interaction between planning as a public policy and property. This connects well with the topic of this discussion and the interaction between the two. When planning was introduced, each raised a big question and it also raised a lot of resistance. At the center of this question is the issue whether zoning (which is part of planning), whether zoning is a form of expropriation. Through zoning, you basically limit the freedom of the land owners rights to develop their plot. If your plot is located in the agricultural zone, then you lose your rights to build a house, for example. Many were afraid that land use planning would infringe too much on property rights. In Switzerland, this discussion took place in the 60s. It resulted in the simultaneous introduction in the federal Constitution, the introduction of the guarantee of property and of a land use planning article. It's quite interesting because property had always been guaranteed. It was just not there. There was no specific article in the Constitution, but in practice property was guaranteed.

But because people were scared of planning, they introduced an article on the guarantee of property simultaneously. This shows how land-use planning was perceived by many as a threat. This is in 1969. Then it took ten years to develop a federal planning law. Again, this is extremely long. This shows how delicate this issue was. It shows the fierceness of the debate between opponents and supporters of planning. Is zoning a form of expropriation? If you answer yes, this means that landowners need to be compensated. It would basically make planning so expensive that it would totally paralyze it. Simultaneously, you also have to acknowledge that in specific cases, planning restricts the freedom of some landowners. In Switzerland, it's basically the Court that finally had to find a middle way between full compensation and the absence of it. I think this interesting tension between planning as a public policy and the definition of property rights.

[Hanna Hilbrandt] Now we've talked a bit about this introduction and the 60s and 70s. How does that play out currently in contemporary debates around how to effectively plan societies at the moment?

[Jean-David Gerber] The big issue in planning today is densification. We want to stop urban sprawl and support the densification of the built environment. In planning the typical strategy that you would use to promote densification is to come up with new plans, imposing higher density. This is basically what planners do. However, how can you make sure that these plans get implemented? If the landowner decides not to develop his or her plots, then nothing happens. It's hardly impossible to force him or her because of the protection of property. So, the planning objectives, for example, densification does not get implemented. What I find interesting today in planning is this land policy approach. Land policy is basically a strategy that tries to provide an answer to this problem. It's the land policy does not only take into account the planning instruments, but also private law instruments. So public property rights, long term easements, contracts with landowners, public private partnerships, non-monetary compensation, transferable development rights, et cetera. Those are all instruments or tools in the planner's toolbox. The planner is basically the public actor that selects the tool. Maybe combine them together with others in order to get things done, to get the plans implemented.

I think this way of conceiving, planning in a more strategic way is quite interesting. Now, land policy is not new. It has a very long tradition in Europe. It was first implemented by left-wing cities. You can think about red Vienna or red Bologna or red Zurich. Those are all municipalities which 100 years ago, bought land and intervened in the land markets to compensate for inequalities. What is interesting today is that we observe that there is a renewal of the land policy approach. This renewal is to be connected with new public management. This is the interesting twist to the story. Both of them obviously have a totally different ideological background. New public management is more the neoliberal understanding. Then the old land policy was more connected with left wing governments, but both of them led to the reappearance of land policy. This kind of strategic approach to land also mobilizing public property and public intervention in the land market. I think this is quite an interesting discussion that's happening today in connection with densification.

[Hanna Hilbrandt] Now talking about densification. I'm also interested to just in a minute learn a bit more about these new approaches to land policy. Densification used to be something that stood in that represented questions of sustainability. I think in Swiss cities today, it's increasingly standing for displacement given that it's been used to renew housing, to really cancel out tenants. So, these new land policy strategies, do they also offer possibilities to combat displacement and to regulate the market in such a way that it also provides possibilities for building more social housing, for being more inclusive in cities?

[Markus Kip] If I can also add on this, maybe whether there's this a shift towards land policy strategy is also indicative also of a shifting political forces that are behind pushing for this strategy.

[Jean-David Gerber] I agree with your observation that densification often leads to new building to improving the existing building stocks and therefore is automatically connected to rising prices of housing. This is a big problem. It contributes to make the housing resource more expensive in Switzerland. What we have observed in the last decade in Switzerland is that in all major cities, there were popular initiatives to try to find a solution to the rising housing prices. So, popular initiative trying to promote affordable housing. The central State brought back in connection with housing policies and the responsibility now is on the shoulders of municipalities. And we observe a lot of creativity, different solutions being promoted in different municipalities all over Switzerland. All of them basically call for better regulation of the land markets. In the end, impact also property rights more or less directly.

One solution that is often proposed is the support of the public lands to cooperative. But that's not the only tool. I think maybe we can discuss a bit of the cooperative, because we were already having this discussion on the commons. Switzerland has a very long tradition of housing cooperative. It's a model that is very successful in Switzerland. This might first appear a bit as a paradox because cooperative are a non-profit organization. Therefore, they're basically taking out the land out of profit generating objective. In that sense, they basically contribute to the decommodification of the land or to a partial decommodification of the land. How is it to be understood that housing cooperative are so successful in a country like Switzerland? This was the focus of a previous article. I think cooperative basically, our solution that can be supported by the left wing and the right wing parties, they please the right wing parties because they are not a public organization. Public housing in Switzerland is almost a taboo. On the other side they please the left wing parties because they connect with self-organization. They are very equalitarian in the sense that there is this strong "one person, one vote" principle at the core of their management. And this is the reason why cooperative are so successful and are thriving in Switzerland. Cooperative can only thrive on public land and this brings us back to the discussion on property. Cities who own a lot of land, like Zurich, but also Biel, also have a lot of housing cooperative that they support through providing the land and then defining long term ground leases for them so that they can play their role as provider of affordable housing.

[Markus Kip] Thank you for these interesting insights. Maybe as a concluding question what do you think other countries could usefully learn from Switzerland in relation to property regimes and public policies related to land or specifically urban land?

[Jean-David Gerber] Yes. Thank you very much for this question. I think it's an interesting one. First, please let me say that it's always tricky to export solutions from one country to the other, but I think it could be an interesting thought experiment to think about that. Therefore, there is one thing that we can be proud of in Swiss planning law, it's the strict separation between building land and agricultural land. Why do I say that? I think it's interesting because this separation leads to a partial decommodification of the agricultural zone. The agricultural land is protected by the federal law on rural land. This means, basically, that agricultural land cannot be sold to non-farmers. This has a direct effect on the price of agricultural land. You partially remove agricultural land out of the regular land market. I think it's quite interesting to observe that agricultural land is partially taken out of the land market. If you think about another part of the Swiss territory, which is forests. Forests too, is somewhat taken out of the land market. The forests are also strongly decommodified in Switzerland. We already mentioned this article 699, that guarantees access of everybody to the forest. But we also need to know that the forest are mostly in public hands. They are not managed for profit. Simultaneously there are also strongly protected. You're not allowed to clear the forests in Switzerland, once a piece of land is acknowledged as a forest, you don't have the right to destroy it. Therefore, this is quite an interesting observation that we can make about land in Switzerland. All the forest land is strongly decommodified, agricultural land is strongly protected and therefore also partially taken out of a market logic. Taken together, this is probably the majority of the area of Switzerland that is taking out of a pure market logic. This is quite an interesting twist in a country like Switzerland, where property rights are otherwise very strongly protected.

So I think this distinction between agricultural lands and buildable land is essential. Unfortunately, I must say, the Parliament over the last 20 years tended to water down this distinction, facilitating the development in the agricultural zone. We should do the opposite to prevent urban sprawl and prevent low quality development. In many international conferences that I have visited, other countries are jealous of this strong protection of agricultural land in Switzerland.

[Markus Kip]: As I was actually asking that question, I realized that question should be also asked the other way around. Now you gave the account of what other countries could learn, possibly from Switzerland. What's worthwhile considering. What would you like Switzerland to learn from other countries, or maybe cities in terms of property regimes and public policies related to land?

[Jean-David Gerber] I have quite a few research projects in Africa presently in Ghana and in Senegal. I also was co-authoring some publications about Ghana. However, it's difficult for me to make comments on a totally different sociopolitical setting, like Ghana. I still feel like an observer who can learn something from these countries. My interest is more to go to foreign countries to learn something for my own country through the comparison. Often I learn more about Switzerland than about Ghana. I'm talking for myself, of course, in this research



projects, we have students, we have also local partners, et cetera. Myself, often I use the comparison to learn about Switzerland and to reflect on things that we take for granted in Switzerland, that we do not question anymore. I think going to Ghana helps me to ask questions about Switzerland. And here a central question that I keep on asking myself is our connection with land, and in particular the way it is mediated through private property. I think it is very interesting. I think we can learn from other systems where group property, common property, collective oriented forms of property are more present than in Switzerland. These are questions that may become even more relevant in the future, because if we want to promote densification, we will have more people living on a smaller piece of land. What does that mean? For the institution of property, how can we make sure that more people can have high quality living on smaller plots of land? Does it mean more property or other forms of property? This is the kind of questions that I find particularly interesting and also inspiring when I go to other countries.

[Hanna Hilbrandt] Fabulous. Thank you so much for these inspirations that we also take along.

[Jean-David Gerber] Thank you very much. It was a pleasure to talk to you about these interesting questions.

[Outro] *Thanks to you for listening. For more information, visit our website, urbanpolitical.podigy.io. Please subscribe and follow us on Twitter.*