Reflections on the *Consolidated Text* of the Spanish *Land Use Act of 2008*: Increased Power of the Arbitrary, Fostering of Corruption, and Increased Upward Pressure on Land Values

Keywords: Urban law; Valuations; Prices; Constitutional validity; Corruption; Speculation

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Highlights

- This work contains a political and economic analysis of the *Consolidated Text* of the Spanish *Land Use Act of 2008*.
- This land legislation increases public intervention in land management.
- Among the effects of this legislation are that it encourages speculation, fosters corruption, and increases the pressure on land values to rise.
- This legislation eliminates the principle of indemnity in the expropriation of property, and generates great juristic-economic uncertainty.
- Some articles of this land legislation may be considered unconstitutional.

Abstract

This work contains a political and economic analysis of the *Real Decreto Legislativo 2/2008, de 20 de junio, por el que se aprueba el texto refundido de la Ley de suelo –*

the *Consolidated Text* of the Spanish *Land Use Act of 2008* – and of its consequences. The study focusses on the increased power of the arbitrary, the fostering of corruption, and the increased pressure on land values to rise caused by the adoption of this bill into law and on the doubtful constitutional validity of the legal text.

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1. Introduction

Legislation on land use and ownership is a key issue in the Spanish political arena for two reasons: the political corruption associated with land transactions and reallocation/reclassification in Spain[1] and the market rise in the price of housing (from 2001 to 2007), which was subsequently followed by a fall (from 2008 to 2015). There are two potential ways to solve these problems: on the one hand, by trusting that savers, consumers, and investors will be able to work together in the marketplace, armed with information on the situation of relative scarcity consequent on free prices (Hayek, 1972a, 1972b), and on the other, by continuing with the centralized planning of land management that has been dominant in Spain since the passing of the first *Land Use Act* in 1956 (*1956 Land Law* hereafter) (regulating and re-regulating the performance of the entities responsible for implementing it, and each time aggravating the underlying issues rather than solving them).

The system affects the consumer in a number of ways that are unfortunate and can rarely be specified, predicted, or effectively prevented; and rather than modify the measures that produce this damage to society in the first place, the national political

[1] For a list of the most important cases of corruption associated with land transactions and reallocation/reclassification in Spain, consult the list published by 20 Minutos at http://www.20minutos.es/noticia/165247/0/corruptelas/urbanisticas/ediles/.

parties and the different governments have attempted to remedy the damage by subsequent, ever wider and more obstrusive interventions, which create further conflict with the working of the market mechanism, following the typical pattern of the dynamic of interventionism (Lavoie, 1982). These overlapping interventions and regulations often cause the economic agencies at work to alter their attitudes in unpredictable ways, making legislative attempts to solve the problem by regulating enormously complicated and counterproductive (Peltzman, 2007).

The political project at the heart of the *Real Decreto Legislativo 2/2008, de 20 de junio, por el que se aprueba el texto refundido de la Ley de suelo* – in English, the *Consolidated Text* of the *Land Use Act of 2008* (*2008 Consolidated Text* hereafter) – following a tradition started in the middle of the last century, is a product of this reality. This text revises the *Ley 8/2007, de 28 de mayo, de suelo*, or *Land Law 8/2007* (*2007 Land Law* hereafter), and the articles of the *Real Decreto Legislativo 1/1992, de 26 de junio, por el que se aprueba el texto refundido de la Ley sobre el Régimen del Suelo y Ordenación Urbana*, or *Consolidated Text* of the *Land Use Act of 1992* (*1992 Consolidated Text* hereafter) that were not repealed.[2] The *2007 Land Law*, which constituted a major part of the *2008 Consolidated Text* that we are considering here, received considerable support in the Congreso de los Diputados (Spanish Congress of Deputies, the lower house of parliament). The Zapatero government, which passed the *2007 Land Law*, repeated many times that this law contained the mechanisms needed to solve the problem of corruption in housing matters in Spain. The Minister of Housing at the time, María Antonia Trujillo, went so far as to write at the time the *2007 Land Law* was approved in 2007 went so far as to say in writing that the *Law*

[2] Subsequent to *Sentencia 61/1997 del Tribunal Constitucional* (*Constitutional Court Judgement 61/1997*), the *1992 Consolidated Text* was declared unconstitutional, with the exception of a number of articles that have remained in force until today as supplementary legislation.

'plays a key role in the fight against speculation and corruption' and that it 'promotes transparency and sustainability, versus opacity and […] speculation' (*Europa Press*, 2007). Furthermore, it should be noted that although the main opposition party (the Partido Popular) at that time was strongly opposed to the approval of the *2007 Land Law*, after winning the November 2011 election with an absolute majority this party has not repealed the content of the *Law* but instead, in October 2015, has repealed the *2008 Consolidated Text* and approved in its place the new *Real Decreto Legislativo 7/2015, de 30 de octubre, por el que se aprueba el texto refundido de la Ley de Suelo y Rehabilitación Urbana* – the *Consolidated Text* of the *Land Use and Rehabilitation Act of 2015* (*2015 Consolidated Text* hereafter), which contains within it the articles of the *2007 Land Law*, the articles of the *1992 Consolidated Text* except for some that have been repealed, and some of the articles of the *Ley 8/2013, de 26 de junio, de rehabilitación, regeneración y renovación urbanas*, or the *Urban Rehabilitation, Regeneration and Renovation Law of 2013*.

There remain, however, serious reasons to believe that *2008 Consolidated Text* has not achieved its objectives and furthermore that the new *2015 Consolidated Text* will not reach them in the future. It is indeed possible that far from providing solutions, the new text may have introduced new problems, making it more difficult to survive the present international economic crisis – a crisis that has affected the Spanish economy with particular virulence.

As we shall see, in attacking the mistakes of the past, the land legislation we are examining considerably increases public intervention in land management. Among the perverse effects of the legislation are that it encourages speculation, fosters corruption, increases the pressure on land values to rise, eliminates the principle of indemnity in the expropriation of property, and, finally, generates great

juristic-economic uncertainty. Furthermore, a large number of the articles of the *2008 Consolidated Text* may be considered unconstitutional.

2. Doubtful Constitutional Validity

Let us start with the last issue. Many of the articles of the *2015 Consolidated Text*, if not most, are of dubious validity in the light of the Spanish Constitution. Appeals have been lodged against the *2007 Land Law* by Autonomous Communities and entities like the Consejo de Gobierno de Madrid (Governing Board of the Madrid Autonomous Community), the Consejo de Gobierno de La Rioja (Governing Board of the La Rioja Autonomous Community), more than fifty *diputados* from the Partido Popular, and the Gobierno de Canarias (Government of the Canary Islands Autonomous Community), and also against the *2008 Consolidated Text* by the Consejo de Gobierno de Madrid and the Consejo de Gobierno de La Rioja. These appeals, however, did not discuss many of the articles mentioned in this work. For these reason, *Judgement 141/2014* of the Tribunal Constitucional (Constitutional Court) ignores many of the concepts of doubtful constitutional validity as discussed in this paper. However, *Judgement 141/2014* nevertheless declared unconstitutional the third paragraph of article 22.1 of the *2007 Land Law* and the third paragraph of article 23.1 a) of the *2008 Consolidated Text*, and there was even a dissenting opinion by a judge which showed that more articles should be unconstitutional, mainly those related to valuations for purposes of expropriation.

In effect, the *2008 Consolidated Text* seems to ignore *Judgement 61/1997* of the Constitutional Court, which closed the debate on whether the State could legislate on planning issues (Asis et al., 1997). This judgement states with total clarity that the national legislator has no competency whatsoever as regards regional or town

planning, and furthermore that s/he may not even establish related supplementary norms. The sentence stipulates that the national legislator only has competency as regards the following: basic conditions related to property rights, general guarantees governing compulsory purchase and in consequence the system of land valuation and the responsibility of the government over patrimony (property rights), the aspects of land and housing title registry relevant to civil legislation, and some other issues of minor importance (Fernandez, 2004). The text, however, seems to ignore these determinations, and retains articles concerning issues that are the competency of the Autonomous Communities.[3]

2.1 'Developer agent' (*agente urbanizador*)

Article 6 of the *2008 Consolidated Text* grants third parties permission to develop and build without the necessity of ownership, thus fomenting a form of 'private expropriation' that is in direct contradiction to the concept of private property as it is understood in the west and even as it is defined in the Spanish Constitution, which recognised the right of all Spaniards to private property.

In such a business model, a company may approach the Municipal Council in power with a proposal to develop land the company does not own but that is classified as building land in the *Plan General de Ordenación Urbana* (Master Municipal Plan).[4] If the Council like the proposal, they may authorize the development. At that point, the owner is given the chance to participate in the urban development of his

[3] When the Spanish Constitution came into force in 1978, the Spanish state became a nation made up of 'Autonomies' or 'Autonomous Communities'. Article 148.1.3 of the Constitution gives the Autonomous Communities competency in subjects related to urban planning, housing, and regional planning. Today all the Autonomous Communities have assumed said competencies.

[4] The Master Municipal Plan is the principal instrument of the Spanish planning system. It is responsible for establishing the different land use classifications (urban, developable, or not developable), thus designating different rights over land use. When land is classified as developable the owner is given the right to develop it. To read more on the allocation of property rights in the urban planning system in Spain, read Lee, S., Webster, C., Melián, G., Calzada, G., and Carr, R., 2013, 'A Property Rights Analysis of Urban Planning in Spain and UK', *European Planning Studies* 21 (10) 1475–1490.

land. Should the owner be unable to participate or be uninterested, the developer keeps much of the land in payment for the urbanization of the same. In such a case, the owner has not choice and s/he cannot stop development conducted by the 'development agent'. As the difference in value between the land untouched and the land developed is enormous, the 'developer agent' keeps practically all the property. Should the owner instead decide to develop the land him- or herself (an unusual occurrence, because most such owners lack the expertise or resources to do so), and should the Autonomous Community's legislation allow it, s/he must pay the 'developer agent' the cost of the project approved by the council. We have here the most outrageous legalization of the right to usurp private property.[5]

The 'developer agent' with its special privileges is a figure that had existed de facto since the passing of a planning law in Valencia in 1994 by the Partido Socialista Obrero Español but was given legal status only with the approval of the *Ley 6/1998, de 13 de abril, sobre régimen del suelo y valoraciones* – the *Land and Valuations Law 6/1998* (*1998 Land Law* hereafter) by the Partido Popular. Subsequently, the 'developer agent' or developer-as-agent as a modus operandi spread to various other Autonomous Communities governed by different political parties. The figure of the 'developer agent' as it emerged in Valencian law produced any number of appeals, and the European Parliament in consequence passed a resolution in which it declared that 'the principle problems arising from the application of the *Ley Reguladora de la Actividad Urbanística de la Comunidad Valenciana* … are related to the role of the developer', insofar as the law leaves unprotected 'the property rights of the individual, raising issues of human rights and fundamental rights' (Auken, 2008).

[5] The figure of the *agente urbanizador* as considered here represents a résumé of the most representative characteristics of the type in practice. In each Autonomous Community where the figure has been legalized, it has its own particularities.

The *2008 Consolidated Text* therefore attempts to legitimise what comes down to being a form of 'private expropriation'. Moreover, the title of article 6, 'Iniciativa pública y privada en las actuaciones de transformación urbanística y en las edificatorias' ('Public and Private Initiative in the Actions of Urban Transformation and Edification'), intimates an extension of this operational mode, which represents a frontal attack on the right to private property, to the realm of building, and urban building land, by referring to an *agente edificador* – a building developer agent. The result is that any private individual may draw up a project for building on an urban plot and carry it out, without necessarily being the owner. However, for this to happen, the different Autonomous Communities would have to adapt their laws to this legislation; and after more than 7 years, no one has introduced such a building developer agent.

In practice, the figure of the 'developer agent' in the marketplace takes the form of large specialized companies who develop the land and make enormous profits, without considering those who own it, while a large number of small owners, unprotected by law, lose their property with little financial return.

2.2 Other quasi-constitutional precepts

The *2008 Consolidated Text* introduces a large number of precepts that affect issues that are the competency of the Autonomies, such as issues of regional planning, urban planning, and housing. While we make no attempt at an exhaustive list, among these we should mention are the town-planning convention/agreement (articles 11 and 16); the period established for public information (articles 11 and 13); the requisite planning documents that should be included (article 15), such as, for example, those on economic sustainability, and finally, the inclusion of totally arbitrary percentage of

profits developers must turn over (from a minimum of 5% to a maximum of 20%) (article 16).

2.3 The minimum reserve of land set aside for protected housing

In 'Título II', the *2008 Consolidated Text* incorporates certain basic criteria related to land use. Among these, it determines that 30% of building land should be reserved for one form or another of protected housing (article 10). This aspect of the *2008 Consolidated Text* is fairly controversial. For instance, the subject is the competency of the Autonomous Communities, which handle regional and urban planning and housing issues and designate these reserves. In addition, a 30% reserve of building land for housing protected in one form or another, increases pressure on the price of land and housing and causes it to rise.

2.4 Property rights over land

Planning orders related to property rights over land and what is contained therein deserve separate consideration. The changes to the *1998 Land Law* in this regard are considerable. The previous law assigned the owner specific rights according to how his or her land was classified (urban, developable, or non-developable), allowing him to 'urbanize' (construct streets) or 'build' (structures). In the text of that law, the only thing the owners may do directly is use and enjoy the land as it is (articles 7 and 8). It is important to point out that the property rights over land at that time were being linked to the existence or non-existence of an *aprovechamiento urbanístico*[6] land use classification. However, it now seems that the land use rights are dissociated from the property rights, going back to the system promulgated by *Ley 8/1990, de 25 de julio, sobre Reforma del Régimen Urbanístico y Valoraciones del Suelo* (*Land and*

[6] That is, the right to build for a given use on a certain number of square metres. It is assigned to the owner by the Master Municipal Plan.

Valuations Law 8/1990; *1990 Land Law* hereafter), which failed dismally to meet its objectives, among others that of lowering the price of housing (Ezquiaga, 2006). This mode of procedure in combination with the planning device that grants third parties (non-owners) the right to develop land is a powerful incentive to an abusive use of the role of the developer. As we shall see, this represents a direct attack on the concept of private property, which no human rights document or magna carta would tolerate.[7]

2.5 Principle of *indemnidad patrimonial* (patrimonial indemnity)

Both the Tribunal Constitucional, stipulating what should and should not be considered indemnity due, and the Supreme Court, in repeated judgements, have defended the so-called principle of patrimonial indemnity, according to which 'the indemnity of the expropriation and the economic value of the property should be equivalent'. The *2008 Consolidated Text* however, totally disregards that principle, and in effect eliminates it completely by modifying the procedures for valuing land in cases of compulsory purchase (Melián and Calzada, 2010). With the change in criteria, valuation is based on the physical condition of the land, rather than how it has been classified and thus on its potential use in economic terms.

2.6 *Estatuto de la ciudadanía* (statute of citizenship)

The statute of citizenship is another of the problematic provisions of the *2008 Consolidated Text*, by means of which a third party is given the right to take decisions with regard to the property rights of an owner over the owner's land. The concept of a statute of citizenship is a new idea developed by Spanish legislators in which all the citizens have the 'right to the city' (cf. Lefebvre, 1968) and rights over the property of others. In the words of the legislation, 'civic life plays itself out in the environment of the city, and recognition should therefore be given to the minimum rights of all

[7] Again, see Lee et al. (2013).

citizens with regard to urban planning and to the environment, be it rural or urban, of liberty, participation and services due. In short, the purpose of the *2008 Consolidated Text* is to guarantee basic conditions of equality in the exercise of these rights and the fulfilment of the duties of individuals as citizens, as set out by the constitution with regard to these matters'. Under this idea, articles 4 and 5 of the *2008 Consolidated Text* lay out rights and responsibilities of citizens and not only, as in the previous legislation, of the landowners. Many groups and organizations have claimed that these articles represent an improvement over the basic rights of citizens as expressed in the Constitution. While this is debatable, it makes no sense that a law, supposedly designed to specify the exclusive rights and responsibilities of owning real estate property and the system of valuations to address cases of expropriation (as ruled by the Tribunal Constitucional, in *Judgement 61/1997*), should introduce rights and responsibilities that have little to do with real estate property (Melián and Calzada, 2010). And it may prove that some of those rights are unconstitutional since they controvert private real estate property rights.

The situation given rise to by the *2008 Consolidated Text* is, in short, the socialisation of decisions regarding use of private land under a very particular conception of cities.

2.7 Sustainable development

The concept of sustainable development employed in the text is a highly controversial one that raises much debate among economists. In reality, the text confuses the concepts of *economic* and *environmental* sustainable development. From the point of view of the environment, the idea of sustainable development arises in the context of

building operations. Limiting growth as recommended by the Club of Rome[8] is of doubtful scientific validity, due to the fact that there is at root a basic incomprehension of how an economic good is created, of the phenomenon of economic scarcity, and of how non-intervention in prices attenuates scarcity (Meadows, 1972 for a critique of sustainable development, consult Cole et al. edited volumen, 1974, Morris, 2002 and Taylor, 1998). These conceptual shortcomings have led to economic policies that, aiming at sustainable development, only achieved the first stage of it – surviving in time, while having no visible effect on development. Any impact of the policies is indeed remarkably elusive when it comes to effectively promoting growth of any significance. The latest report of the World Wide Fund for Nature (WWF) on development, *Living Planet 2006*, gives a good example: the only country on the planet that complies with the criteria of sustainability in accordance with the document is Cuba.

If applying the concept of sustainability to land use legislation already causes confusion, the *2008 Consolidated Text* makes matters even worse by requiring the inclusion of a report on economic sustainability among the documentation required of the developers (article 15). Once again, the central administration meddles in competencies that belong to the Autonomous Communities. The report on sustainability, in accordance with the dispositions of the legal text, should pay particular attention to the tax impact of the planning. The apparent implication here is that the important thing is not to achieve harmonious development that maximises the use of land, a valuable, scarce resource, but that public funds should show a healthy balance.

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[8] The famous requirements for the Club of Rome´s recommended 'state of global equilibrium' were described in *The Limits of Growth* (Meadows, 1972, pp. 173–174) in the following way: 1. 'The capital plant and the population are constant in size'; 2. 'All input and output rates – births, deaths, investment, and depreciation – are kept to a minimum', and 3. 'The levels of capital and population and the ratio of the two are set in accordance with the values of the society'.

3. The Influence of the *Law* on Land Prices

3.1 The *Law* puts upward pressure on land prices

As in other developed countries, one of the main preoccupations of the Spanish population is the high price of housing. It is therefore natural that legislators should have tried to legitimise the *2008 Consolidated Text* by relating it to the fight against inflation and increased prices. From the economic point of view, however, the explanation of why the price of housing has gone up that this connection implies leaves much to be desired. The *2008 Consolidated Text* considers that the rise in the price of housing is a consequence of the classification of the land, and, as we shall see later on, of speculation; if true, this would justify reform of processes of classification and valuation of land, as part of the fight against the high price of housing. The most surprising element here is what the legislation puts forward as the pivotal reason for introducing this substantial change, as he explains in his description of the aims of the 2007 *Land Law*: 'classification has contributed historically to the inflation of land values, introducing expectations of revaluation long before the activation of the processes involved in carrying out the urban planning orders of the public authorities, thereby also increasing speculative activities, which the Constitution requires us to combat' (*2007 Land Law*). In our opinion, this position is wrong, probably due to lack of thought or, alternatively, ignorance of how the market operates.

The subject is best examined step by step. There are effectively two reasons for increase in prices of land and housing. On the one hand, there is the financial demand for land. Policies that reduce interest rates, known as 'cheap money' policies, help to generate economic bubbles in sectors like development and building, which are highly sensitive to the rate of interest (the rate at which a property today is

interchanged with a property tomorrow) (Huerta de Soto, 2005). While it is true that politicians are largely responsible for the disastrous, spiralling inflation in the field we are concerned with, it is also true that if a monetary policy produces operational distortion, a *Land Use Act* stands little chance of correcting the process.

On the other hand, there is the question of supply. The continuous increase in the price of land and housing was at the root of policies of intervention related to the land available (the supply) via either classification (Lee et al., 2013) or any other form of state intervention that limits the potential uses of the land by the owner. In other words, what a *Land Use Act* can do is exacerbate the effect of low interest rates on the price of land and housing via the artificial reduction of the supply of land for development. If the aim is to combat the tendency to inflation of prices in this sector, with the resistance of the market to performing otherwise, the best a *Land Use Act* could do would be, in obedience to economic laws, to eliminate artificial restrictions on the supply of land available for development.[9] The *2008 Consolidated Text*, however, not only greatly increases intervention in land matters but also introduces new 'taxes' in money and kind that effectively remove land from the market. The contradiction between the way the *2007 Land Law* is justified and the repercussions of the intervention recommended could not be more evident.

One of the new forms of intervention that contributes to raising the price of land is the increase in the percentage of profits generated by housing development that are passed on to local government. This disguised tax – a tax on one of the most basic goods, to which access should be facilitated by the governing bodies, according

[9] Market resistance to lower prices could also be attacked by introducing financial regulation to make it impossible for banks to maintain housing on their books at prices well above their market value. See Melián (2009).

to the Constitution[10] – passes from a maximum 10% in the *Land and Valuations Law* 6/1998, to 20% in the *2007 Land Law*, which was incorporated in the *2008 Consolidated Text* and in the *2015 Consolidated Text.*[11]

Moreover, as we discussed when commenting on how the *2008 Consolidated Text* exceeds its authority, the minimum proportion of building rights reserved for protected housing of some sort or another is a full 30%. This measure, which has already been exceeded in certain Autonomous Communities, of course reduces the supply of land available for non-protected housing, and therefore principally ensures that politicians of all sorts can publicly boast of having produced houses for all. The unfortunate reality, however, is that most Spanish families buy housing on the open market, and as the land available is reduced, the prices are higher than they would otherwise have been. Policies of intervention in land use therefore make it that much more difficult for the average Spanish family to buy a house.

In short, far from solving the problem of the continued escalation in the price of land that so preoccupies the Spanish population, the *2008 Consolidated Text* introduces added pressure on prices to continue rising.

3.2 The actual evolution of land prices after the passing of the *Law*

As shown in the previous section, the *2007 Land Law*, which is included in the *2008 Consolidated Text* and in the *2015 Consolidated Text*, therefore contained no mechanisms to reduce the price of land on the market, but rather the opposite. And yet, despite the *2007 Land Law*, the price of urban land would decline drastically in the following seven years. In fact, the forces that would greatly reduce the price of land in Spain were already in place in May 2007 when the *2007 Land Law* was

[10] The Spanish Constitution stipulates in article 47 that all Spanish citizens should participate in the profits generated by urban development.

[11] The 10% maximum in the *1998 Land Law* refers to the *aprovechamiento* – land use designation – while the 20% of the *2007 Land Law* refers to the average of the building rights granted.

passed. Between the last quarter of 2006 and the first quarter of 2007, the price of land in Spain was down 3.7%, showing signs of exhaustion (*Boletin del Ministerio de Fomento* – http://www.fomento.es/be2/?nivel=2&orden=36000000). In the United States the rate of mortgage default marked a 7-year record in March 2007, and on 2 April, a month before the adoption of the *2007 Land Law*, New Century Financial, a financial main specialized in subprime mortgages went bankrupt. The crisis had begun, and the housing bubble's bursting occurred just before the adoption of the *2007 Land Law*.

Arguably because of after the passing of the 2007 Land Law, prices rebounded slightly, and reached a record high of 285 euros per square meter in the third quarter of 2007. From there, the price fell 12% while lawmakers prepared to approve the *2008 Consolidated Text* (ratified in June). Although the ups and downs of these early stages of the global financial crisis still allowed a slight recovery for two quarters, there then came a steady and rapid decline in land prices in Spain, which only begin to recover in late 2014 (*Boletin del Ministerio de Fomento* – http://www.fomento.es/be2/?nivel=2&orden=36000000). Legislators, of course, were not aware of this dramatic shift as they were passing the *2007 Land Law* in 2007. The statistics on land prices came in only after the publication of the *2007 Land Law*. One wonders if the legislature would have put so much emphasis on anecdotal evidence of price problems if it had been aware of the powerful downward forces that were already acting and the multiple bankruptcies of financial firms that were about to occur while the legal response was brewing.

As indicated, these forces were triggered by the bursting of the housing bubble and the recession it caused. In particular, the collapse in demand for housing and commercial premises due to the uncertainty generated by the crisis and the sharp

increase in supply due to the attempts of many owners to sell their properties to solve problems of enormous leverage, and the resulting illiquidity with agents, led to a crisis, and land prices sank. From the record high of 2007, the bottom of the downward spiral came in 2014, by which time urban land prices had fallen an average of 50.35% (*Boletin del Ministerio de Fomento* – http://www.fomento.es/be2/?nivel=2&orden=36000000).

The economic recovery in Spain since 2013 seems to have checked falling prices and revived the demand for homes and offices, and therefore land, since 2014. In this new context, the terms of the *2007 Land Law* as reflected not only in the revised *2008 Consolidated Text*, in effect until 31 October 2015, but also in the new *2015 Consolidated Text*, and the additional costs and constraint-free land supply which it provides can only help prices to rise higher than they otherwise would have been.

4. Speculation and Corruption

As we have seen in the quote taken from the legal text in section 3.1, theoretically another of the aims of the *2008 Consolidated Text* is to fight against speculation and to try to eliminate corruption. However, a rapid analysis of the dynamics of speculation demonstrates that the result will be the opposite of the one desired here as well.

Speculation has two sources. The first is autonomous: the supply can be made to fit the demand, a process that functions by bridging different periods in time (economic speculation). This speculative operation may consist, for example, in buying land when it is suspected that there will be a shortage in the future – the purchase is made when the land is relatively cheap, and the sale occurs when the land is most needed, helping to reduce the pressure on prices to rise consequent on

scarcity. Thus, far from representing upward pressure on prices when they are already high, economic speculation only invites prices to rise when they are relatively low, and helps to *decrease* the price of land and housing when it is relatively high (Reisman, 1990).

The second form of speculation is the product of different forms of public intervention in the free use of land: political speculation. This type of speculative exercise, unrelated to the strictly economic world, consists in buying land at low prices not because foresight suspects shortage in the future of this type of land but because there is certainty that the land will be reclassified. While economic speculation has positive social effects, the political variant would seem to represent a perfect breeding ground for one of the most pernicious vices of modern society, namely corruption in the domain of urban planning. The *2008 Consolidated Text*, however, attacks the first type of speculation while fomenting the second with new doses of intervention and arbitrary processes that act as incentives to corruption (Reisman, 1979).

To try to avoid economic speculation is to unbalance the market, distancing supply and demand – a divergence that causes serious problems. On the other hand, to try to avoid political speculation, other than by ceasing the intervention that caused the problem in the first place, leads to further intervention that will, once again, unbalance the behaviour of the market, leading to new opportunities for speculation as a result of future intervention, and thus in turn future corruption as well.

Also of importance is to note that by constitutional mandate (article 47 of the Spanish Constitution) public authorities should impede speculation. The Spanish Constitution naturally does not differentiate between the two variants of speculation we have examined, but it would seem evident that the mandate refers to political

speculation – unless we ignore the teachings of economics. If any of the three State authorities were to attempt to take generalized measures to avoid economic speculation of any sort, the economy of the country would enter a phase of economic chaos, as happened for instance in the Spanish food sector Spain between 1939 and 1953 after the approval of the June 26, 1939 decree against speculation in the food market.

5. Expropriation at Bargain Prices

The greatest novelty in the text of the *2008 Consolidated Text*, however – and the one with the most profound effect on urban planning, the market, and private property – is to be found in the 'Titulo III' of the *2008 Consolidated Text*, which deals with valuation for purposes of expropriation. As we have said, the legislator blames the high cost of housing on the classification of the land. In the light of that approach, he eliminates the concept; and the land, as stipulated in the legal text, will be valued according to whether it is developed or undeveloped. The land that government decides to expropriate will not be valued according to its potential use but according to its physical condition or situation. In land not destined for development, settling the value by comparison with analogous pieces of land is no longer a valid approach; meanwhile, on land destined for development, the repercussive mode of valuation, in which the potential developed value is included in the valuation, is no longer applicable. Thus, in sum, the value of non-developable land will be calculated according to the capitalisation of income instead of by comparative methods, and the value of land classified for development, by repercussive mode. Just how important a change this is becomes apparent if we consider that in this situation plots for development will be expropriated as if they were protected or non-developable plots.

Thus, the economic compensation in cases of compulsory purchase will be much, much lower than the market value and the real economic value of the property[12]. This new piece of legal-political engineering not only puts an end to the idea of patrimonial indemnity but also makes pretty pointless the more than 400 years of study and application, with greater or lesser success, of fair price theory that Spain has exported all over the world, ever since the problem was first analysed by the Escuela de Salamanca (Salamanca School) (specifically, by De Roover, 1958). The new criteria for valuation for purposes of compulsory purchase could well be called 'unfair price expropriation'. This attack on private property has a dire effect on the capacity of small and mid-size developers, who find their capacity to finance operations via mortgages greatly reduced. Small landowners lose out, and the only ones to profit from the operation are the State and the *agente urbanizador* (the 'developer agent'), who will keep the land he has developed almost in its entirety in payment for the work carried out. This is possible because of the low valuation the land receives on being considered 'not urbanised' at the time of valuation.

6. Uncertainty

From beginning to end, the *2008 Consolidated Text* consists in a series of stipulations, the application of which is openly arbitrary. Thus, article 4 speaks of the right 'of citizens to participate and assist in the urban planning', while article 9 says that the owner has the duty 'to conserve the land and the vegetation in order to avoid an enormous quantity of risks'. The result is uncertainty. The difference, moreover, between the price paid for the land expropriated and the market value generates great

[12] To read more on valuation for purposes of expropriation and the main changes introduced by the *Consolidated Text of the Land Use Act of 2008*, read Melián, G. and Calzada, G., 2010, 'A legal and economic study of the new Consolidated Text of the Land Use Act of 2008 in Spain', *Land Use Policy* 27 (4) 1091–1096.

uncertainty among financial entities and financiers when it comes to setting up mortgages.

7. Conclusions

In conclusion, we find that the *2007 Land Law* and thus the *2008 Consolidated Text* and the *2015 Consolidated Text* follows faithfully in the tradition of intervention of the *1956 Land Law*. That is to say, both in spirit and in form, it would seem to respond to the dictates of an authoritarian and paternalistic state rather than to those of a well-established liberal democracy that guarantees the rights of its citizens. This regrettable tendency, together with the fact that the 2008 *Consolidated Text* repeatedly ignores the dictates of the judgements of the Tribunal Constitucional differentiating the planning competencies belonging to the central administration from those of the Autonomies, make the constitutionality of the norms underlying the *2008 Consolidated Text* and *2015 Consolidated Text* doubtful, to put it mildly.

On the other hand, the traditionally contradictory attitude of the political classes towards land and urban planning reaches splendid heights in this *2008 Consolidated Text*. The text employs all type of verbal dialectics and fireworks to sell to the voter/taxpayer the idea that the *2008 Consolidated Text* is going to solve the main problem that most worries the Spanish population: the price of land and housing (CIS, 2007). For example, the Statement of Motives of the *2007 Land Law*, retained in the *2008 Consolidated Text*, holds that 'classification has historically contributed to the inflation of land values, incorporating revaluation expectations long before the necessary operations will be made to realize the urban determinations of public powers and therefore has also encouraged speculative practices against we should fight for the constitutional imperative'. As we have been exploring, the stipulations of

the *2008 Consolidated Text* (on reserve and capital gain) put increased upward pressure on land prices, making them higher than if the norm had not existed. In this context, the most outrageous contradiction of all is the affirmation that land is being removed from the free market in order to build the working man decent, low-cost housing. The average person, that is, the great majority of people, buy their homes on the open market. Operations of government propaganda can only make their lives harder as the supply of land available on the free market is reduced.

The invasive intervention of the *2008 Consolidated Text* moreover does not serve as medicine to cure the major social disease represented by corruption, as outlined above. On the contrary, political speculation, with its mechanisms of control over land and the legal labyrinths in which the *2008 Consolidated Text* enmeshes urban planning, makes for a perfect breeding ground for this modern disease, as legislators dedicate their energy instead to attacking economic speculation, which is in reality an essential component of a complex process requiring coordination over different moments in time, in different places, with land of different types. In short, the *2008 Consolidated Text* pushes out the economic speculator – the agent who alleviates the tendency of prices to rise when and where land is highly scarce and buys up land on the open market when it is relatively abundant. Meanwhile, corrupt practices can flourish, lining the pockets of certain bureaucrats and politicians.

Finally, the *2008 Consolidated Text* devalues the importance of private property. On the one hand, it offers renewed legal support to the figure of the *agente urbanizador* or 'developer agent'. Supporting this legal alliance between mayors and what amount to private mafias, many of no small importance, guarantees the continuity of this source of legal insecurity, together with the persistent abuse of some of the most elementary of human rights. On the other hand, the *2008 Consolidated*

Text destroys a concept that has for more than 400 years played an important social and legal role and has been studied and analysed generation after generation, at greater or lesser depth: the concept of *justiprecio* (fair price), and the related concept of patrimonial indemnity. In substitution, it introduces a new form of expropriation according to the physical condition/situation of the land, a procedure that leaves the owner wholly unprotected from whatever use the major political parties may make of the state machinery. Now it seems that with this piece of expropriatory engineering, the state can acquire the land of an honourable citizen for a ridiculous figure. With this underlying philosophy, it will be difficult for the legal text to fulfil its objectives.

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