The Political Fragmentation of Land Use Governance in Santiago, Chile, and its Implications for Socioeconomic Residential Segregation

Diego Gil Mc Cawley, Stanford University

Available at: https://works.bepress.com/diego_gilmccawley/1/
THE POLITICAL FRAGMENTATION OF LAND USE GOVERNANCE IN
SANTIAGO - CHILE, AND ITS IMPLICATIONS FOR SOCIOECONOMIC
RESIDENTIAL SEGREGATION

(August 22, 2013)

Diego Gil Mc Cawley

ABSTRACT

Despite decades of economic development and the general improvement in the quality of life of its people, Santiago, the capital of Chile, presents high levels of residential segregation along socioeconomic lines. A debate about legal reforms to address this phenomenon is currently occurring.

Existing Chilean research suggests that the current pattern of urban segregation has been caused by social housing policies based on the provision of subsidies to homeless people implemented in the last decades. However, foreign literature, especially in the United States, indicates that residential segregation is also influenced by land use legal structure and practices. This latter factor has been overlooked in Chilean scholarship, and the purpose of this paper is to include this additional dimension in the current debate.

The paper asks whether Santiago’s land use legal dynamics affect the achievement of social integration. In overview, the paper finds that Santiago presents a complex regulatory scenario in the realm of land use, mainly involving the Ministry of Housing and Urban Planning (MHUP), and its 52 municipalities. The research also finds that through the exercise of multiple administrative and regulatory mechanisms, municipalities are increasingly using their power to guide the urban development in their corresponding territories. However, this is largely contingent on the bureaucratic and financial situation of each local government, the social needs they have to cover, and the political pressure they face. Some municipalities are subject to intense lobbying from real estate developers, landowners, and residents’ organizations. Therefore, the regulatory possibilities among Santiago’s local governments vary dramatically.

This fragmented scenario impacts the way public officials perceive the relationship between land use governance and segregation. Some observe that the law establishes strong obstacles to residential integration. Others emphasize the lack of incentives to produce

1 J.S.D. Candidate, Stanford Law School. LL.B. Universidad de Chile (2008), J.S.M. Stanford Law School (2011). This article is an updated version of the dissertation I completed during the Master of the Science of Law Program at Stanford Law School, 2010-2011. The research was conducted under the supervision of Professor Mariano-Florentino Cuéllar, to whom I am very grateful for his wise advice and support. I would also like to thank Professors Lawrence Friedman, Deborah Hensler, Rogelio Pérez-Perdomo, William Simon, and Stephen Haber, for very helpful conversations on topics related to my thesis. Many thanks to Moria Paz, Eugenio Cárdenas, Agnes Chong, and Guillermo Jiménez, who provided very helpful comments and advice. I presented an early version of this paper at the Law and Society Association Annual Meeting, in San Francisco, (June 2011) and at the 2011 Doctoral Scholarship Conference, at Yale Law School (December 2011), where I also received useful comments. This thesis would not have been possible without the generous gift of time of all the people interviewed. I promised anonymity to all of them, but I would like to explicitly acknowledge their contribution to this research. Errors are mine.
inclusionary housing projects. Finally, a third group considers that segregation is beyond the scope of their concern. This is especially observed in high-income districts.

The findings of this paper support the idea that social housing policies based on subsidies cannot be the only remedy for socioeconomic residential segregation. Without addressing the institutional choices and incentives created by Chilean land use regulatory framework, and how this institutional structure operates in practice, social integration within Santiago’s metropolitan area will remain an unattainable ideal.
# TABLE OF CONTENTS

I. INTRODUCTION ....................................................................................................4

II. BACKGROUND: RESIDENTIAL SEGREGATION IN SANTIAGO, CHILE, AND THE LAND USE GOVERNANCE DIMENSION..............................................................................9
   A. Residential Segregation in Santiago, Chile, and Its Problematic Nature ...9
   B. Competing Models of Land Use Governance....................................................14

III. THE MISSING FACTOR: LAND USE LEGAL PRACTICES AND ITS POLITICAL CHOICES IN SANTIAGO - CHILE ................................................................. 18
   A. Overview of Chilean Land Use Legal Framework.................................................18
   B. Chilean Land Use Law in Action.........................................................................23
   C. The Politics behind Land Use Governance in Santiago - Chile .....................31

IV. THE MISSING LINK: THE RELATIONSHIP BETWEEN LAND USE GOVERNANCE AND SOCIOECONOMIC RESIDENTIAL SEGREGATION...35
   A. Public Acknowledgment of Residential Segregation and Its Causes ..........35
   B. The Role of Land Use Governance in Addressing Residential Segregation ..........................................................................................................................37
   C. Institutional Attitudes Towards Residential Segregation...............................41

V. CONCLUDING REMARKS ..................................................................................44
I. INTRODUCTION

In 1999, a large group of families, without the authorization of the owner, began occupying a private piece of land located in a middle class district in Santiago, Chile, called Peñalolén, a district well located in terms of its proximity to Santiago’s downtown. The place was known as “La Toma de Peñalolén”. The families, which after a couple of years ended up being 1,700, took the piece of land with a strong commitment to settle there and to create a slum. The case strongly impacted public opinion, especially because it was the biggest slum created after the return of democracy in Chile, and after many years of economic development. The families were very well organized and rejected all the offers to move to social housing projects in the periphery of the city. They wanted to stay in the same district, close to their social and economic networks.

The municipality of the district, and the Ministry of Housing and Urban Planning (MHUP), were under huge pressure to provide a solution to the problem. One option was to expropriate the private piece of land where the squatters were located, but the residents that were surrounding the land did not want this solution. The reason they gave was that they bought their properties according to certain land use rules that would have to be modified to build social housing, which would impact the value of their land. Another alternative was to move the people to another district, but the families of the slum opposed this option. A third alternative was to buy other pieces of land in the same district to build projects for the families, which was finally the decision taken by the MHUP.

As part of this solution chosen, the MHUP bought a property inside a private condominium of high-income people, called “The Ecological Community” (“La Comunidad Ecológica”).

---

2 The description of “La Toma de Peñalolén”, and the conflict that originated, has been obtained from multiple sources. A summary of it can be found here: [http://www.emol.com/noticias/nacional/2004/02/25/139660/toma-de-penalolen-una-historia-muchos-actores.html](http://www.emol.com/noticias/nacional/2004/02/25/139660/toma-de-penalolen-una-historia-muchos-actores.html). See also Rodrigo Salcedo, *The Last Slum: Moving From Illegal Settlements to Subsidized Home Ownership in Chile*, 46 *Urban Affairs Review* 90–118 (2010) (arguing that La Toma de Peñalolén represents the fact that quality and localization are becoming more relevant in housing policy); Ana María Álvarez Rojas, *La segmentación socioeconómica del espacio: la comunidad ecológica y la toma de Peñalolén*, 34 *EURE* (SANTIAGO) 121–136 (2008) (assessing the conflict between the people of La Toma de Peñalolén and the families that were living in the neighborhood where part of “La Toma” was supposed to be relocated); Lucas Sierra, *Urbanismo por decreto: centralismo y confusión institucional en la ciudad chilena, in SANTIAGO. DÓNDE ESTAMOS Y HACIA DÓNDE VAMOS* 299–328 (Alexander Galetovic ed., 2006) (analyzing the different regulatory options that were available to provide a solution to the conflict).

3 In Chile, slums are called “campamentos”, and they are defined by the Ministry of Housing and Urbanism as urban settlements of more than 8 families, that inhabit irregularly a piece of land (without holding property rights), that lack at least 1 social service (either water, electricity or sewage system), and with houses that are contiguous. See Mapa Social de Campamentos 2011, [http://www.minvu.cl/opensite_20110523144022.aspx](http://www.minvu.cl/opensite_20110523144022.aspx) (describing the results of a census of slums conducted in Chile).
Ecológica”), to relocate part of the families living in the slum. After this purchase, a strong conflict between the government and the condominium’s residents started. The residents argued that their environmental project would be completely destroyed by the installation of a large conglomerate of dwellers on their land. After a long process of negotiation and lobbying, the result of the conflict was nothing less than astonishing. A real state corporation offered to purchase the land in “The Ecological Community” and to pay an extra bonus of money to each of the families that were waiting to be located in that place, in order to make them able to get a good housing solution in another place of the district.

Finally, “La Toma de Peñalolen” was subject to a variety of solutions, using different policy and legal techniques. A group of families was moved to a new social housing project in the same district, but far from where the slum was located. Another group accepted to be moved to another district. Other families are still awaiting the end of the construction of new projects for them in other territories of the district. The private land where the families placed the informal settlement was finally expropriated, and now the municipality is building a nice park replacing the slum.

This case is a good example of the challenges that many metropolitan areas around the world face today, i.e., how to provide a definitive and appropriate housing solution to low-income people in well-located land, where usually land prices are high, and where residents are potentially strong opponents of the construction of social housing projects. Public authorities have different legal instruments to promote the construction of inclusionary social housing projects. However, the practice of these legal mechanisms is highly contextual and highly political, which affect the way residents, especially those who are poor, are distributed within the city. The balance of technical and political considerations is inescapable for the public officials that have to deal with social housing and residential segregation.

Today in Chile, as it is the case in many cities around the globe, residential segregation is a policy concern, and is prompting a debate about reforms in the legal structure that governs the process of urban planning and management to promote more social integration. While the MHUP has proposed the creation of urban planning

---

4 An example of the political importance of this phenomenon is the following quote from the former Minister of Housing and Urban Planning, Patricia Poblete: “With a more structural view, we think that the problem of social segregation requires more efforts than the ones that the government can fund. This urban trend is a problem for all the Chilean people, and affects our social cohesion as a country. This year we are going to
mechanisms and obligations of social integration, to date there has not been any important change in the legal structure that governs Santiago, and there is no consensus about the directions that the reforms should follow.\(^5\)

One of the possible reasons for this lack of consensus is the absence of deep analysis about the role of land use law and policy in the process of residential segregation. As will be described below, most of the literature in the field has referred to the characteristics of residential segregation in Chile, and the relationship between this phenomenon and the social housing policy based on demand subsidies that created large conglomerates of social housing projects in the periphery of the city.\(^6\) Indeed, the focus of most academic and policy analysis to the question of how to provide social housing in an inclusionary way has been in the policies that allocate subsidies to homeless applicants, which has been the core of housing assistance programs in the last 4 decades.\(^7\) Generally speaking, the legal structure governing urban land use is taken for granted. However, this legal dimension has important consequences for the distribution of residents throughout Santiago’s territory, which impact the effectiveness of Chilean social housing policies. The law governing city land use establishes strong and discretionary powers on the hands of public officials that define, in important ways, the life of the people living in Santiago. To the best of my knowledge, no one has asked if the legal structure and the regulatory practices that govern Santiago also affect the goal of residential integration.

Two main questions are addressed in this paper: (2) How urban land use decisions are taken in Santiago, Chile?, and (2) How these institutional practices affect the pattern of residential segregation along socioeconomic lines in Santiago’s metropolitan area? The paper assumes that a complete understanding of the causes and responses to this phenomenon cannot rely exclusively on the social housing policy based on subsidies. In other words, the paper tries to prove the hypothesis that not only the social housing subsidies system affect

---

\(^5\) A recent study of the OECD has provided a very comprehensive assessment of Chile’s urban policy, with recommendations of reforms in many areas, which indicates that these issues are starting to be discussed. See OECD, OECD URBAN POLICY REVIEWS: CHILE 2013 1–214 (2013).

\(^6\) See infra Section II A.

\(^7\) Id.
the pattern of residential segregation, but also the legal dynamics that regulate Santiago’s land use.\(^8\)

This relationship has had little exploration in Chilean legal scholarship.\(^9\) In contrast, in the United States, extensive research on the topic shows that a review of the regulatory structure and practices that govern cities’ land use is crucial to understanding and fighting urban inequalities\(^\text{10}\). This comparative perspective justifies focusing on these legal dynamics as an essential factor to understand the problem of residential segregation. I hope it will be clear at the end of this paper that the revision of the legal practices governing land use in Santiago is an unavoidable task if we want to address social segregation within the city. This study should be considered as a first step in that direction.

The issue that this paper pretends to address is not a particularity of the Chilean urban context. Indeed, residential segregation is a challenge in many parts of the world. Many metropolitan areas around the world are increasing their level of social fragmentation. The engine of this fragmentation, though, varies among them. While the characteristic mark

---

\(^8\) For the purpose of this paper, the social housing policy and land use legal practices should be understood as different institutional practices within the Chilean context. By social housing policy I refer to the social program that provides vouchers to homeless people to get access to housing. By land use law I refer to the set of rules and practices that govern city land use. I will use the term “legal dynamics” to refer to how agencies and officials actually implement that law.

\(^9\) One of the few exceptions is the work of Enrique Rajevic. See, for example, Enrique Rajevic, El paulatino pero insuficiente desarrollo del derecho urbanístico en Chile: en tránsito de la adolescencia a la madurez, 9 FÓRUM DE DIREITO URBANO E AMBIENTAL 61–70 (2010) (arguing that land use law in Chile has had an insufficient development with regards to problems like social segregation). Another exception is Francisco Sabatini et al., Dispersión espacial de vivienda económica como vía de integración social urbana, en CAMINO AL BICENTENARIO: PROPUESTAS PARA CHILE (Pontificia Universidad Católica de Chile ed. 2010). This is a policy recommendation paper, where the authors argue that social housing policies based on subsidies need to be complemented with land use legal incentives to promote more social integration within a city. They propose to implement in Chile a rule similar to Chapter 40B of the Massachusetts Constitution, that allows real state developers to build social housing projects with a higher density than the one established by zoning laws, in districts with low percentage of social housing (less than 10%).

of Latin American cities is residential segregation based on class, in the United States the concern is mainly racial segregation in metropolitan zones. In Europe, the current pattern of segregation is very influenced by the problem of massive immigration. Most of the countries facing this problem are trying to respond to it, using different legal and policy techniques. Therefore, the analysis presented below is pertinent for the reality of many countries over the globe.

The focus of the article is on how land use law reacts to residential segregation in Santiago, Chile. This reaction cannot be properly assessed only describing the land use legal framework as how it appears on the books. It is also important to evaluate how that legal framework is actually implemented in practice by public officials (what the socio-legal literature called “law in action”). To measure these practices, I conducted a case study of Chile’s land use legal practices. Among the sources of information used, I benefitted enormously from several semi-structured interviews with public officials working in urban planning departments and in the implementation of social housing policies, both at the municipal and ministerial level. I also interviewed people from private institutions that work closely with the type of officials mentioned. The interviews were carried out in January and February 2011.

I complemented this information with the analysis of secondary sources, especially public databases that have information regarding the Chilean housing market, urban planning instruments, and the characteristics and administration of each municipality in Santiago.

This Article reveals that urban land use decisions are taken in Santiago in an increasingly complex and fragmented political structure, where each municipality in which the metropolitan area is divided plays a significant role. The regulatory decisions taken by all the institutional actors involved are not politically neutral. On the contrary, they are

\[\text{See Francisco Sabatini, LA SEGREGACIÓN SOCIAL DEL ESPACIO EN LAS CIUDADES DE AMÉRICA LATINA (2003).}\]
\[\text{Sonia Arbaci, Ethnic segregation, housing systems and welfare regimes in Europe, 7 EUROPEAN JOURNAL OF HOUSING POLICY 401–433 (2007).}\]
\[\text{Nico Calavita & Alan Mallach, INCLUSIONARY HOUSING IN INTERNATIONAL PERSPECTIVE: AFFORDABLE HOUSING, SOCIAL INCLUSION, AND LAND VALUE RECAPTURE (2010).}\]
\[\text{All interviewees were promise anonymity. To quote them, I identify them by a general description of their role. Interviews were conducted in Spanish, so I translated all the quotes used. More information on file with author.}\]
\[\text{See www.observatoriohabitacional.cl; www.observatoriourbano.cl; www.sinim.cl (last visit March 14, 2011).}\]
significantly influenced by political interests. And they respond to very different schemes of incentives. For some authorities, the integration of low-income groups through housing policy is an urgent reality to which they have to provide a response. For others, however, this problem is beyond the scope of their concern. Then, the fragmentation along class is supported by the political fragmentation of the institutions with city land use regulatory powers in Santiago.

The paper proceeds as follows. Part II provides a description of the two premises over which this research is built: (1) that residential segregation is a problematic phenomenon in Chilean urban areas, especially in Santiago, and (2) that land use governance is an important dimension of it. Part III describes the legal framework governing land use regulation in Santiago, analyzing how that framework is implemented in practice, and how political interests influence those practices. Part IV explores how the land use governance regime impacts the pattern of residential segregation. Part V concludes.

II. BACKGROUND: RESIDENTIAL SEGREGATION IN SANTIAGO, CHILE, AND THE LAND USE GOVERNANCE DIMENSION

This paper builds on two premises. The first premise is that residential segregation along socioeconomic lines is an extensive and problematic phenomenon in Santiago, Chile, from a theoretical and empirical perspective. The second premise is that the legal and political structure governing cities, especially in the realm of land use regulation, plays an important role in residential segregation. These two premises will be developed in the following pages.

A. Residential Segregation in Santiago, Chile, and its Problematic Nature

From a sociological perspective, residential segregation may be defined as the agglomeration of people from the same social condition in the same geographical space. The social condition may be age, migratory origin, religious belief, race, or socioeconomic level, among other factors. As Elizabeth Anderson has argued, “segregation typically leads to

---

group inequality when the group practicing social closure controls the allocation of goods critical to securing advantage or power”.\(^{18}\)

Although racial and socioeconomic residential segregation is a global social phenomenon, its main characteristics and causes may vary from country to country and city to city. How extensive is socioeconomic residential segregation in Santiago, Chile? What are the factors that led to it?

Santiago, as many others Latin American cities, has evolved from its traditional European urban pattern to the U.S. urban model. It has been argued that the traditional pattern of segregation in Latin America was characterized by what has been called “high-scale” segregation, which refers to a pattern of territorial concentration of upper classes in a certain area of the city—the east part in Santiago—with the vertex in the downtown area, and to extensive zones with agglomerations of low-income families in peripheral areas, far from the city’s downtown and with low quality public services. However, there was some degree of social diversity in the upper class neighborhoods due to the existence of small residential areas where low or middle-income classes lived.\(^{19}\)

This pattern has been changing in recent decades. New alternatives of urban developments for high-income families and new business centers in alternative places to downtown have emerged. The prices of land have been increasing, leaving almost no opportunity for low-income families to purchase housing in well-located places. Also, there have been some urban redevelopment projects in downtown areas. Finally, a new type of concentrated urban poverty, with similar characteristics to American ghettos, has arisen in Latin America, and the interaction in urban spaces among different social class groups has become less frequent.\(^{20}\)

The recent changes in the pattern of residential segregation in Santiago are, at least in part, caused by legal and economic reforms that were implemented in Chile by the dictatorship regime between 1973 and 1990, and continued afterwards by the democratic


governments. The military government implemented substantial reforms towards the deregulation of urban land markets. Along with strengthening private property rights in the Constitution of 1980, the regime expanded urban boundaries, eliminated some regulations and property taxes that affected the urban market, sold public urban land, divided the metropolitan area into more municipalities, regularized illegal settlements, and moved others that were placed in high-income areas to the periphery of the city.\textsuperscript{21} Indeed, the poorest municipality in Santiago, La Pintana, was created on the urban edge of Santiago to receive all the slums that were located in the upper-class zone of the city. The assumption of the military government reforms was that with a free market functioning properly, the increase of urban prices and developers’ speculation with the land would be neutralized. None of these things has occurred.\textsuperscript{22} The deregulation of the urban market has promoted alternatives model of development that, in some cases, have led to more physical proximity between high, middle, and low-income neighborhoods. However, the rising prices have established more obstacles to the integration of low-income families in wealthier neighborhoods.

Consistent with the deregulation reform of the urban land market, the dictatorship implemented a new model of housing policy based on subsidies programs aim at stimulating the market to provide housing for the poor. As Sugranyes argues, even though these programs were internationally perceived as demand subsidies targeted to the promotion of homeownership for the poor, in reality they worked as supply subsidies.\textsuperscript{23} The MHUP, through its regional agency (SERVIU), organized public auctions for the construction of social housing projects, and assigned the construction to the private developer what would offer building the defined number of housing units at the cheapest price.\textsuperscript{24} The main objective of this policy was to reduce the housing deficit existent in Chile, and it was quite successful in achieving this goal. The annual production of social housing units increased from 22,000 units in 1921 to 142,000 units in 1997.\textsuperscript{25} However, another problem started to emerge as a consequence of the same policy: the creation of large and isolated neighborhoods of low-income families in the periphery of Chilean cities. The reason was

\begin{footnotesize}
\begin{enumerate}
\item[21] Francisco Sabatini, \textit{Reforma de los mercados de suelo en Santiago, Chile: efectos sobre los precios de la tierra y la segregación residencial}, XXVI EURE 49-80, 50-51 (2000).
\item[22] Id. at 52.
\item[24] Sugranyes, supra note at 35-39.
\item[25] Sugranyes, supra note at 39.
\end{enumerate}
\end{footnotesize}
that localization was never a relevant dimension in the implementation of these programs, and since the government paid a fix amount of money per unit constructed, private developers maximized their profit through the construction of those units in cheap land.\footnote{Sugranyes, supra note \_\_ \_ at 36-37.}

These legal mechanisms are largely responsible for the creation of big and isolated ghettos of poverty in Chilean cities. A recent study conducted in the 25 biggest cities in Chile, which concentrate 67\% of the population in the country, shows that there are 64 ghettos in Chile, where 1,684,190 people live. This means that approximately 10\% of Chile’s inhabitants live in ghettos. 44\% of people living in ghettos live in Santiago, which concentrates the biggest ghettos of the country.\footnote{ATISBA, GUETOS EN CHILE 1–29 (2010)}. In part because of the increased segregation that resulted from these social housing programs, significant reforms to the housing assistance programs were created in the beginning of this century to promote the opposite policy outcome.\footnote{José Miguel Simian, Logros y desafíos de la política habitacional en Chile, ESTUDIOS PÚBLICOS 269–322, 299-304 (2010).}

Today, the quality of life of all the residents in Chile is better than it was thirty years ago, due to the recent decades of economic growth and redistributive policies. A recent study of Santiago shows that the level of inequality among districts has decreased, and that the quality of housing and durable goods of all the population has increased. In terms of income, there are peripheral and central districts that show similar levels of either income homogeneity or heterogeneity. However, the data shows that the poorest and the wealthiest districts are the most homogeneous in terms of income. Only a few municipalities concentrate the highest level of high school and university education, with very few people having low education. Indeed, there are three districts that tend to be hugely superior to the others in terms of housing quality, access to durable goods and income per capita.\footnote{Claudio Agostini, Pobreza, Desigualdad y Segregación en la Región Metropolitana, 117 ESTUDIOS PÚBLICOS, 2010.} It seems that poverty and wealth are still very concentrated in Santiago.
Now, the fact that the poor (and the rich) are territorially isolated in Santiago leads to the question of whether this is a problematic phenomenon that urges a response from the law and public policy. Indeed, there is a large body of research that suggests that neighborhood context affects individual and social outcomes. Empirical evidence in the United States suggests that residential segregation, based on class or race, has negative effects for residents and for the city as a whole. A famous paper in the field shows that minority groups that are segregated are in worse condition than those who are integrated with other communities, in terms of exposure to education, outcomes and commuting time to work.\textsuperscript{30} A similar study focused on Chile shows that residential segregation has negative effects on the poor regarding variables such as preschool attendance, school dropout, poorer grades in school, and economic inactivity of young people\textsuperscript{31}.

This question has also normative implications regarding the ideal model of the “city” that should be promoted by the law. A deep treatment of this debate is beyond the scope of this work. However, it must be said that “city life” is usually associated to the possibility of interaction among different social groups. Indeed, that interaction is actually very real in many places of a city, especially in public spaces like the downtown area or public parks. And it is plausible to argue that social interaction between different groups is something that has normative value, because it helps people to respect difference and to empathize with those we consider different. Territorially, the city is the place where this type of encounter is possible. Creating and protecting isolated communities go against this normative ideal.\textsuperscript{32}

\textsuperscript{30} Cutler, David M. and Glaeser, Edward E., \textit{Are Ghettos Good or Bad?}, \textsc{The Quarterly Journal of Economics}, 828 (1997) (“Using a variety of economic and social outcomes, we find strong, consistent evidence that black outcomes are substantially worse (both in absolute terms and relative to whites) in racially segregated cities than they are in more integrated cities. As segregation increases, blacks have lower high school graduation rates, are more likely to be idle (neither in school nor working), earn less income, and are more likely to become single mothers. Further, the quantitative effects of segregation are large. A one standard deviation reduction in segregation eliminates approximately one-third of the difference between blacks and whites in most outcomes.”).

\textsuperscript{31} Osvaldo Larraña & Claudia Sanhueza, \textit{Residential Segregation Effects on Poor’s Opportunities in Chile}, \textsc{Working Paper 259, Departamento de Economía, Universidad de Chile} (2007).

\textsuperscript{32} See, for instance, Iris Marion Young’s proposal of city life as a normative ideal, and as an alternative to the ideals of communitarian life and of liberal individualism. By city life she means a form of relationship that promotes interaction among strangers. Under this theory, it is legitimate for groups of people to seek differentiation. However, this differentiation cannot mean exclusion. Thus, neighborhood borders are allowed, but they should be always open to others. Additionally, this theory assumes a multise differentiation of social space, which means urban spaces with neighborhood identity but which are open to others, and also the provision of “public places and forums where anyone can speak and anyone can listen”. See IRIS MARION YOUNG, \textsc{Justice and the Politics of Difference / 8, 237 - 240} (1990). This is a very contested issue in political theory. In an opposite position we found the libertarian vision of Robert Nozick. He claims that “there is no reason to think that there is one community which will serve as ideal for all people and much reason to
B. Competing Models of Land Use Governance

There are many reasons why people decide to live in homogeneous communities, creating a pattern of social fragmentation. Gerald Frug offers three types of explanation to this phenomenon: psychological, sociological, and political. The psychological explanation associates people’s desire to live in a homogeneous neighborhood with a psychological characteristic developed during adolescence. Adolescence, according to this view, is the stage when people define their identities in response to the fear they feel for living in times of uncertainty and complexity. The idea of living in a homogeneous community reflects the same behavior learned during adolescence, as a reaction to the uncertainties and complexities produced by urban life. The sociological explanation is related to a long tradition of a negative perception about city life. This negative perception can be divided into two basic complaints about cities: their physical conditions and the people who live in them. With regards to this last claim, Frug affirms that in the United States there is a long tradition of perceiving cities as areas populated by “the mob”, nowadays usually in reference to poor African American communities. The political explanation is related to the use of political and legal power to separate residential areas in terms of class and ethnic criteria. This research focuses on this third variable behind residential segregation.  

What the political dimensions calls into attention is that residential segregation is not only a natural phenomenon. It is true that people want to live with those they perceive as part of their community. Generally speaking, people are open to sharing spaces with “strangers” at work or in public places such as parks, shopping malls, and business districts, but when deciding where to locate their home, the sense of community becomes stronger and more exclusive. However, residential segregation cannot be only understood as a spontaneous social process. It is also the result of legal and policy instruments used to divide different groups of people within a city.  


34 Richard Ford
The growth and development of urban areas is a significantly regulated process. Public institutions at all levels make policy decisions and use legal instruments that affect the way cities develop. When a public institution decides to construct a freeway that connects a suburb with the city, it is promoting one type of urban development. The same occurs with decisions on public transportation, social housing, property taxes, urban renewal projects, and others. There are many legal and policy decisions that shape the way metropolitan areas look, which impact the way their residents live. They also affect the lives of residents from adjoining neighborhoods. Most of these decisions are made by municipal corporations that control urban development under their city jurisdiction. Some cities have only one institution that governs the urban space, and some others have many.\(^{35}\)

These legal and policy decisions that shape the urban development of a city constitutes what I refer in this paper as land use governance system.\(^{36}\) Now, there is not a unique form of structuring land use governance. On the contrary, the ways these regulatory powers are structured usually respond to conflicting visions of how cities’ land use ought to be governed. Different, and sometimes conflicting, theoretical models compete to guide the design and implementation of a land use governance system.

A very influential approach to land use governance is the “localist” model, which favors the fragmentation of large metropolitan areas into small and homogeneous communities to control the urban development of their territories. Three arguments are usually mentioned to support a strong commitment towards localism. The first one is citizen participation. The argument is that the best way to promote citizen participation in public affairs is through small governments. This line of argument affirms that a small local government is the only institutional context capable of creating an immediacy relationship with their residents that incentivize their participation in the polis’ affairs. The territorial and demographic scale of metropolitan areas makes impossible the real engagement of their citizens in the problems affecting their territories, and hinders the possibility of real civic participation of their

---

35 The United States is an interesting example of metropolitan fragmentation. According to data from 1987, the average U.S. metropolitan area was divided into 114 local governments, with strong urban regulatory powers. Richard Briffault, *Local Government Boundary Problem in Metropolitan Areas*, The, 48 STAN. L. REV. 1115, 1120 (1995).

36 I use the term “governance” to emphasize the necessity of understanding land use regulation as institutional practices that are shaped by relationships between the government (national and local), the private sector and the civil society. Although the main focus of this paper is on public institutions, it also refers to their relationship with non-public actors. See John Minnery, *Stars and their Supporting Cast: State, Market and Community as Actors in Urban Governance*, 25 URBAN POLICY AND RESEARCH 325–345 (2007).
residents. This argument also affirms that small local governments are more likely to be responsive to the demands of their residents. In other words, citizens’ voice would be listened more at the local than at the metropolitan level\(^{37}\).

The second argument is efficiency, which has been strongly defended by the public choice school based on the work of Charles Tiebout.\(^ {38}\) This school argues that the fragmentation of metropolitan areas into multiple local governments leads to a more efficient allocation of public goods and services. The territorial fragmentation of cities among many municipalities creates a sort of a market model where local governments compete to attract residents to their districts. Residents would go to the district that best fit with their personal preferences. In other words, they would “vote with their feet”. A centralized government would not be able to create this consumer-based scenario, and the distribution of public goods would not accurately reflect the preference of metropolitan citizens.\(^ {39}\)

The third argument refers to the idea of community. Authors who defend localism usually argue that the sense of community is felt stronger in small governments. Small local governments have the power to shape the character of their districts, creating a community among people with similar values and desires. This ideal cannot be fulfilled in large-scale urban areas, where the diversity of people’s ideas and preferences cannot be avoided. For this line of thought, it is only at the local level where people are able to use legal powers to create truly communities.\(^ {40}\)

Professors Richard Briffault and Sheryll Cashin have expressed a degree of skepticism about the localist model that has governed most of U.S. metropolitan areas.\(^ {41}\) Cashin argues that the fragmentation of American cities have led to the emergence of a parochial spirit where citizens are blind to the social and economic situation that occurs


\(^{39}\) Idem. See also James M. Buchanan, *Principles of Urban Fiscal Strategy*, 11 PUBLIC CHOICE 1-16, 13 (1971) ("The objective for rational urban fiscal strategy is the maximization of per capita fiscal dividend or surplus. This translates directly into the requirement that all persons who contribute positively to the generation of fiscal surplus be kept within the club. To the extent that persons or groups who do make net contributions are observed to migrate to the suburbs, urban fiscal strategy has failed").

\(^{40}\) Id. at 2000–2003.

\(^{41}\) Even though these arguments have been made for the urban scenario that U.S. cities face, they can be applied broadly, and are particularly appealing for the case of Santiago, Chile.
across the borders of their districts. This fragmented institutional design makes them unable to empathize with those who are not members of their local communities. The argument becomes even stronger when considering the fact that many social groups have used this institutional framework to exclude people according to race and class criteria.\(^{42}\)

The general view that Cashin proposes is that local fragmentation tends to benefit the position of what she called “the favored quarter”, which are high-class districts or suburbs that get the majority of metropolitan public investments, and have the lowest barriers for civic participation. The favored quarter usually is able to strengthen their fiscal position hindering the possibilities of redistribution to low-income areas.\(^ {43}\)

Briffault identifies several problems regarding the division of metropolitan areas into multiple local governments. The first one is what he called the “spillover problem”, which refers to the existence of local boundaries that exclude people that are actually affected by local decisions, but cannot participate in the decision-making process because they are not residents of the district.\(^ {44}\) This problem is very relevant today in metropolitan areas because people tend to participate in their daily activities in many jurisdictions. Usually they sleep in a district but have their labor activities in another territory.

The second problem is what he called the “aggregate regional consequences of locally bounded regulation”. Briffault argues that in contemporary metropolis, important externalities about urban life are the consequence of aggregate local legal decisions. For instance, through local regulation, local governments from high-income districts can increase the housing costs of their jurisdictions, aimed to exclude those who are not able to contribute to the local wealth in the same terms than their residents. This type of decision taken by groups of local governments impact the geographic distribution of citizens who requires affordable housing, forcing them to get housing far from developed metropolitan zones.\(^ {45}\)

Finally, the third problem that Briffault identifies refers to the idea of a metropolitan community. In his view, boundaries not only recognize existing political communities, but many times they do create communities. By establishing small local governments within a

\(^{42}\) Id. at 2016 (“But beyond economic differentiation, race seems to be one of the strongest factors in the process of locational sorting that has occurred in metropolitan America”).

\(^{43}\) Id. at 2015–2027.

\(^{44}\) Briffault, supra note 4 at 1132–1133.

\(^{45}\) Id. at 1133–1141.
metropolitan area, the law hinders the possibility of creating a metropolitan community in itself. With this institutional design, citizens' concern would focus on local affairs rather than the problems of the whole metropolitan area.46

The problems behind localism have led to Professors’ Cashin and Briffault to propose a structural reform to the current pattern of metropolitan governance, where the metropolis could constitute a political unit. This aspiration would require legal reforms to moderate the regulatory powers of local municipalities while creating political institutions with legal powers at the metropolitan level.47

Of course, land use legal practices are usually an expression of a mix of different theoretical ideas on how to regulate the development of urban areas. There is not a unique model guiding land use regulatory practices in contemporary metropolitan areas. Also, these institutional practices cannot be blamed as the only factor driving the pattern of residential segregation along race and class within a city. Other factors, like market forces, can also promote this situation. However, they are an important variable, which can be used politically to produce certain outcomes, such as the exclusion of undesired groups of people. Therefore, land use legal structure and practices, and their causes and implications, should be subject to serious analysis.

III. THE MISSING FACTOR: LAND USE LEGAL PRACTICES AND ITS POLITICAL CHOICES IN SANTIAGO - CHILE

A. Overview of Chilean Land Use Legal Framework

City land use regulation is the legal power to regulate the planning processes of urban territories and their transformation through urbanization and construction. It constitutes the legal framework of the public policies that shape urban land. The justification for this power is that the urban land market does not provide the conditions for a perfect competition and leads to important failures that the law has to correct. Thus, it is difficult to have efficient urban development without the intervention of the government.48

46 Id. at 1141–1144.
47 See Briffault, supra note 4 at 1164-1171; Cashin, supra note 6 at 2027-2048.
48 Enrique Rajevic, Derecho y Legislación Urbanística en Chile, 2 REVISTA DE DERECHO ADMINISTRATIVO ECONÓMICO, 527-530 (2000).
In the realm of urban land use, there is no perfect competition because urban land is a scarce and high-demand resource. Generally speaking, few actors participate in this market. Also, urban land is not a homogeneous resource, and the appropriate pieces of land for big investments tend to generate monopolist situations. The urban market also shows important externalities. Some of them are positive, such as better cultural life, sophisticated jobs, and educational opportunities; some of them are negative, such as traffic, pollution, insecurity, and concentration of the land. A city is a center of benefits and costs for its residents. The aim of land use regulation is to correct these externalities, and to provide public goods such as parks, roads, and lights for residents.\(^{49}\)

In addition to the classical objectives of land use regulation, there are new purposes that contemporary cities are required to fulfill. New standards in the protection of cities’ environments, and their cultural heritage, for instance, call for new approaches to the law governing cities. In the same sense, land use regulation has to deal with the barriers for the provision of social housing, and with the demand for more equality in access to cities’ opportunities for all their residents.\(^{50}\)

An important aspect of land use regulation is that it affects many other policies. Public policies require the use of urban land in many areas, such as education, health, housing, and infrastructure. The geographic distribution of these policies is affected in crucial ways by the rules governing each of the affected territories.

The legal framework of Chilean land use regulation is constituted by multiple norms, which grants regulatory powers to many public institutions\(^{51}\). The main statute governing

\(^{49}\) Id. at 527-530.

\(^{50}\) See DAVID L. CALLIES, CASES AND MATERIALS ON LAND USE / 1 (2nd ed. ed. 1994). (“Beyond the basic business of providing a legal structure for deciding how and when land development will occur, problems that land use law must confront include protecting environmentally sensitive land and agricultural land, rebuilding the urban core, providing, and paying for, the infrastructure that communities depend upon, curbing urban sprawl, dealing with barriers to the creation of affordable housing, and contending the efforts to exclude the poor and racial or religious minorities from suburban communities”).

\(^{51}\) There are a number of provisions that are related to the exercise of the power of land use in Chile’s Constitution. Probably the most important one is the provision establishing what is called “the social function of property”. This rule establishes that private property can be limited and regulated for the promotion of its social function. This has been the historical constitutional foundation for the exercise of the power of land use law. See ENRIQUE EVANS, III LOS DERECHOS CONSTITUCIONALES 216 ( 3rd ed. 2004); Lautaro Ríos, El principio constitucional de la función social de la propiedad, 84 REVISTA DE DERECHO Y JURISPRUDENCIA (1987). The interpretation of this rule has not been a pacific issue in Chilean legal doctrine. See ARTURO FERMANOIS, DERECHO CONSTITUCIONAL ECONÓMICO: GARANTÍAS ECONÓMICAS, DOCTRINA Y JURISPRUDENCIA ( 2006) (defending a restrictive interpretation of the constitutional provision). Pablo Ruiz-Tagle, Principios Constitucionales del Estado Empresario, 62 REVISTA DE DERECHO PÚBLICO (2000) (defending a more expansive understanding of the constitutional rule).
Chile’s land use law is the General Act of Urban Planning and Construction, passed in 1974, during the dictatorship, without Congress deliberation. This statute has been amended more than 20 times in its 37 years in force, which reflects the rapid evolution of ideas and problems in the realm of cities regulation. This statute has broad delegations to the General Ordinance for Urban Planning and Construction, which is a set of rules established in 1992 by the President (Executive Power), through its Ministry of Housing and Urban Planning (MHUP). The role of the Ordinance is to implement the general rules established by the General Act. The Ordinance has more than 350 pages of text and has been amended more than 50 times since its creation, which exemplifies the complexity of the Chilean land use legal framework.

The General Act of Urban Planning and Construction, and its Ordinance, establish the core of the legal structure governing land use. The main purpose of this legal framework is to reconcile social aims related to the public uses of the city with private property rights in urban space. Together with establishing a substantive set of rules about the uses of urban land, it recognizes the power of some public institutions to shape the urban land under their jurisdictions.

Three are the most important land use regulatory powers that can be exercised on Chilean urban land: (1) urban plans, (2) administrative authorizations, and (3) expropriation. These three powers have to be exercised according to the substantive rules established by the General Act and the Ordinance.

Urban plans are legal instruments that organize a given territory, establishing rules on the different activities and uses of a city. Their objectives are mainly two: (1) the localization (placement) of the different uses of a city, and (2) the zoning of each of those uses, namely the specific rules that govern the construction on certain parts of the city.

In Chile, there are four territorial levels of urban plans: (1) national, (2) regional, (3) inter-district, and (4) district. The MHUP elaborates the national urban plan. Each of the 15 regions into which Chile is divided has its own urban regional plan, established by the

---

52 Enrique Rajevic, “El paulatino pero insuficiente desarrollo…”, p. 62
53 For an extensive description of this legal framework, see JOSÉ FERNÁNDEZ & FELIPE HOLMES, DERECHO URBANÍSTICO CHILENO (2008).
54 See articles 27 to 51 of the General Act of Urban Planning and Construction.
regional department of the MHUP (SEREMI), with the approval of the Regional Council.\textsuperscript{55}

The same regional agency elaborates the inter-district urban plan, but, in this case, the municipalities that govern the districts affected by the plan are consulted. Finally, each municipality into which a city is divided, following a strict procedure, establishes its own district urban plan. This has to be discussed with the neighbors of the district, and approved by the Municipal Council,\textsuperscript{56} among other requirements.\textsuperscript{57}

The most important function of urban plans is to define land use regimes.\textsuperscript{58} These regimes include the definition of urban boundaries and the uses of urban land within those boundaries. If a piece of land is outside the urban boundary, the only possibility for the owner to develop the land is to request a change in the use of that land, which implies modifying the corresponding urban plan. Within the urban limits, the district plan is the main instrument that governs the use of land. Typically, these plans establish different zones for distinct land uses: residential, commercial, public services, public spaces, and infrastructure. For each of these uses, the urban plan establishes rules about its intensity: density, constructability coefficient, coefficient of occupation of land, heights and gradients, etc.

The second expression of the land use power has to do with administrative authorizations.\textsuperscript{59} Each development project has to be authorized by the Department of Municipal Works in the municipality where the project is located. Without this permission, the work may not be executed. The same institution has power to inspect and to verify that the construction complies with the corresponding urban rules. Administrative authorizations are constrained by law. There is not much space for innovation using this regulatory power.

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{55}Chile has a Unitarian government, which is divided in 15 regions. Each region has regional councils, elected by popular suffrage, which intervene in the government of some of the regional affairs, including land use issues.
\item \textsuperscript{56}Municipal Councils are institutions that intervene in the government of their respective districts, mainly, approving the most important decisions taken by the municipality’s mayor. As municipalities’ mayors, the members of the Municipal Councils are elected by the suffrage of the districts’ residents.
\item \textsuperscript{57}The concept “urban plan” refers to the product of the exercise of the urban planning power in a certain territory. The technical name in Spanish used in Chile is “plan regulador”. As there are different territorial levels in which this power is exercised, usually it is added to the concept the corresponding geographical level. For example, the urban plan elaborated by a municipality for its districts, is called “municipal urban plan” or “district urban plan”. As urban plans include zoning, for this paper the concepts urban plan and zoning plan will be used as synonyms.
\item \textsuperscript{58}See articles 52 to 71 of the General Act of Urban Planning and Construction.
\item \textsuperscript{59}See articles 116 to 125 of the General Act of Urban Planning and Construction.
\end{itemize}
\end{footnotesize}
Finally, a third type of land use power is expropriation. The General Law of Urban Planning and Construction authorizes urban expropriations only in cases in which a municipality requires private land in order to create public use areas, or to comply with the rules of the district plan. The owner of the land, in every case, has the right to compensation for the patrimonial harm suffered.

The following chart presents a summary of the regulatory powers and the public institutions involved:

<table>
<thead>
<tr>
<th>Regulatory Power</th>
<th>Types of Regulations</th>
<th>Public Institutions involved</th>
<th>Political Dependencies</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban Plans</td>
<td>National Plan</td>
<td>MHUP</td>
<td>President</td>
</tr>
<tr>
<td></td>
<td>Regional Plan</td>
<td>MHUP</td>
<td>President</td>
</tr>
<tr>
<td></td>
<td>Inter-district Plan</td>
<td>Regional Council</td>
<td>Popular Suffrage</td>
</tr>
<tr>
<td></td>
<td>District Plan</td>
<td>Municipalities’ Mayor</td>
<td>Popular Suffrage</td>
</tr>
<tr>
<td>Administrative</td>
<td>Permission</td>
<td>Direction of Municipal Works</td>
<td>Municipalities’ Mayor</td>
</tr>
<tr>
<td>Authorizations</td>
<td>Inspection</td>
<td>Direction of Municipal Works</td>
<td>Municipalities’ Mayor</td>
</tr>
<tr>
<td></td>
<td>Certification</td>
<td>Direction of Municipal Works</td>
<td>Municipalities’ Mayor</td>
</tr>
<tr>
<td>Expropriation</td>
<td></td>
<td>Municipalities’ Mayor</td>
<td>Popular Suffrage</td>
</tr>
</tbody>
</table>

Figure 1: Regulatory Powers, Public Institutions and Political Dependencies

From this brief description of the regulatory powers governing city land use, it is clear that multiple actors, using different legal instruments, ultimately define the way Chilean cities develop. In the elaboration of urban plans, for example, participate at least 5 types of institutions, depending on the geographical level: the MHUP, SEREMIs, the Regional Council, Municipalities’ Mayors and their staff, and the Municipal Council. These institutions have different political dependencies. Some of them are subordinated to the Chilean President; others depend on the popular suffrage. In the case of Santiago, for instance, land use powers are exercised by the MHUP, the regional SEREMI, and each of the 52 municipalities in which the capital of Chile is divided, with their corresponding Municipal Councils. Therefore, many different political actors are involved in shaping the city and the distribution of its residents.

---

60 See articles 83 to 99 of the General Act of Urban Planning and Construction.
61 I excluded other authorities that also have regulatory powers that impact Chilean urban development in specific areas, such as transportation, infrastructure, and environment, among others. This makes the regulatory scenario even more complex.
Especially important is the role of the MHUP, which, as the executive authority in the realm of housing and urban planning, is entitled to develop the national, regional, and inter-district plans, and issues guidelines to municipalities for the implementation of the General Act and the Ordinance.

The role of municipalities is also crucial, especially for this research project. Much of what happen in Santiago is governed by each district urban plan, elaborated by the corresponding municipality. Also, these local governments make daily decisions that impact the organization of the city.

B. Chilean Land Use Law in Action

Municipalities and the MHUP are the main actors governing city land use. In addition to the exercise of the legal powers established in the law, these institutions use some other less formal mechanisms to guide the urban development within their jurisdictions.

According to the interviews conducted, the power that allows the most discretion in the hands of public officials is the authority to elaborate urban plans. With this instrument, the MHUP and municipalities are able to define the character of the territories under their jurisdiction. Real estate developers design their projects under the set of rules governing the place where they locate their buildings. Thus, the regulatory instruments established by

---

62 For a broad description of Chilean municipal law, see José Fernández, Derecho Municipal Chileno (2007).

63 Lucas Sierra has provided an interesting assessment of the institutional choices behind the legal structure governing Chilean cities. In his view, this legal framework is highly vertical, centralized, and confusing. He also affirms that this legal structure is hostile to the idea of property rights, because they are very vulnerable to regulatory interventions. He says this legal framework is highly vertical because it relies in “top down” rules imposed by public institutions. In Chile, the government, at different levels, establishes the rules governing urban land. There is no space for horizontal rules created by the residents of a city using contractual mechanisms. He also affirms that Chilean land use regulation is highly centralized, because it gives a strong power to the central government (executive power), through its MHUP. In his perception, most of the rules governing Chilean cities come from the MHUP, and not from the Congress or municipalities. Finally, Sierra argues that this legal structure is a “regulatory jungle.” Multiple actors with multiple regulatory powers intervene in the regulation of Chilean cities. There are constitutional, legislative, administrative, local, and judicial rules governing Chilean urban land. For the author, this scenario creates an extremely complex regulatory situation, which also includes other pieces of legislation that affect land use, such as environmental law, transportation law, and infrastructure law. For Sierra, this is a very confusing scenario for real state developers and landowners, and allows a broad discretion on the hands of public institutions, especially the MHUP. His analysis is based mainly on a description of the Chilean land use legal framework, and not on how this system operates in practice, which is the main focus of this paper. The emphasis on the land use regulatory practices helps to broaden the picture described by Sierra. See Sierra, supra note...  

64 For an interesting discussion of U.S. legal doctrine about the power of cities to control their community character, see Gerald E. Frug, Local Government Law: Cases and Materials / 620-654 (5th ed. ed. c2010.).
political institutions guide their developments, and have a strong impact on the value of the
district’s property. Also, they impact the geographic distribution of people within the city.

Administrative authorizations are very constrained by law, at least in the perception
of the public officials in charge. According to the interviewees, there is not much space for
innovation using this legal power. Regarding the power of expropriation, interviewees noted
that it is rarely used.

An interesting aspect that emerged from the interviews is that public officials use
more mechanisms to shape the city than what we can infer by only analyzing the law on the
books, especially at the municipal level. One of these mechanisms, which do not have a
binding effect on private developers, is the district development plan (planes de desarrollo
comunal). In these plans each municipality establishes the policy orientations that should
govern their districts. The municipalities that have these instruments try to adjust their
activities according to these rules.

The difference between district development plans and district urban plans is that the
first ones are urban policy guidelines that direct the activity of a municipality. District urban
plans, on the other hand, are legal rules elaborated by a municipality, which are mandatory
for every activity in the jurisdiction of the corresponding municipality. Under a scenario
characterized by the lack of a national urban policy, as will be described below, districts
development plans get more importance.

Another administrative power in the hands of municipalities comes from public
redevelopment projects. Some local governments have an annual investment plan to
promote developments aimed at improving the quality of life of their residents. Every
municipality can use this power, but, of course, this depends on the budget, professional
capacity, and priorities of the mayor, among other factors. Thus, it is not surprising that this
type of administrative power emerged in a conversation with a public official from a wealthy
local government. Indeed, as Figure 2 shows, there are big budget differences between
municipalities in Santiago, which implies that investment possibilities vary strongly among
Santiago’s different jurisdictions.
Finally, another administrative power used, which can be highly influential in the way the life in a district is organized, entails the negotiations with real estate developers. Each developer has to go to the corresponding municipality to obtain the authorizations required for an urban project. When the project has a big impact on the life of the district, some municipalities start a process of negotiation to establish conditions that would diminish the impact of the project, or that would increase the value of the project and of its surroundings areas. This is not regulated by Chilean law, but takes place in reality.

The negotiation power also applies to the organization of the demand of social housing in the case of municipalities that host housing projects in their territories. The social housing policy, which is based on a demand subsidy that the government provides to homeless people, allows the beneficiaries strong control on future projects. Municipalities, through negotiation with the beneficiaries of subsidies, can achieve important goals in the neighborhoods under construction. As the beneficiaries of social housing projects require the collaboration of municipalities, these institutions are able to influence the character of the future housing projects. By this influence, they participate in the urban development of their districts, in the same way they do with all the developments projected in their jurisdictions.  

\[\text{Figure 2: Municipal Income Per Resident}^{65}\]

---

$^{65}$ The differences among municipal budgets were calculated using data from the sources indicated in supra note 76.

$^{66}$ As a public official interviewed noted, “If you have contacts with the neighbors, beneficiaries of a project, and are able to explain to them, in a pedagogic way, why the project requires characteristics going beyond what is required by law, characteristics that will make their quality of life better, you have a very powerful weapon.
The practice of these administrative powers will depend on the different needs of each district. Some are able to focus on improving the urban needs of their communities. Others are only able to take care of basic social services for their population.\textsuperscript{67} Therefore, the regulatory scenario of each municipality in Santiago depends not only on the regulatory instruments and budget available, but also on the social needs that each municipality has to cover. Here, Santiago’s metropolitan area presents a significant level of fragmentation. The social services that a low-income municipality is required to provide are quite different from what a high-income municipality is obliged to offer. This seems to have an important impact in the realm of land use and urban development. The possibilities for a rational process of urban planning and intervention by municipalities are higher in high-income districts than in low-income districts.

The interviews conducted show different perceptions about the distribution of urban regulatory powers in Santiago. However, and despite a long tradition of centralized power, the evidence seems to indicate that local governments are increasing their level of autonomy.

The distribution of the power of zoning is a good example of this phenomenon. Santiago is regulated by a metropolitan plan, approved in 1994, and by municipal urban plans. Some municipalities do not have urban plans in force, and in these cases they are governed by Santiago’s metropolitan plan. As Figure 3a shows, considering the whole metropolitan area, 40 of the 52 municipalities have urban plans in force. The metropolitan plan regulates 10 municipalities that do not have plans, whereas 2 do not provide information about the legal instrument that governs land use in these territories. Some of the municipalities have very outdated plans, while others have very updated ones. Indeed, as Figure 3b shows, in recent decades, municipalities have been highly active in approving urban plans for their jurisdictions. Indeed, in the last decade, 21 municipalities passed a new district urban plan. This should not be a surprising fact, given that one of the policy of the

\textsuperscript{67} As an interviewee told me: “Of course, neither Vitacura, neither Providencia and Las Condes [the wealthiest municipalities in Santiago], care about municipal public education. On the contrary, the schools that depend on these municipalities are excellent in comparison to others public schools. These municipalities have a low demand for public education and health, because their residents go to private schools and private hospitals; thus, they may worry about [other] urban needs more than a low-income municipality in which the mayor is worried about more urgent matters”. Telephone Interview with Land Use Attorney (February 23, 2011).
MHUP in the last decades has been to encourage local governments to elaborate their corresponding urban plans.\textsuperscript{68}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure3a.png}
\caption{Number of Municipalities with Urban Plans, Before and After 1994\textsuperscript{69}}
\end{figure}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure3b.png}
\caption{Historical Evolution of the Approvals of Municipal Urban Plans\textsuperscript{70}}
\end{figure}

\textsuperscript{68} The public official from the MHUP interviewed for this research said that in this process of assisting municipalities to elaborate urban plans has concentrated a big part of the work of the urban planning department at the MHUP. Telephone Interview with Public Official #8, from the Ministry of Housing and Urban Planning (February 2, 2011).

\textsuperscript{69} The data about the number of municipalities with urban district plans, and the year of their approvals, was obtained from the sources indicated in \textit{supra} note 76.

\textsuperscript{70} \textit{Id.}
How autonomous are municipalities’ urban plans from the metropolitan plan? No unanimous respond to this question was found. It is interesting to note that those public officials who work in wealthy municipalities considered that their regulatory power is more autonomous than what was perceived by public officials from middle or low-income districts. It is interesting to contrast these perceptions with the opinion of the attorney and the MHUP public official interviewed for this project, both of whom acknowledged a strong degree of autonomy in the hands of each municipality.

Then, the possibilities for autonomy and innovative action under the restrictions imposed by the metropolitan plan is perceived in different ways by the actors involved in land use governance. Overall, however, it seems that this degree of autonomy has been growing with time, and now a municipality that has the resources and staff to produce innovative changes in the regulation of its territory can do so, using either the zoning power or other regulatory mechanisms.

Also, the interviews show that the actors involved in land use regulation in Santiago influence each other. There is a process of negotiation whenever one of these actors has to make a decision that will affect other parts of the metropolitan area. An interesting example happened with a low-income municipality that does not have its own urban plan, and hence is governed by the metropolitan plan. However, when the metropolitan plan was in the process of elaboration, the officials from that municipality negotiated certain regulatory outcomes with the Ministry. In particular, they wanted to stop the process of shaping that jurisdiction as a ghetto of poverty. A public official reported the following to that effect:

71 An example of the view of people working in high-income districts is the following quote: “[Municipalities] have a strong power, but, always, this power, and the level of investment or management, is subordinated to a higher urban plan, which is the metropolitan urban plan for Santiago, established and directed by the Ministry of Housing and Urban Planning, through its regional agency. Each Municipality that has more than 50,000 residents has the duty to have an urban plan, and, in this plan, they establish the conditions they want for their district, i.e. land uses, amount of equipment, health services, education services, etc. This is done, always, under the rules of the higher plan, so the municipality, when elaborating a plan, creates the district it wants, but always maintaining the actual characteristics of the district”. Telephone Interview with Public Official #1, from a high-income municipality (January 7, 2011). The emphasis is mine.

72 An example of the view of officials working in low-income districts is the following quote: “I think that municipalities’ power is limited; urban district plans are subordinated to the metropolitan plan, therefore, the powers are constrained”. Telephone Interview with Public Official #2, from a low-income municipality (January 12, 2011).

73 “Municipalities are the institution with the strongest [urban planning] power, because they elaborate their urban plans with complete autonomy. The SEREMI [regional agency of the Ministry of Housing and Urban Planning] only checks if the district plan does not contradict the general law in the matter …. So, if the municipality takes a decision, and this decision does not violate the law, the SEREMI may not claim anything. Thus, urban plans are the first legal framework that governs the city, and each municipality defines its own plan”. Telephone Interview with Land Use Attorney (February 23, 2011).
In the moment of the elaboration of the metropolitan plan, I am referring to 1995 more or less, we had a strong participation. I mean, we proposed some crucial issues that finally were approved. Not all of them, but the most important ones. This has to do with what we wanted, as a very top priority, to stop the process of transforming this district in the depositary of the poor from all over the metropolitan region .... Thus, our intention was to stop this process abruptly, completely, because if not, we would have ended being an unviable district. We achieved this, through the metropolitan plan, by leaving land out of the urban development; I would say, more than 2/3 of the territory of the district.  

The story told by the public official is a good example of a negotiation process between a Municipality and the MHUP in the definition of certain rules that govern the city. It implies that the legal structure that governs city land use works through multiple actors with some degree of autonomy and discretion, and that there is space to negotiate decisions that may affect different parts of the metropolitan area.

In a scenario with a lack of national guidelines on urban development issued by the MHUP, municipalities, depending on their bureaucratic situation and the needs that they have to cover, as was describe above, are able to make substantial decisions on land use. Indeed, the role of the MHUP has been to push each municipality to establish or update its district urban plans, as was described above. It has been primarily a procedural guide to local government. Therefore, municipalities are in the position to make substantive decisions on urban land use.

---

74 Telephone Interview with Public Official #3, from a low-income municipality (January 14, 2011).
75 Recently, the government of Chile convoked a multidisciplinary group of experts and personalities, across the political spectrum, to elaborate a report called “National Policy of Urban Development”. The final report addresses 5 topics, the first one being social integration. It is yet to be defined the concrete legal and policy instruments that will follow the report. See: http://www.emol.com/noticias/nacional/2013/05/07/597457/presidente-pinera-recibio-informe-de-politica-nacional-de-desarrollo-urbano.html
In the use of their regulatory powers, and under the constraints imposed by the social needs of the district, municipalities have strong incentives to maintain the character of the district in which they govern. Wealthy districts want to keep their character as an area for high-income people. Middle-income districts want to improve their neighborhoods in order to attract wealthy people. This scenario clearly affects the level of social heterogeneity within the city. The following quote from a public official of a high-income municipality is a good example:

So, municipalities, their mayors, when creating their urban plans, have the chance to establish a district under their requirements, but the crucial issue is to keep the characteristics of the district. Here … we are a residential district, of high-income status. And, what do the people want? They want to maintain the characteristics of a garden city, which means that, even if we would like to establish big heights for certain areas, the residents do not want it.  

This fragmented scenario is reinforced by a municipal legal structure that promotes the distinction between residents and nonresidents, in the sense that local authorities have strong incentives to benefit the residents of their jurisdictions and to exclude nonresidents from the services they provide, because their election depends on the suffrage of the people living in the district. These incentives are also strengthened by the fact that an important part of municipalities’ budget comes from the property taxes that each local government is allowed to collect from their residents. This explains, among various reasons, why municipalities that concentrate high-income residents try to keep the status quo. 

---

76 Telephone Interview with Public Official #1, from a high-income municipality (January 7, 2011). Although it can be said that the pressure by residents varies according to the level of income, the same incentives apply to middle or low-income municipalities: “The objective [of this district] is to assimilate to the neighbor districts …, to consolidate residential neighborhoods, to keep industrial neighborhoods only if they are not offensive and if they do not pollute, and to consolidate an urban development that implies keeping the population or increasing the density of the district”. Telephone Interview with Public Official #2, from a low-income municipality (January 12, 2011).

77 It can be argued more generally, that to a considerable extent, local government law is based on the distinction between residents and nonresidents. Indeed, residents have a strong power to shape the municipality governing their district. In a sense, residents are the source of the power of local governments. This is an institutional decision, embedded in our political and cultural understanding of local power. Local governments are created to represent a group of people that wants to defend their interests. This group has the power to elect its officials and to promote decisions about the organization of the territory under their
C. The Politics behind Land Use Governance in Santiago - Chile

One of the findings of this research project is that land use regulation is not a neutral regulatory mechanism. On the contrary, politics and other social factors strongly affect the outcomes of these administrative actions. Indeed, the actors involved in the process of land use regulation usually have to balance technical and political interests.

The lack of balance between technical and political considerations may provoke strong political conflicts. An interesting example of urban conflicts occurred recently in a wealthy district in Santiago between the residents of a neighborhood and the district’s mayor concerning maximum building heights. The mayor wanted to increase the height, but a group of residents objected. The residents demanded a plebiscite, but the mayor opposed it. Finally, the independent agency in charge of controlling the executive power and municipalities (Contraloría General de la República) intervened and obliged the mayor to organize a plebiscite, which was decided in favor of the residents.

This case shows that even with strong technical justifications to impose a regulatory decision in the city, public officials are obliged to consider the interests of those affected by jurisdiction. Therefore, local government law is based on the distinction between insiders and outsiders, which is very similar to the distinction between citizens and noncitizens in the political structure of a whole country. For a collection of U.S. legal doctrine regarding this distinction, see FRUG, supra note 64 at 373-412.

This fragmented institutional scenario cannot be fully understood without mentioning two other characteristics of the regulatory processes that govern Santiago: (1) a high level of bureaucracy; and (2) a lack of transparency. Concerning the first one, there is a common perception that all these legal procedures take a long time, and require the intervention of many actors and paperwork. Some of the interviewees reported that elaborating an urban plan takes about two years; others said that it could take over five years. Changing specific rules of the urban plan may also take a long time. That is why most developers and NGOs that work in social housing would not design their projects based on a change of zoning rules. Obtaining authorizations from the Director of Municipal Works could also take a while, just as with the implementation of other administrative interventions. Some of the interviewees blamed the lack of professional capacity in many municipalities as the reason for the high level of bureaucracy. With regard to the lack of transparency, although the level of civic participation in land use regulatory processes is increasing, some of the interviewees still perceive that many regulatory decisions are made as a result of obscure procedures. Indeed, there are not many opportunities for the MHUP or municipalities to openly discuss with interested groups the rules they want to establish for a certain district. The residents of the city seldom know about the political negotiations through which these rules emerge. An official interviewed mentioned the following in this respect: “When you talk about negotiation, the word has a negative connotation …. Though it is something that happens, it would be better if it were an open process. I mean, if we could open a negotiation process with all the interested parties, to determine a certain land use, things would be more transparent... There would be more certainty in that the decisions reached are the best way to go. And, if there were to be mistakes, the process would, at least, be transparent”. Telephone Interview with Public Official #3, from a low-income municipality (January 14, 2011).

As an interviewee noted: “When the political authority [the mayor], whoever it happens to be, does not balance properly politics with technical solutions, conflicts arise”. Telephone Interview with Public Official #1, from a high-income municipality (January 7, 2011).

Rajevic Mosler, supra note ___ at 69.
the decision. Indeed, there are political mechanisms through which these interest groups can influence the regulatory practice. Thus, land use regulation cannot be described only as a legal and technical process, as legal scholarship often understands it. It is highly contextual and highly political.  

The level of political pressure depends on the type of regulatory mechanism that is under elaboration or review. For example, interviewees recognized that when there is discussion about extending the urban boundary in Santiago (under the jurisdiction of the metropolitan plan), there is strong participation by real estate developers through their lobby organization. In these kinds of cases, interviewees affirm that important political negotiations between public institutions and powerful interest groups affect the outcomes of those regulatory processes. Nothing similar, however, occurs for small and routine decisions that municipalities have to make.  

Through the interviews it is possible to identify some of the interest groups that influence the regulatory and administrative processes governing the city, lobbying in favor of their particular benefits. There are, clearly, three groups that the interviewees identified: real estate developers, landowners, and organizations of residents.  

Developers’ interests are driven by business opportunities. Thus, their pressure is stronger when the value of the land is high, or in high-profit projects. Generally speaking, they work under the existing rules. Only when a change in the rules may affect their projects in important ways do they intervene, mostly through their lobby organization: the Chilean Chamber of Construction (Cámara Chilena de la Construcción). As a public official noted:

Concerning that [deciding a maximum building height under a urban plan], we had strong opposition from the Chilean Chamber of Construction, and from the Ministry. They wanted to stop the urban plan; to declare it illegal. We had to go through many efforts and negotiations, because the investors did not want the new rule. They produced terrible reports about how this decision would paralyze all the

---

81 As a public official says: “In the approval of an urban plan, there are, of course, political factors involved …. I am not sure whether it is always clear, even for those promoting a normative change …., but I repeat, political factors are present when plans are elaborated ….”. Telephone Interview with Public Official #2, from a low-income municipality (January 12, 2011).
building projects in the district, trying to scare the mayor. It was very difficult to defend this.\textsuperscript{82}

The way this official described developers’ lobbying, reaching out to high political authorities to promote certain legal and policy outcomes, is consistent with what another official noted concerning the negotiation process through which developers usually try to change land use rules to build development projects:

I can tell to you that, in all attempts that take place regarding changing land uses, where housing is prohibited by a manner of speaking, the feature has been interested parties going, first, to the Ministry of Housing and Urban Planning, at the highest levels, and, second, to the legislators of this jurisdiction, including important house representatives and senators. Results on changing land use will largely depend on whether or not the corresponding congressman supports the particular case. Only then, will the parties come to the Municipality to execute the process, but only if necessary.\textsuperscript{83}

A second interest group involves landowners, who might be strongly affected by the regulatory decisions of a municipality. Through urban plans, redevelopment projects, and other administrative actions, the value of a piece of land can change dramatically. Thus, it seems plausible that this interest group exercises a strong pressure on certain regulatory decisions. Here, again, the pressure will also depend on the actual or potential value of the land, which explains why this issue came up more frequently in the interviews with officials in high-income municipalities.

An interesting phenomenon that has occurred in recent years is the organization of residents in some districts to defend certain characteristics of a neighborhood, or of the whole district. Some of these organizations operate throughout the whole city,\textsuperscript{84} and others have more local claims. Some emerge temporarily, regarding specific problems; others are

\textsuperscript{82} Telephone Interview with Public Official #4, from a high-income municipality (January 19, 2011).
\textsuperscript{83} Telephone Interview with Public Official #3, from a low-income municipality (January 14, 2011).
\textsuperscript{84} The most famous one is an organization called “Defending the City” (“Defendamos la Ciudad”). See \url{www.defendamoslaciudad.cl} (last visit March 14, 2011).
permanent. However, all of them have pushed for more civic participation in the regulatory processes shaping the city. This is clearly identified by officials working in urban planning, either in a municipality or in the Ministry of Housing, and it involves a new regulatory scenario not specified by law.\textsuperscript{85}

The success of these resident organizations varies across the city, and relies strongly on their ability to manage resources and lobbying. The level of income is an important factor as well. To the question about the factors that influence the success of these organizations, a public official responded:

First, it depends on how organized they are, and what is the relationship that they have with the Municipality. Some of them are very polarized. In this neighborhood …, the organization sometimes expelled us from the meetings, and they did not let us talk. But in the other neighborhood … we have a peaceful relationship with the resident organization. They are different, one is a low-middle income group, and the other one is a high-income group, very aggressive, people with clear agendas.\textsuperscript{86}

It can be concluded that the organizations formed by high- or middle-income residents get better results from the lobbying processes. Indeed, from the interviews with NGOs representing communities petitioning for social housing projects, and with public officials working in social housing projects, it was not reported that the communities were very active in lobbying for better rules and projects for them. Therefore, the political and social pressure seems to be stronger in high and middle-income municipalities.

The picture about how politics influence land use regulation would be incomplete with only a description of the political pressure made by interest groups. There are, of course, other factors that induce the actions of public officials in this field, which were also identified through the interviews.

\textsuperscript{85} Manuel Tironi et al., Organizaciones emergentes, participación ciudadana y planificación urbana: una propuesta de política pública, en CAMINO AL BICENTENARIO: PROPUESTAS PARA CHILE , 275-276 ( Pontificia Universidad Católica de Chile ed. 2010). (“In the last decade, Santiago has undergone a multiplication in citizen organizations, which have emerged in reaction to urban interventions of different kinds, either modifications to municipal urban plans, new infrastructure, or urban equipment transformation”).

\textsuperscript{86} Telephone Interview with Public Official #4, from a high-income municipality (January 19, 2011).
The first one is obvious: money. The process of developing an urban plan is very expensive. It is necessary to hire a team of trained professionals, and a consulting firm. Also, it is necessary to do extensive research on the district’s urban requirements, and to go through significant bureaucratic stages. This explains why the Urban Development Department of the Ministry of Housing has spent considerable resources assisting municipalities with their urban district plans, rather than establishing a national urban policy.

This factor applies to many of the projects, regulations, and administrative actions that shape the city. The reality is that, in terms of budget, Santiago shows a high level of fragmentation, as was described above.87

Another visible factor is the development of the urban land market. Under a set of rules, the market grows in certain ways that often require legal adjustments. Even in a highly regulated market, as the market of urban property rights, there is a spontaneous movement that obliges the regulator to act reactively. According to the interviewees, the pressure to update old rules that are not responsive to the new market trends drives many regulatory decisions made in the city today.

IV. THE MISSING LINK: THE RELATIONSHIP BETWEEN LAND USE GOVERNANCE AND SOCIOECONOMIC RESIDENTIAL SEGREGATION

A. Public Acknowledgment of Residential Segregation and Its Causes

There is a wide public acknowledgment in Chile that residential segregation is both a reality and a problem in Santiago. Although this phenomenon has not become an area of real concern for the most important political actors in the country, it seems that, with varying approaches, the officials concerned with urban planning and social housing are very aware of this issue. However, there is no consensus on the causes of the phenomenon.

The most common explanation blame housing policies implemented during the dictatorship (and followed in the 1990s during democratic governments), reporting that they moved homeless people to the periphery of the city. These policies were designed to reduce the deficit of social housing in Chile, privileging the number of houses built rather than the quality and placement of the projects.88 Indeed, one of the poorest municipalities in Chile,

87 See supra, figure 2.
88 See description provided in supra Part II. A.
La Pintana, was created to host the new social housing projects for the families that had lived in slums in wealthy districts. That is, indeed, one of the reasons why the Ministry of Housing launched a new housing policy in the early 2000s to improve the quality of the housing solutions for the poor.

A different question is: what are the barriers to residential segregation today? Here, there is less consensus. One of the factors that are usually mentioned is the price of land in Santiago. The dynamics of urban land prices promote segregation. Social housing projects require cheap land, and, in well-located places, there is no cheap land available. Even with the special subsidy created by the government to promote well-located sites for social housing projects, these tend to go where the land is cheaper, which in Santiago means the periphery of the city. Figure 4 shows how 11 municipalities in Santiago concentrate almost the 70% of all the social housing subsidies paid by the government in 2009.

![Social Housing Subsidies Per Municipalities](image)

---

89 One of the interviewees went further with this diagnosis: “You have to realize that, in the context of the process of regionalization in the 80s, the CONARA [National Commission of Administrative Reforms], when it created new districts in Santiago, started a process called district reformulation. If you read that document, one of the objectives was to create new districts to host socioeconomic homogeneous communities. It is the only legislation in the world that I know, where there was an explicit acknowledgement of spatial segregation as a government goal. When you create socioeconomic homogeneous communities, you are segregating, not integrating, and it was in this context where the programs to eradicate slums were implemented”. Telephone Interview with NGO Official #3 (January 13, 2011).

90 See Simian, supra note _.

91 This is the called subsidy to localization. See Sabatini et al., supra note _.

92 The differences in the number of social housing subsidies that received each municipality in Santiago were calculated using data from the sources indicated in supra note 76.
Figure 4 shows that social housing is highly concentrated in some municipalities in Santiago, which receive all the pressure to allocate poor communities within their jurisdictions. In 2009, no subsidy was allocated in one of the wealthiest districts of Santiago-Vitacura, whereas 848 families received a voucher for housing projects placed in Puente Alto, a low-income municipality located in the south periphery of the city. This scenario of Chilean housing policy makes difficult the achievement of integration within Santiago’s metropolitan area.

However, the interviewees did not blame only government policies and the urban land market when they explained residential segregation. The interviews disclose the existence of a cultural element playing a role, as an NGO official said:

The problem is that the issue of social integration has to do more with a cultural element, in the sense that people do not want to cohabit with others different from them. Because they have a stable job, they do not want to live near people with an unstable job. … They see them as an inferior class.\(^{93}\)

This is one of the big obstacles that the MHUP, NGOs and municipalities that work to organize social housing projects face: the resistance of established residents regarding new communities being placed in their neighborhoods.

B. The Role of Land Use Governance in Addressing Residential Segregation

How does the law respond to residential segregation? In other words, how do the main actors involved in land use governance address residential segregation? The answer to these questions varies depending on the institutions involved: either the MHUP or the municipalities. The common perception is that the MHUP, through its social housing policy, is the institution in charge of addressing this phenomenon. However, municipalities also have an important role to play in facing this problem.

Generally speaking, the institution in charge of providing adequate solutions to homeless people is the MHUP. Historically, the Ministry is responsible for designing and implementing social housing policies in Chile. The current version of the housing policy relies on demand side subsidies, and includes the participation of private institutions.

\(^{93}\) Telephone Interview with NGO Official #1 (January 6, 2011).
(“Entidades Patrocinantes”) that are the responsible for the organization of housing projects, intermediating between the families, central and local governments, and the construction companies. These reforms to the market-oriented housing approach launched in the 1970s during the dictatorship have improved the targeting of the housing programs on the poorest, increasing the quality and location of housing solutions.94

The problem of this regulatory approach, however, is that with only a subsidy system it is difficult to face the price dynamics of the urban land market, as was described above. And, except for some particular cases without a major impact in the city’s pattern of residential segregation, the Ministry has not established regulatory instruments that incentivize socially integrated housing projects.95

Municipalities constitute the other public actor involved. Some municipal officials perceived that the role of local governments in addressing segregation is very constrained. However, there are other regulatory mechanisms that may promote integration as well, and the municipalities can be more active in achieving this goal. As an official from an NGO noted:

As always, [social housing projects] depend on the approval and support of a municipality. A project with support will succeed and last the time that has to last, and a project without support can take so long that it may not be doable. There are municipalities that seek social housing solutions for the people of their district, …, and there are municipalities which decide not to organize projects, or to place obstacles to any social projects ….96

Municipalities can actively participate in housing projects for low-income people, using the regulatory and administrative mechanisms described above, which may be applied to respond to the segregation phenomenon.

---

94 Simian, supra note 93.
95 The mechanisms that have been implemented to promote residential integration, mainly involve the increase of housing subsidies to purchase well-located land (subsidio a la localización), and subsidies for families that decide to buy a house in projects that incorporate social housing. See Sabatini et al., supra note 9.
96 Telephone Interview with NGO Official #2 (January 12, 2011).
How municipalities can contribute to the promotion of inclusionary social housing? 
First, municipalities are the closest institutions to the communities looking for housing. 
Moreover, in many cases, they are in charge of organizing the demand for social housing and planning housing projects with the community. This, as described above, can constitute a strong power in terms of establishing and negotiating the conditions under which a project should be localized and integrated with other residents of the district.

Second, municipalities have the power to invest in development projects, and there are interesting experiences in some municipalities that have complemented the government subsidies to achieve better social housing projects. This, of course, will strongly depend on the financial capacity of each municipality, which, in Santiago’s metropolitan area, varies dramatically. Indeed, the only cases in which a social housing project has been placed in a wealthy district in Santiago has been when the municipality decided to organize the project and to use part of its budget to invest in it.

Third, as was also reported in some interviews, municipalities are able to negotiate, with real estate developers, the conditions under which a development project may be placed in a certain neighborhood. The general view about this possibility is that all the actions of municipalities are constrained by the law. There is no room for negotiation; the role of local governments is to authorize all the projects that comply with the law. This is what the legal doctrine provides, and what some of the interviewees noted. However, another story can be told. Sometimes municipalities do negotiate certain conditions for development projects; this is an important source of influence over a district’s urban development. And one of the instruments that municipalities use, which exemplifies this discretionary power, is time. An interviewee explained one example as follows:

Not long ago, there was a development project, with a significant level of density .... The project involved the creation of social housing condominiums. So, based on a technicality, we opposed the project, and our Director of Municipal Works did not approve it. The SEREMI [the regional agency of the Ministry of Housing] instructed the Director of Municipal Works to approve the project, but he decided not to. Thus, the SEREMI went to the Comptroller [Contraloría, the independent agency that controls the
executive power and the municipalities], and the Comptroller, understanding the situation, did not prosecute the Director, but instructed him to give approval. However, so much time passed before the approval that finally the project was not done; the real estate company desisted.\(^97\)

There are many ways in which a municipality can negotiate conditions for development projects. It is not always necessary to reach a conflictive scenario, as the one described in the quotation above, and negotiations with developers proceed along more peaceful paths. But sometimes this is not possible, and municipalities employ their discretionary power.

Finally, municipalities can use their urban planning instruments to promote more socially integrated housing projects. This has not been the general policy in Santiago, although there are no legal obstacles to doing this, as an attorney specialized in this field suggested:

A municipality could elaborate an urban plan stating that, for social housing projects, the density shall be 250, and, for non-social housing projects, the density shall be 150. Yes, a municipality can do this. … This would be interesting, and would generate a big debate in Chile, I think.\(^98\)

However, except for some particular cases, municipalities in Santiago have not deployed this kind of legal incentive. Then, on one hand municipalities have a significant degree of regulatory discretion that could favor the provision of well-located social housing projects, but on the other hand the political and legal structure governing the land use power of municipalities hinder the use of that power for inclusionary purposes. And amending that political and legal structure is something that goes beyond the municipalities’ scope of authority.

\(^{97}\) Telephone Interview with Public Official #3, from a low-income municipality (January 14, 2011).  
\(^{98}\) Telephone Interview with Land Use Attorney (February 23, 2011).
C. Institutional Attitudes Towards Residential Segregation

The legal structure governing urban development in Chile promotes the political fragmentation of land use powers, which impact the way public officials perceive the role of land use governance in addressing residential segregation. In this research, three different approaches on how to deal with socioeconomic residential segregation in the city were identified.

The first one is the perception that the law establishes obstacles to residential integration. According to this view, even if officials and developers would like to promote inclusionary projects, there are legal constraints hindering that process. One of the obstacles mentioned was land use regulation. As an NGO official noted:

Today, urban plans are big instruments for segregation …. There is a set of rules that appears to be very simple, but accentuates segregation. These rules, for example, include the establishment of minimum land divisions in high-income districts. If the minimum land division is 1,000 square meters, this immediately prohibits middle or low-income families living there, because the land is going to be very expensive. Thus, when defining low densities, you prevent middle or low-income sectors of the population from having access to places with a predominance of middle and high-income people.  

In this view, the legal structure explicitly or implicitly prevents residential integration. Thus, public officials who want to achieve more integration within the city are constrained by a legal structure that promotes social fragmentation among classes.

Excessive bureaucracy, budget constraints and professional capability are also factors that were identified as obstacles for promoting inclusionary social housing projects. The interviewees noted that public officials do want to create more integration within their districts, but they do not have the money to complement the government subsidy, nor the

---

99 Telephone Interview with NGO Official #3 (January 13, 2011).
human resources to implement these policies. Indeed, as Figure 5 shows, the municipalities where most of the social housing projects are located include those with lower budgets.

<table>
<thead>
<tr>
<th>Subsidies/Avg. Municipal Income Per Resident (2009)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thousands Pesos</td>
</tr>
<tr>
<td>------------------</td>
</tr>
<tr>
<td>232</td>
</tr>
<tr>
<td>111</td>
</tr>
<tr>
<td>93</td>
</tr>
<tr>
<td>73</td>
</tr>
</tbody>
</table>

Figure 5: Subsidies Per Average of Municipal Income Per Resident

The second approach is related to the first one, but the emphasis is placed on the incentives behind the legal structure that governs Santiago’s land use. The vast majority of the interviewees were in this position. Here, it is necessary to distinguish between incentives for developers and incentives for public officials. Concerning developers, some of the interviewees affirmed that there are no clear incentives for them to design integrated housing projects. Developers do not receive remuneration for generating well-located social projects. Moreover, this kind of project would face more problems due to the political and cultural sensitivities associated with these developments. Thus, from the perspective of a private developer, it is not worthy to promote integrated projects.

Regarding public officials, the question is: what are the incentives for municipalities to promote inclusionary housing in their districts? From a political perspective, a mayor and a municipal council depend on the suffrage of a district’s residents. Thus, the question is whether the development of inclusionary housing projects may have political gains. In wealthy districts, where there are practically no slums and homeless people, promoting residential integration cannot translate into political gains. Also, social housing projects do not pay property taxes, which reduces the incentives to host that kind of projects. Only

---

100 The relationship between the number of subsidies received by each municipality and the average of municipal income per resident was calculated using data from the sources indicated in supra note 76.
those districts with strong political pressure for social housing may have an incentive to promote integrated projects. However, this will not necessarily change the segregation pattern, especially if only low-income families live in those districts.

Finally, the third approach emphasizes the perception of the problem. For some officials, socioeconomic residential segregation is beyond the scope of their sphere of concern. The opinion of a municipal official interviewed is representative of this view:

No, here we do not discuss that issue [socioeconomic integration within the city], because the capacities and resources available for each district are the factors that promote segregation. The populations of wealthy municipalities have to contribute with 10% of their incomes to poor municipalities, through the municipal fund …. We help our neighborhoods improving the public infrastructure …, public parks, paving the streets, etc., but we do not have problems of poverty and social segregation here. 101

From this perception, social segregation is not a problem, at least, for that district. Municipalities contribute with a percentage of their income to other districts, and that is all what they can do to improve the life of the urban poor. It is not that this type of public officials does not recognize the extension of the problem of residential segregation. They do recognize segregation, but not as a problem that involves them. That seems to be happening in the districts that concentrate high-income residents. Segregation is not in their range of concern.

How each of these approaches has contributed to the pattern of residential segregation is an empirical question beyond the scope of this research. What can be said, in light of the findings, is that these approaches play a role in the segregation phenomenon, and that any legal reform on the topic should consider how the law shapes these institutional attitudes.

101 Telephone Interview with Public Official #1, from a high-income municipality (January 7, 2011).
V. CONCLUDING REMARKS

This study explores the legal dynamics affecting residential integration in Santiago, Chile. Its focus is on the legal practices shaping the city, and the implications of these regulatory decisions for social integration. It assumes that residential segregation along socioeconomic lines is a problematic phenomenon for contemporary metropolitan areas like Santiago. It also presumes that, behind this social phenomenon, there are legal dynamics playing a role, especially in the realm of land use regulation.

The growth and development of urban areas is not only a spontaneous process, but also a calculated and significantly regulated one. Public institutions at all levels make policy decisions and use legal instruments that affect the way cities develop. This regulatory scenario impacts the way cities’ residents live, affects how people are distributed within a metropolitan area, and influences their access to the opportunities a city offers.

The Chilean legal framework governing urban land use, as every legal structure, reflects certain institutional choices that constitute a structure of incentives for all the actors involved. Through the analysis of the regulatory practices shaping Santiago, by the perception of leading figures involved in these processes, it is possible to conclude that although the MHUD, and its regional agency (SEREMI), play a crucial role, each of the 52 municipalities in which Santiago is divided also have relevant regulatory powers to guide the urban development of their districts. Their role is growing in importance, which is exemplified by the fact that the number of new urban district plans has increased in the last years. This means that municipalities are starting to increase the use of their powers to define the character of their territories.

Along with the possibility to elaborate urban plans, municipalities also use other regulatory and administrative actions to influence the urban development of their districts in a highly discretionary way. Depending on the availability of budget, local governments invest in redevelopment projects for the benefits of their residents, and negotiate with real state developers to include certain urban conditions in development projects.

The regulatory decisions shaping Santiago are not politically neutral. On the contrary, they are influenced by political agendas. The Minister of Housing and Urban Planning is a political authority, elected by the President of Chile. Local authorities are also political actors, elected each 4 years by the suffrage of the residents of the corresponding district. As political institutions, when they take important decisions affecting the city life of
Santiago’s citizens, they balance technical with political considerations. The lobby of interest groups, mainly real state developers, landowners, and residents’ organizations, influences these political considerations. The latter interested group has become an influential actor in Santiago in the last years.

One of the findings of this research is the lack of national policy guidelines on urban planning. This leads to an even more important role of municipalities. The land use legal framework creates strong incentives for local governments to keep the character of their districts, especially for those who concentrate high-income residents. Along with this incentive, municipalities’ budget, the social needs they have to cover, and urban market trends, also influence the regulatory activity of local governments.

Today in Santiago, everyone recognizes the extension of the problem of socioeconomic residential segregation. However, the way public officials perceive this problem varies according to their perception of the relationship between the legal structure and this social phenomenon. Some observe that the law establishes strong obstacles to residential integration. Others emphasize the lack of incentives to produce inclusionary housing projects. Finally, a third group considers that segregation is beyond the scope of their concern. According to this latter group, there is nothing they can do to solve the problem. This is especially observed in high-income districts.

How each of these approaches has contributed to the pattern of residential segregation is an empirical question that remains to be solved and requires further research. What can be affirmed is that there are land use legal dynamics affecting the achievement of more residential integration.

Who are the beneficiaries of Chilean land use law? It is plausible to argue that the legal dynamics implementing land use laws in Santiago do not create strong incentives to the promotion of inclusionary housing solutions for the urban poor. On the contrary, it seems that it promotes the expansion of the pattern of social fragmentation that exists today.

The findings of this paper support the idea that social housing policy based on subsidies cannot be the only remedy for socioeconomic residential segregation. Without addressing the institutional choices and incentives created by Santiago’s land use legal framework, and how this institutional structure operates in practice, social integration within Santiago’s metropolitan area will remain an unattainable ideal.