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From participation as a plus factor in government to participation as a strategy in governance – empowering or weakening civil society actors in urban development?

Eva Irene Falleth

Norwegian Institute for Urban and Regional Research (NIBR)

Gro Sandkjaer Hanssen

Norwegian Institute for Urban and Regional Research (NIBR)

Inger- Lise Saglie

Norwegian Institute for Urban and Regional Research (NIBR)

P.O. Box 44 Blindern, NO-0313 Oslo, Norway.

E-mail: eva.falleth@nibr.no, fax: +47 22 22 37 02, phone: +47 22 95 88 00

Abstract:

The conditions for participation in Norwegian urban planning processes are changing due to the more prominent role of market actors in urban development. New forms of network governance are emerging. Both the outcomes as well as the procedures are increasingly met with local opposition. How can the changing conditions for participation and influence be justified or questioned from a democracy theory perspective? How can planning processes be designed to secure essential democratic norms?

1. Introduction

The major focus of this paper is the consequences for civil society arising from new forms of governance in urban planning. The market actors have since the mid-eighties taken a more important role in urban planning and development processes. In the Norwegian capital, Oslo, 85 per cent of urban plans are made by developers. Although formal procedures of representative government certainly structure such processes, important decisions are in many ways made in the informal stage of the planning process, in negotiations between planning authorities and developers before the planning turns into the stages with formal procedures for participation and political decision-making. In some cases politicians are involved, in other cases not. The negotiations take place before the public inspection of the planning proposal, and participation from civil society organisations or individuals have up to now had little place in these bargaining arenas. These changing conditions for participation in Norwegian urban planning has lead to a legitimacy crisis both in terms of just and fair democratic procedures, but also a lack of legitimacy of the outcome of public decision-making. This change in planning practice, however, has not been discussed in a wider democratic perspective.

The right to influence planning decisions has a judicial background. Public decisions in planning and building affects individual property rights and particular interest, and land owners and neighbours have been granted special rights to be informed about and given a voice in such processes. Since the 1960s -1970s direct participation has been a part of normative planning theories, such as collaborative planning (Healey 1997). Democratic ideals are important norms in planning, but are not underpinning the legal procedures for participation in the Planning and Building Act (1985). The formal rationale for participation is still efficiency in planning.

The discussions of legitimate collective planning decision-making procedures and the role of participation in planning have been conducted within normative planning theories, but not within a more general discussion on democracy. The aim of this paper is to bring these traditions together in a discussion on the changing conditions for participation in urban planning. First, we will present a theoretical discussion about *the tentative implications of the new forms of network governance for the legitimacy of urban planning*. A second question is *how public planning processes can be designed to secure essential democratic norms related to participation rights based on deliberative democratic norms*.

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2. Changing conditions for participation in Norwegian urban planning

Market actors have assumed a stronger role in Norwegian urban planning processes since the mid 1980s. The influence on actual planning stems from political ideals about market liberalisation, particularly within housing policy, and a rearrangement of the public sector in line with “New Public Management”.

The Norwegian Planning and Building Act of 1985 cleared the way for private actors to submit zoning plans for governmental approval. It was meant as a democratic right for local organisations and citizens to present alternatives to planning proposals that had until then been a public responsibility. However, in practice the developers have used this opportunity to present plans. Today, these zoning plans dominate: in 2000, between 50 and 60 per cent of all zoning plans originated in the private sector or public enterprises (NKF 2000). In Oslo, the capital, 85 per cent of the 158 approved zoning plans were submitted by private developers and public enterprises, the majority in the former category in 2004.¹ This means that the planning authorities do not carry out detailed planning work themselves; most plans are only scrutinised by the public authorities. This means that the developers are responsible for the early informal stage of the planning processes, a stage that is seen as crucial for influencing the formulation of the plan.

In urban politics there is an abundance of visions and goals. The ruling political parties in Oslo have for example promised 40 000 new dwellings before 2015 without any intention of being involved in their construction. As the public sector has reduced their role in urban land management, infrastructure investments and construction of public facilities, they have become more reliant on striking financial deals with the private sector for investments. In urban transformation areas negotiations about divisions of cost between the investors and public sector are common. In many cases the bargaining of the planning proposal and the cost sharing are seen as one bargaining process. A model for cost sharing may depend on a certain density in the planning proposal, and might thereby have negative effects such as increased traffic, noise, pollution, loss of view, green space and sun. Negotiations between developers and planning authorities in the informal stage of the planning process are not open to the public. Still, these negotiations can be decisive for the outcome of the planning processes. Due to critique relating to lack of transparency, central government has made new rules stating that the start of such negotiations shall be announced publicly. But there are no participatory rights at the arena for negotiations, ensuring what the Ministry of Environment emphasized in 1984; “for the planning work it is an advantage that views can be identified as early as possible, and avoid that the process come to a standstill because vital points of views are presented too late in the process.” (Ot.prop. nr 56 1984-85 Planning and Building Act. p 29)

These practices are partly a result of the critique from developers, arguing that planning authorities are too ineffective and too unpredictable. Several formal changes have been made to streamline the process, including time limits for the public authorities to scrutinise the plan, and reducing the possibilities for the affected parties to make complaints. Procedures have also been developed for cooperation between market actors and planning authorities in some municipalities and a formal system for agreements on cost sharing in addition to the formal planning system. There are new articles about such agreements in the Planning and Building Act in 2005, and there is a new national guideline for such agreements (KRD 2006).

¹ *Årsmelding 2004 Plan- og bygningsetaten i Oslo kommune.*

The planning process can be divided into several stages, as illustrated in figure 1 below. The focus of this paper is the current practice in the two first stages of urban planning; the informal stage and the formal stage of the planning process.

Figure 1. *Presentation of the different stages of urban planning in Norway.*

	Informal stage of the planning process	Formal stage of the planning process	Decision-making	Implementation
Main actors	Private developers Planning authorities	Civil society Public authorities	Politicians	State Court of law Ombudsman
Strategies for interaction	Negotiation Lobbyism	Deliberation	Lobbyism	Political review Juridical review

The *informal stage of the planning process* is governed by developers as the plan's "owners". They prepare the plan proposal and negotiate with the planning authority. There are no formal requirements beyond the duty to announce publicly the commencement of planning, which take place when the work on the actual planning starts. There is also a formal claim to inform the public about start-up of negotiations about agreements relating to sharing of cost in urban planning. This informal stage is an important stage, because here the deliberation around planning ideas and frames take place, as well as the translation of ideas into draft plans. Many municipalities are eager to initiate early conversations with developers, and work has been carried out to develop methodology that allows for early collaboration between the planning authority and developers (Bonnevie-Svendsen 2000). Little research has been done on attitudes to liaising between the planning authorities and the developers, but there is reason to believe that private developers do liaise with council politicians and department officials (Børud 2005, Fimreite et al. 2005). Private developers have been accused of "short circuiting" the process by "leapfrogging" formal planning stages, or sidestepping civil society involvement in this stage of the proceedings.

The *formal stage of the planning process* commences with the developer submitting his plan to the local authorities. The rules governing the ensuing planning process are set out in the Planning and Building Act. Council officials prepare a consultation round, the plan is made available for public scrutiny, giving affected actors (individuals, organisations, commercial interests) an opportunity to study the proposal and suggest amendments etc. It is at this stage civil society enjoys statutory rights of participation.

The planning process comes to an end in the final *political decision-making* stage; when the politicians vote for or against the final draft.² However, *the implementation* of the plan is also an important stage, but is seldom included in studies of planning processes or democracy forms. An increasing focus on political review through objection or complaints against local approved zoning plans, judicial review in court and complaints to the ombudsman indicates that also the implementation phase is of interest for the research project. This will, however, not be the focus of this paper.

² Zoning plans can be finalized by different authorities. Local councils and city governments are entitled to delegate the job to a standing committee on planning applications.

In our view, the new forms of network governance in Norwegian urban planning have divided the first part of the planning process into an informal and a formal stage, and changed the interaction and power balance in these stages. This has several *implications* for the opportunities of different actors from civil society and the private sector to influence planning processes.

Firstly, the exclusion of civil society actors in the informal stage of the planning process seems to create a major lack of legitimacy for procedures in urban planning. The different (external) actors enjoy different formal participation rights, thus having different opportunities to influence at different stages of the planning process. This asymmetry in opportunities to participate directly in planning processes is enhanced by the major asymmetry in resources between the external actors. The developers are strong and resourceful, while local community actors, like neighbourhood groups, associations and organisations, often are small, poor, ad-hoc-organised and fragmented.

Secondly, this development seems to increase the competitive democracy ideals, and thereby weakening the deliberative ideals and procedures in planning processes (Healey 1997). We see that NGOs representing civil society actors, when being excluded from important deliberative arenas, increase their lobbying activities and start ad-hoc campaigns.

Thirdly, the exclusion of civil society actors in the early stages of the planning process also seems to create a major lack of legitimacy for the outcome. As the planning law commission predicted (ref); several proposals have lately been met with such protests that they have come to a standstill, also after the politicians have made their final decisions. This may well be the case with the biggest and most prestigious urban waterfront development in Oslo, Bjørvika. After a massive ad-hoc protest, counting 30 000 signatures, when building heights were visualised, central local politicians now call for a restart of the whole process almost twenty years after it started³, involving negotiations between planning authorities and several developers.

We will now discuss if mainstream planning theory reflect these changing frames for urban planning.

3. Changing norms and rules in urban planning – a democracy perspective

Major contributions in planning theory focus on the planning process, and in particular conditions for participation, ways of participation and purposes of participation (Friedmann 1987, Healey 1997, Cars et al. 2002). However, the consequences, contradictions and tensions of participation in the planning process are undercommunicated. So are consequences of reorganisation of planning in practice, which tends to follow ideals of New Public Management rather than those of deliberative democracy ideals articulated in planning theory. We have argued in this paper that major changes have occurred in the informal and initial planning process in Norway, changes that lead to implication representing democratic challenges in urban planning. We will now discuss this further.

Participation is a difficult concept, and is understood in diverse ways. There has always existed a certain degree of discomfort between representative democracy (insisting on participation solely by vote) and different forms of direct, non-parliamentary participation

³ Kommunedelplan Oslo sjøside 1988

(accepting and promoting other participation forms than vote). Direct participation in planning was first justified by reference to entitlements and legal safety of private landowners and rights holders. A zoning measure, which essentially is a minor law, introduces constraints and creates openings for private landowners. Zoning of building areas introduces a not inconsequential profit motive, while zoning may also result in a building ban and eventual expropriation. Later, other justifications for participation have been floated. One of them sees participation as a way of streamlining the planning process. According to this view, decisions of importance to people's future and rights tend to be taken without their involvement, and are therefore a threat to planning's legitimacy. Participation in planning has also been justified by evoking a social and political dimension, with a stress on the "bottom-up" perspective. This perspective has been very important, maybe the most important, in the theoretical debate about planning. It is not a particularly obvious theme in the Norwegian Planning and Building Act (1987), but it has had a major influence on norms in planning among professionals and academics. Friedmann (1987) published an important contribution to theory in which he conceptualised and systematised planning theory perspectives. He singled out four main schools of planning theory based on a radical vs. conservative dimension, and on planning as a tool of governance and as a means of social reform. Several theoretical contributions on variants of co-determination and participation derive from the radical perspective, the aim of which is to ensure society's say in its own development. Advocacy in planning emerged in the 1960s in the US: planners became the spokespeople of the disenfranchised and vulnerable groups in the planning process. Friedmann himself coined the term "transactive planning", conceiving planning as a learning process.

Planning theory since then has seen the emergence of concepts such as collaborative planning – derived from Habermas and the idea of communicative rationality and open dialogue (Healey 1997). The focus is on actors' interaction in the planning process, where the ideal of deliberative democracy is of highest importance. Collaborative planning has been criticised for ignoring the issue of power and influence (Booher and Innes 2000). The most recent advances in planning theory are heavily indebted to theories of governance (Cars et al. 2002), which, on the other hand, to a larger extent take questions related to influence and asymmetry in resource-bases into account. In this literature, network structures and factors affecting cooperation based on relational and informational resources and operative mobility feature strongly. Therefore, many have argued that network governance theories are more capable of describing and analysing the current situation in urban planning (Nenseth 2005, Røsnes 2005). Urban planning in Norway can be characterised by strong elements of network governance, defined as 'interorganisational networks characterised by interdependency, resource exchange, rules of the game and significant autonomy from the state (Rhodes 1997:15), although in the 'shadow of hierarchy' (Scharpf 1994). While the focus of communicative planning theories have traditionally been on participation from local community actors (the 'victims' of urban planning), a governance perspective to a larger extent allows us to analyse participation and influence from all actors in urban planning, also including strong, resourceful developers, landowners, consultants, public agencies, politicians etc (Nenseth 2005).

In urban planning, one mechanism of network governance is often emphasised; public-private partnerships. Public-private partnerships have been a central element in the New Public Management reforms that have swept over Western Europe, a mechanism often presented as a recipe for increasing the efficiency and effectiveness of public sector (Andersen 2004). The partnership model displays remarkable empirical variation and includes many arrangements. Partnerships require the commitment of the participating actors to fuse their capabilities or

resources, in order to realise something to the gain of everyone (Peters 1998). This tradition put particular emphasis on increasing the system capacity of public authorities to produce effective public services. Thereby it differs from the collaborative planning perspective which is underpinned with norms of deliberative democracy.

The developers are increasingly financing common goods such as infrastructures, parks, etc in urban development in Norway. This is common goods which earlier were financed by public authorities. The municipalities have since the 1980s increasingly transferred these expenses to the developers (Røsnes 2005). By co-financing and realising collective goods and public interests, private developers achieve a strong negotiation-position towards the planning authorities. This network governance is a form of public-private partnership in line with theories such as 'planning by negotiations' (Jensen 1987, Bowotz and Høegh 2005:42, Haugstveit, Oraug, Petersen 1982). From this point of view, the plan is a kind of agreement as an outcome of negotiations between equal actors, which in urban planning is the planning authorities and the market actors. The planning by negotiation tradition also emphasise that a broader spectre of resource controlling interests should be ensured a say in public planning – to increase the system capacity. In planning by negotiation, the resource (and power)-base of the actors is essential for the results of the negotiations.

3.1 Legitimizing of planning

The described development of planning-practices and -theories reflects a shift of emphasis on how urban planning processes are to be legitimised. There is a gap between the focus on democracy in planning theory, and the focus on efficiency of planning- practices. This gap, has been absent as a discussion theme in the planning debate. But here the discussion in network governance theories might be fruitful. In governance theories, democratic legitimacy is often used as an analytical tool for evaluating democratic aspects of network arrangements. The concept refers to the acceptance of a political system by those who are bound by its decisions (Haus, Heinelt and Stewart 2005, Klausen and Sweeting 2005). Recent change in focus tends to legitimise public authorities based on their capacity to produce results. When urban planning is concerned, the bias in focus towards planning results - output from planning – rather than on the democratic anchorages of planning may be an explanation of the high controversy about important urban plans. We will therefore use these analytical tools in analyzing the implications of the described development.

Urban planning may on one hand be legitimised through broadly supported formal procedures, labelled 'input-based' grounds for legitimisation (Scharpf 1999:6). This is mainly done through the principle of 'participation by all' (vote), i.e participation in elections. However, planning theories – and different governance theories – also emphasise direct, non-parliamentary forms of participation (voice). Here, the principle of *participation by those affected* is important, arguing for the regular and guaranteed presence of those collectives that will be affected by the policy (Schmitter 2002). Those who most often are affected by urban planning are to be found in civil society and markets. One attempt of operationalising "those affected" is by categorising different 'holders' (Schmitter 2002:62-63), like holders of participation rights, holders of spatial location (those who live within a demarcated territory), holders of knowledge, holders of share (holders of property rights, owners), holders of stake and interest (victims/ beneficiaries that are affected, or their spokespersons) and holders of status (recognised by the authorities as representing social, economical or political categories). However, as Klausen and Sweeting argue (2005) the understanding of the

planning situation is important for those regarded as stakeholders and who are given participation rights.

On the other hand, the political system can be legitimised by virtue of its capacity to adequately respond to emerging wants and needs in the polity, in other words 'output-based' grounds of legitimisation (Scharpf 1999:6). Here the legitimacy of governance is measured by the effectiveness and efficiency of the solution of problems in ways geared towards the common good, and participation is only seen as valuable to the extent that it contributes to instrumental goal-attainment (Goldsmith and Larsen 2004:124, Wolf 2002, Klausen and Sweeting 2005). In this respect, it is important to include resourceful actors (having resources like knowledge, capital etc) who can contribute to increase the system capacity of the municipalities when it comes to urban development.

Haus, Heinelt and Stewart (2005) introduce a third dimension, throughput-legitimacy, denoting the ways in which political systems can be legitimised by transparent decision-making procedures, and by making decision-makers visible and accountable to the public for their decisions. All three forms are prerequisites for democratic decision-making being legitimate.

The development in planning theories reflects a shift of emphasis related to whether inclusion in planning processes should be based on input-based or output-based grounds of legitimisation. While the collaborative planning tradition favour input based arguments, that (a broad spectre of) affected actors were to be included, governance traditions, like 'public-private partnership' and 'planning by negotiation' are emphasising out-put based legitimisation – that resources-controlling actors should be included (and have influence) in urban development in order to ensure and increase the system capacity of public authorities.

In the following sections we will discuss if, and if so, to what degree, these different forms of legitimacy is ensured in the current practice of urban planning in Norway.

3.2 In – put based grounds for legitimacy: designing the process

One way of legitimising democratic institutions and practices is through formal procedures ensuring participation and preference-articulation of the members of a polity (input based legitimacy). Such procedures can be differentiated in 'vote'- procedures and 'voice' procedures; planning procedures that first of all are regulating the formal planning procedures today.

As citizens, we have a right to participate indirectly in the governing of society in elections (vote). Here we elect the politicians taking decisions on a day-to-day basis on urban development. An important point to stress is that the current practise of urban planning has not changed the *formal (and equal) right to vote*. An essential premise in representative democracy, however, is that the politicians to a certain extent are responsive to the preferences of their electorate. As Dahl emphasize; 'a key characteristic of democracy is the continued responsiveness of the government to the preferences of citizens' (1971:1). With the introduction of an informal phase in urban planning, an important question to ask is: are the local politicians as able to ensure public interests and the preferences of the citizens in urban planning as they were before? Several factors indicate that this is not the case. First, in the closed negotiation meetings with the planning authorities (predominantly planning bureaucrats, but also politicians) developers present theirs ideas and proposals, and have good opportunities to argue their case, promoting their interests, and for convincing the planning

authorities. In these negotiation meetings important premises is agreed upon, and formal agreements are made (although not legally binding), without other actors present. In addition, the meetings are closed for public scrutiny. Other, more critical, voices (for example from civil society actors) are often not heard before the plan is made public, in later stage of the planning process. This one-sided influence early in the planning process might give the planning authorities, especially the politicians, an imbalanced understanding of the situation – an understanding in favour of the developers.

Secondly, in Norway local politicians decide on urban masterplans to ensure the public interest in urban development. However, today, many of the zoning plans get dispensation from the masterplans. The urban production is first of all steered through zoning plans with the basis in each single development project (Børud 2005). Thereby, the tool meant to ensure public interest and the common good – are not working in an effective way. An interesting question is therefore why politicians let developers have dispensation from masterplans they originally made to protect public interest? Are the masterplans too vague, are the objectives not sufficiently operationalised, do they mirror national policy rather than local policy? One explanation might be that the planning authorities (planning bureaucrats and politicians) are influenced by the arguments of the developers, – while the interest of citizens and civil society are neither heard, nor taken into account. Or deliberation around planning takes place among few actors, which can lead to a disparity between the discourse among the few partners and the discourses in civil society as such.

Thirdly; planning authorities and developers often make preliminary agreements in the early phases of the planning process (for example in the closed negotiation meetings). These agreements are often crucial for the formal planning decisions and the implementation. Even if they are not legally binding for the politicians, the politicians often feel committed to these agreements (Røsnes 2005). This reduces their room for manoeuvre in the formal decision-making stage. If important decisions, in reality, are made in the closed negotiation meetings early in the process, the narrow participation in this forum, as well as the lack of transparency, constitutes a severe democratic deficit of urban planning.

Fourth, the practice of closed negotiation meetings reduces the total spectre of interests that are heard in urban planning. From a deliberative perspective, that is central in the collaborative planning tradition (Healey 1997), it is important that all relevant actors and interests are represented in the deliberation processes. Deliberation is seen as an aspect of the concept of justice, according to which the reason for a procedure (measure) shall be acceptable to the parties whose interests are likely to suffer as a result (King 2003). The argument in favour of deliberation highlights its epistemic value, i.e., it improves the quality of information and argumentation (King 2003). King goes on to stress deliberation's transformative potential inasmuch as it creates and fosters ideas and notions. We find distinct echoes here of recent planning theory.

Nevertheless, even if negative consequences of this practice might be that politicians reduce their responsiveness towards citizens, and increase their responsiveness towards developers, the important mechanisms of the vote-functions remain. The citizens have the opportunity to sanction non-responsive politicians in the next election. In Oslo, a specific zoning plan is made subject for the coming election-campaign. When urban development is made subject for election-campaigns, this enhances the opportunities of influencing urban development through 'vote'.

In addition to participation through 'vote', citizens also have (formal) rights to participate *directly* in the planning processes, either as a citizen, or as 'affected actors'. Such alternative, non-parliamentary channels of participation, often labelled 'voice', are hearings, demonstrations, public debate etc.

In Norway, these channels are well taken care of in the formal phase of planning processes. Citizens, as affected actors (this can be organised interests, advocacy groups etc) have formal rights (by the Planning and Building Act) to present their preferences and views in hearings. Other laws give citizens formal rights to information about public planning processes. In addition, there are several non-parliamentary forms of participation open for all citizens, affected or not; like participation in the public debate, in demonstrations, petitions etc. Through these forms of participation, citizens have the possibility to have their preferences and interests heard, and thereby the possibility to influence public planning processes. The formal participation rights in planning have formally been justified by efficiency, but the professional norms in planning participation is also coloured by a social and political dimension, with a stress on the "bottom-up" perspective. Here participation of the 'victims' of urban development have been emphasised.

However, the formal rights to participate (directly) are related to the *formal* phases of the planning process. The *informal* phase, where the negotiations between planning authorities and market actors take place, is closed, both for participation and for public scrutiny. This reduces the opportunities of civil society actors to be supplier of conditions in urban planning, in the same way as market actors are. Thereby civil society actors, being presented the formulated proposal, often perceive their only options to be either protesting against or accepting the proposal. Their contribution in urban planning is therefore often reactive instead of proactive. The asymmetry in resources between developers and civil society actors is striking. Civil society actors like neighbourhood groups, local associations, environmental organisations etc, are often small, fragmented and have few resources. The spectre of civil society actors recognised as affected actors are often narrow, due to a too narrow framing. The affected actors of a zoning plan might not be inhabitants of the specific area; they might be citizens in general, using the part of the city as recreation, having their workplace there etc. An important question is therefore which actors are defined as stakeholders, and thereby is invited to hearings, meetings etc. The civil society actors in smaller neighbourhoods seldom represent a real challenge to the resourceful developers. But they might be a threat if the development project affects larger parts of the society which give a potential for stronger resistance and publicity.

Another concern is related to the ideals we find in traditional public administration theories (Weber 1971). Here, the administration represents neutral, non-biased professional expertise, which is to develop proposals to be decided upon by political institutions like Parliaments and City Councils. In the current practice in Norway, the expertise formulating the plan-drafts (which constitutes the case-documents to the politicians) is not solely to be found within the planning authorities, but just as much to be found at the developers. In Oslo, private developers formulate about 85 per cent of the plans. In this situation, an important question is whether the professional expertise is as neutral and un-biased as is expected from a public administration perspective.

So, can the advantageous position of the developers in urban planning be justified by input grounds of legitimisation? To a certain extent, developers can be characterised as affected partners, as 'holders' of share (property rights, resources) (Schmitter 2002). Some of the

developers are private landowners, and in planning there are long traditions for giving participation rights by reference to entitlements and legal safety of private landowners. As such private land owners (and developers) can definitively be defined as affected actors, with a right to have a say. However, their participation is first and foremost justified by the resources they bring into urban development – a justification which we shall see later in the discussion are based upon output-based grounds of legitimisation.

Closely related to input-based grounds are throughput-based grounds of legitimisation, referring to decision-making processes in democratic institutions that must be open, transparent and visible to ensure that politicians are accountable to the public for their decisions. There are requirements of transparent procedures in the formal planning stage such as announcement, public hearing, decision-making and participation. There are no such formal procedures in the informal stage, except announcement of start-up of negotiations about agreements on sharing cost between the planning authority and market actors. This has been one of the main criticisms of the current practice, that the informal stage is closed for public scrutiny. Lack of transparency in the informal stage might also blur the accountability of the planning authorities (especially the political institutions). It might be difficult for the citizens to get a picture of whom to hold accountable for the initial agreements and negotiations which have had major impacts on the final results.

All this considered, this calls for a critical appraisal of whether or not the development has reduced both the ‘vote’ and ‘voice’ possibilities of the citizens to be heard and to influence urban development, thereby reducing the input legitimacy of urban planning. Even if input legitimacy can be ensured by vote, the question is whether the practice has decreased the politicians’ abilities to defend public purposes. In addition, it can be discussed whether citizens and civil society actors, being excluded from the informal phase of urban planning, have *sufficient* opportunities to promote their own – and public – interest in urban development through non-parliamentary participation.

3.2 Out – put based grounds for legitimisation: results and plans

Output is the other main justification for legitimate representative democracy. The elected politicians will ultimately be judged on what they deliver and the degree to which these are judged favourably by the electorate. We can divide between outputs as achieving tangible results, justification for decisions in terms of reasons acceptable to those burdened by the exercises of power, and better and more informed decisions.

Achieving tangible results in urban development is the ultimate judgement for local politicians, such as the provision of 40 000 newly built dwellings in Oslo in 2015. The inclusion of resource holders such as investors and developers can be defended in an output based justification for legitimate representative democracy (Scharpf 1999). By including resource-controlling actors from private and public sector in governance arrangements, public authorities may increase their capabilities of problem-solving and thereby the system capacity of the governing system. ‘System-capacity’ denotes the ability of public governance to transform input into output and thereby be responsive to emerging wants and needs. In urban development these aspects have come to the forefront as the role of public authorities has been diminished. Forming close relations to large development actors and engaging in exchange of resources in network governance is a way of enhancing local capacity for reaching political goals. As long as there is a political goal to build more dwellings and increase the number of jobs created, investors and property owners are vital resource actors to

facilitate new construction in market based urban development. If the urban planning proposals are considered as good and beneficial for the city at large, the politicians will be deemed as having done a good job. Thus, network governance might strengthen the legitimacy of elected politicians, by producing good results. Negotiations in closed rooms and lack of transparency can be seen as regrettable but necessary concessions in order to achieve tangible benefits for the city at large. Revealing the public authorities' strategies in negotiation processes can potentially be harmful for the public interests. In this output-based view, it is not argued for a broad participation, only the inclusion of the stakeholders that are absolutely necessary in the instrumental pursuit of development goal.

However, if the output in the shape of tangible outcome, such as new urban development proposals, is generally met with protests of some magnitude, the politician's legitimacy is at stake. It might be questioned if their decisions reflect the popular will. In this case network governance cannot be defended by aggregate democracy theories or by output based legitimacy arguments. Thus, network governance can in practical policy making be a potentially dangerous path for politicians. They may be accused of forming strong ties and bonds to powerful economic elite actors, in arenas that lack transparency and producing an outcome that is not considered to be in the public interest.

Acceptable justifications for decisions for those that are burdened by the exercise of power.

Within deliberative democratic theory there is an argument that if the democratic system is to maintain their legitimacy, the decisions must be justified in terms of reasons acceptable to those that are affected by them. A way of ensuring that the various arguments are presented and discussed, participatory, deliberative arenas can ensure this exchange. Lack of such arenas might be a lack of arguments presented for the decision makers and thus make it more difficult to arrive at decisions that can be justified in terms of reason acceptable for those burdened by them. Decisions, or in our case urban development proposals, are often contested, and there are often difficult pro and contra argument and contradictions between sectoral goals. In urban development situations there are often difficult choices between public and private goods as well. In a situation where the public authorities expect that public infrastructure might be paid for by the developer, the latter have a strong bargaining power. As a result, a higher degree of exploitation might be seen as a necessary condition for the developer and a delicate balance between cost distribution and level of exploitation may be the result. The problem is that high exploitation also has costs in the form of externalities for neighbours, local communities or even the large part of the cities such as loss of sun, view, green space etc. Local protests about these externalities might be seen as ad-hoc "protest actions" and sand in the machinery. If also larger parts of the electorate protests the protest are no longer negligible and possible to be set aside by politicians as just neighbourhood NIMBY'isms (Not In My BackYard).

The efficiency arguments for resource based bargaining networks are clearly no longer there when they produce outcomes that are met with so much resistance. Project development might well come to a standstill. Thus, stakeholder participation can increase efficiency in resource based network governance. Their arguments can be presented and those particularly burdened can meet counterarguments that can convince them that it is acceptable and necessary in order to reach a common good. It might also happen that acceptable compromises or even win-win situations can be achieved. But again, is it reasonable to expect that civil society actors can be included in negotiation and bargaining in cost sharing? The arguments for closed doors and restricted public access in the bargaining processes are still valid, and might restrict the number of arenas stakeholders are admitted to.

Increased knowledge base and better informed decisions is another output based justification for extended participation. These arguments can be found both in deliberative democracy theories (King 2003) as well as in collaborative planning theories (Healy 1997) and network governance theories (Scharpf 1999). There are several components in the argumentation for the increase in knowledge base. Strands of literature focus on local knowledge or citizen knowledge, other focus more specifically the role of expert or scientific knowledge as opposed to other knowledge forms, but they are also intertwined and seen as synonymous. As planning processes in some interpretations are seen as particularly knowledge intensive, these arguments are particularly pertinent in discussions on planning. The inclusion of local knowledge as opposed to expert based knowledge was an important justification for participation in planning theories in the 1970s as a part of a critique of centralised public planning (Friedmann 1987). In a network governance perspective stakeholders may also be seen as resource controlling actors. They may for example contribute with local knowledge, which seems to have an increasing emphasis (Koschatzky 2005, Fraser and Lepofsky 2004, Matthiesen 2005). Together with explicit knowledge, like professional, expert, institutional knowledge, these (often tacit) knowledge forms are assessed as crucial in enabling the politicians to respond adequately to the challenges of the local community, and thereby ensure the system capacity of local government to respond adequately to emerging wants and needs (Matthiesen 2005). Correspondingly, lack of participation from local citizens in network governance may serve to reduce the system capacity and the correspondence between public policy and the preferences and needs of the population.

Later, other justifications have emerged. It might often be that the public voice is not univocal, but contested and uncertain. Particularly environmental problems as unintended consequences of intentional social actions have lead to a scrutiny of scientific knowledge. Citizens panels, surveys, exhibitions, charrettes are all new methods that have been developed to deal with inherent uncertainties and contested knowledge. So far interest representation have been a guiding element for participation in planning practice, citizens panels and surveys are a relative new element in urban planning, only just been tested. Increasingly diverging knowledge claims are presented, such as noise and pollution effects from new proposals, where studies and counter studies are presented.

In this context it is important to note that timing is of importance. A problem is that the general interest in actively engaging in planning processes often is inverse with the possibility to influence the result. Early in the planning processes the possibility for influence is the best, while nearer the end of the process the effects are more clearly defined and the general public more inclined to react. In Oslo we find a typical example; in the seaside development plan for Bjørvika the heights of the buildings was open for public scrutiny a couple of years ago and was approved by the politicians. But it is not until now, when the actual buildings are presented and the effect as a visual barrier is visualized in the newspaper that citizens and civil society actors react. During one week, 30 000 people signed a digital petition campaign.

To sum up, there has been an increased planning activity and transfer of power into the informal planning stage. This stage is inhabited with few stakeholders limited to those with distinct development interests and means to produce urban development: the planning authority and market development actors. These turn in planning into an informal stage can be termed as a “planning before the planning”. Important decisions are taken in opaque negotiations between core stakeholders. This limits deliberative democracy ideals (voice) to a reactive role. It also bonds the formal political decision- making (vote). And it can set aside

the political deliberation in the formal planning stage. We sum this in one question. Takes urban planning place in a democratic vacuum?

The current change practices towards “planning before the planning” are first and foremost based on out-put based grounds of legitimisation. However, a broader participation might also be justified by this out-put efficiency argumentation. Civil society protests against planning proposals can make the planning stand-still because politicians are dependent on support from their voters. Therefore public debate with a manifold of actors can contribute with new knowledge, perspectives, responses and needs. It might make the planning process more time consuming, but might improve the implementation of planning.

4. Democratic anchorage of urban planning

We have argued that urban planning is characterised as a statutory system embedded with network governance. These systems work in different ways at different stages in the planning process. The planning process is influenced by the power of network governance consisting of planning authorities and market actors in the *informal stage* of the planning process, while the public take part in the *formal stage* of the planning process and the politicians predominantly take part in the decision-making stage. This network governance in the informal stage is favouring market actors. This generates democratic problems correlated to norms in the aggregative (vote) as well as the deliberative democratic (voice) model.

Social science researchers and political decision makers praise governance network for their potential contribution to efficient governance. They have a large potential for proactive governance because the manifold of actors give new perspective on policy challenges, gather more knowledge and can produce new responses using different and more means than government. More importantly, the network forms a framework for deliberation among the participants. This is gained in well-functioning networks. However, other researchers have shown unfavourable democratic implications of governance network. Governance network can undermine representative democracy's institutions (March and Olsen 1989). Networks tend to jeopardize the core values of political equity and individual liberty (Sørensen and Torfing 2005). Networks between market actors and planning authorities in urban planning might expand deliberation among these actors, and make urban production more effective, but it also challenges local government and their responsibility to urban common goods. It can also undermine the democracy's institutions as well as the broader deliberation in the urban community. Governance network as seen in urban planning has given a high urban production, but suffer from deliberation among the few, lack of transparency, democratic legitimacy problems and accountability.

Sørensen and Torfing (2005) argue that democratic legitimacy is obtained when networks are controlled by democratically elected politicians. Stronger political control of network, called metagovernance, can shape the conditions under which networks operate (Kooiman 1993, Klausen and Sweeting 2005, Sørensen and Torfing 2005). There are at least three different forms of metagovernance that can enhance the democratic legitimacy (Sørensen and Torfing 2005, Kickert and Koppenjan 1997). The first form is *network design*, which involves political attempts to shape and structure the networks. This could be the design of norms and rules, participation rights, decision-making competence and internal procedures. Today, informal planning processes in urban planning are gradually being institutionalised in meetings and agreements where primarily market actors and planning authorities participate.

These seem to have developed with the aim of a more efficient urban development. The pressure for these networks is actors with primary interest in development projects rather than overall urban planning. Democratic implications and undermining of the representative democratic institutions have not been a core issue in these changes, rather an unintended effect. However, participation rights for market actors but not other stakeholders give a biased start in favour of market actors in urban planning. We ask the question if redesigning the network could give a better balance, and thereby increase the democratic legitimacy of urban planning.

The second form is *network framing* which involves formulation of political objectives to be pursued in the first informal phases of the planning process. At the first glance, the many policy documents and formal urban masterplans indicate that the political framing of networks is well ensured. However, contemporary urban planning does not work like this. The urban development in Oslo is built on numerous sovereign development projects formalised in zonings plans (Børud 2005). The role of masterplans is limited. Metagovernance in terms of master plans seems therefore not to fill the role as a political guideline in urban development. Why this? One explanation might be that the negotiations among participants in the first informal phases of an urban development projects is first of all a deliberation around how the market actors can realise their projects. Stakeholders advocating public urban goods such as views, traffic, park, parking and environment are not given participation rights in the "planning consideration before the formal and public planning". When the urban project are put into the formal and open planning process, important conditions are already left behind. The politicians might be bound up before the political and open deliberation about the projects. It might be that urban planning can be recaptured if the current bias toward market actors is balanced, both through building institutions and procedures to empower civil society actors. More important is to improve the political responsibility and accountability in urban planning. Urban planning as a political responsibility can be clarified.

The third form of metagovernance is *network participation*. Sørensen and Torfing (2005) argue that politicians cannot only depend entirely on their administrations' partnerships in network governance, which they often seems to do. Knowledge about political – administrative interaction in urban projects is scarce, but "New public Management" in the public sector have also been implemented in the planning authority. This puts restrictions on politicians' and administrative dialogue, and gives the politicians a strategic role. This might be an institutional framework which favours the role of the administration, not the politicians, in network governance. We believe that the role of politicians in urban networks varies. It might be that small projects have minor public attention, and correspondingly also minor political attention. It might be that interaction in these projects is dominated by the planning authority and the market actors. However, in large and profiled projects politicians might participate and negotiate with developers in the planning process, as well as lobbying taking place through-out the whole planning process.

We have argued that changes in planning are underpinned from output-based grounds of legitimisation. The overall rationale has been to design an effective urban planning where the purpose has been to improve the production of urban development. Network governance partnerships between planning authorities and market actors have mushroomed. There has even been an institutionalisation of these networks into procedures of meetings and frames and processes for the agreements among these participants. The challenge is the lack of

participation rights and its opaque character. This has turned planning into a democratic vacuum with distinct bias between planning ideals and planning in practice.

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