UCL Press

Chapter Title: The governance of urban public spaces in London: In the public interest or in the interest of local stakeholders?
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Book Title: Critical Dialogues of Urban Governance, Development and Activism
Book Subtitle: London and Toronto
Book Editor(s): Susannah Bunce, Nicola Livingstone, Loren March, Susan Moore, Alan Walks
Published by: UCL Press. (2020)
Stable URL: https://www.jstor.org/stable/j.ctv13xps83.13

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The governance of urban public spaces in London: In the public interest or in the interest of local stakeholders?

Claudio De Magalhães

Introduction

This chapter discusses forms of urban public spaces governance that are emerging in London out of a rearrangement of governance responsibilities between local government, communities and private interests. Beyond the so-called privately owned public spaces (POPS)[1] – the privately owned and managed parts of the physical public realm – there has been an increasing takeover of the management of parks and other public areas by not-for-profit organisations from the voluntary, community and private sectors, as well as the emergence and multiplication of Business Improvement Districts (BIDs).[2]

This is not a phenomenon peculiar to London. However, the city's size, its history of private and voluntary involvement in public space provision and management, and the multiplicity of stakes in those spaces make it a laboratory in which to observe how public space governance has responded to pressures on existing governance systems and to try to understand the full implications of those responses.

Should we be concerned about the transfer of public space governance from elected local governments to organised groups of stakeholders? Does this make those spaces more private than public? What are the aggregate consequences of transferring public space governance to third parties for the city?

For some, direct stakeholder involvement in governance represents a more effective way of ensuring that towns and cities remain viable and competitive, with potentially more efficient, demand-sensitive and differentiated ways of delivering services and managing public spaces. Added to this is the access to resources of various kinds beyond those of declining public sector budgets (Audit Commission 2002). For others, the transfer of public realm governance functions from the state to other social agents, and especially to the private sector, constitutes privatisation. As such, it entails the expansion of market and commodity imperatives into the

public realm and their prevalence over more communal ones (see Low and Smith 2006; Kohn 2004).

This chapter discusses the implications of governance transfer processes in public spaces with evidence from London. It deploys an analytical framework based on the notion of rights over public goods (Blomley 2014; Ostrom 2003) to reflect on how those arrangements shape the attributes that make up the public essence of those spaces – their publicness. In doing that, the chapter explores the point highlighted by Boydell and Searle (2014), of cities made up of constellations of spaces with fine-grained differences in publicness making up the public realm.

In its look at emerging forms of public space management in London through the lens of allocation and appropriation of rights, the chapter also examines the emerging tensions between the active participation of those with a recognised stake in a public space and the protection of other legitimate interests, including those of the wider society. In its conclusion, the chapter discusses the implications of its findings for local democracy, for London and for other global cities.

The context: Declining public space budgets and increasingly diverse demands

The offloading of governance and management responsibility over public goods in general and public spaces in particular in the UK has a long history, with its fair share of controversy and opposition. The background has been the long process of redesign of the role of the state under a powerful mix of ideological aspirations for a reduced state and the move to adapt the economy and society to a globalised economy. It has been at play from the late 1970s, since the early years of Margaret Thatcher's Conservative government, and its latest incarnation has taken the shape of 'devolution of power' from government to regional, local government and civil society, and goes hand in hand with a search for alternative ways to fund public services (Lowndes and Pratchett 2012). This process has been given a considerable push with the recent financial crisis and the austerity measures that have come to dominate many western economies (see e.g. Raco 2013; Hastings et al. 2015; Peck 2012). Local authorities have used this devolution of power framework to transfer in part, or as a whole, governance and management responsibilities for local public services to interested parties in civil society, under what some have termed contractual governance (Peel et al. 2009; Vincent-Jones 2000). For public spaces, this has been substantiated in many forms: in the proliferation of long leases to allow the transfer of public land containing, or designated to contain, parks and green space to not-for-profit trusts; in the increasing use of the 2002 right-to-manage legislation to transfer the management of local authority housing estates and their grounds to resident-led bodies; and in the use of public–private partnerships and private finance initiative mechanisms in build–operate–transfer contracts to secure private capital investment for redeveloping and managing public facilities. This is

in addition to the wide use of simpler contracting-out instruments transferring all or some public space governance responsibilities to a contractor and the multiplication of less formal arrangements incorporating stakeholders in governance decision-making. The implications of this process for the nature of public spaces can be significant.

There is considerable academic literature on the withdrawal of the state from the provision and management of public spaces (see Low and Smith 2006; Law 2002; Minton 2006, 2009; Németh and Schmidt 2011; Langstraat and van Melik 2013). It draws on long-standing, predominantly US debates about the changing nature of the state and of the relationship between state and markets, the public and the private, and the extension of forms of commodification into social life. In most of the pre-financial crisis literature, the decreasing presence of the public sector in the provision and management of public spaces is associated with a more assertive role of market forces in urban governance in the 1980s and 1990s (see Kohn 2004; Sorkin 1992). This shift would be a corollary of the dominance of 'neo-liberal' or pro-market approaches to politics and to policy-making and the emergence of the 'entrepreneurial' city.

Overall, the literature suggests a gradual process of privatisation, with corporate interests taking over public spaces. This would be exemplified either in direct provision in the context of privately led urban regeneration projects and the multiplication of privately owned public spaces (Hayden 2006), or through the business-led management of publicly owned spaces, as in the case of BIDs (Minton 2009; Ward 2006). Some have even suggested the 'death of public space' (Sorkin 1992) as the outcome of this commodification and privatisation process, with adverse consequences for an inclusive democratic polity.

The post-financial crisis literature has emphasised the impacts of austerity policies and the search for resources outside the public sector to provide and manage public goods. Privatisation is still the main theme, as a cash-starved public sector sells off its assets to the highest bidder in order to obtain the necessary resources to invest in underfunded public services (see Raco 2013; Whitfield 2012). Some, however, have focused on the potential for a new citizen–state relationship that process might facilitate (see e.g. Pestoff and Brandsen 2010). Difficulties in progressing with capital-intense redevelopment operations might create a challenge to the 'neoliberal order' and offer opportunities for the temporary takeover of public spaces by activists and community groups in the name of an alternative, more democratic publicness. This would represent a form of resistance urbanism, creating a new 'commons' and suggesting embryonic forms of citizen empowerment (Kohn 2013; Lubin 2012; Gursozlu 2015; Eizenberg 2011).

Is that what we see in London? A visit to most of its public spaces would not give the impression that they are in immediate danger of becoming corporatised spaces, and the 'end of public space' still seems far off. On the contrary, there is evidence that old and new public spaces in London under different regimes have flourished (see e.g. Carmona and Wunderlich 2012). At the same time, the few,

occasional and temporary acts of radical takeover – such as those of the Occupy London movement – have so far not succeeded in bringing about new types of state–citizen relationship. Not that there are not examples of both, but, more numerous than corporatised public private spaces and their opposite, the protest takeover spaces – and arguably more significant for the daily life of the majority of citizens – are those in which governance and management regimes have become hybridised. As they seek ways to cope with austerity, while often under pressure to respond to historical demands from pressure groups, local governments and communities have been devising ways to ensure that existing and new public spaces somehow meet their aspirations and fulfil the functions expected of them. This has taken place in some planned and some ad hoc fashions, through various forms of transfer of governance and management responsibility from the public sector to a plethora of other actors from the private, voluntary and community sectors, as indicated earlier. Whereas those governance transfers might not be as dramatic as corporate or activist takeover, they raise fundamental questions about the very nature of publicness, of what public spaces are or should be.

Assessing publicness

There is good evidence of an increasing number of public spaces in London governed through arrangements that diverge from the norm (De Magalhães and Freire Trigo 2017a, 2017b). This has led to questions about how public they really are, manifest in recent policy concerns with the consequences of the proliferation of public spaces outside direct local government control (see e.g. London Assembly 2011). This is reflected in turn in the popular press and informs the debate around a potential loss of 'publicness' caused by those governance arrangements.

However, assessing 'publicness' is not a straightforward matter. Most of the literature on the subject adopts a normative stance, centred on ideal models of publicness, against which individual spaces could be measured. The criteria defining those models vary considerably, from ownership to the nature and range of the users, to the type of relationships public spaces should foster between them, to the nature of the practices that take place there, to design elements, and to a combination of those in varying proportions (see e.g. Ellin 1996; Varna 2014; Low and Smith 2006; Mitchell and Staeheli 2006; Benn and Gauss 1983; Németh and Schmidt 2011). Implicit in most formulations is the view of publicness as an objective and absolute concept with a measurable dimension, with spaces being more or less public the closer to or further away from the norm they are. Any progressive policy agenda should therefore be concerned with making as many public spaces as possible come closer to that norm and with changing those that diverge from it.

The problem is that cities are made up of a vast array of public spaces performing different functions for different groups of people, with varying practical and symbolic meaning and significance, creating different stakes in those spaces

and giving rise to a myriad of potential conflicts. There is only a weak rationale for the idea that a place such as Trafalgar Square in central London, with its central location, easy accessibility, large symbolic appeal and tradition of events and large demonstrations, should have its publicness measured with the same gauge as a small local park, used primarily by local elderly people, dog walkers and young mothers and their children. Moreover, whereas there are spaces that might be easily classified as fully public or fully private, for many more this is far more nuanced, and most will have attributes that might exhibit different degrees of publicness or privateness. The case for a spectrum of publicness rather than a more simplistic public/private dichotomy is not new (see e.g. Carmona 2015).

Understanding what different types of public space governance arrangements mean requires a relational, non-normative conceptualisation of publicness. This should take into account the context in which a space is located, the manifold stakes that people and groups of people might have in it and the ways through which these stakes are negotiated and the priorities defined by those arrangements.

Publicness is about the rights people have over the attributes of a space – what they can and cannot do with them. The literature on property rights and the commons suggests the basis for a non-normative view of publicness, understanding it as the result of the allocation of rights and responsibilities over those attributes (Ostrom 2003; Colding et al. 2013; Lee and Webster, 2006; Németh 2012; Boydell and Searle 2014). Whereas the list of material and immaterial attributes of a public space will be extensive, the chapter focuses on the rights associated with the most basic and defining elements of publicness: the degree of openness of access and use of the space and its attributes and the power to have a say on them (De Magalhães and Freire Trigo 2017a).

Firstly, then, is the right of *access*: the most basic expectation is that a public space should be provided and managed in a way that secures relatively open access to most members of society. This formulation accepts Webster's (2002) point that very few urban public goods – public spaces included – are public in the sense of absolute openness to access. Rights of access encompass rules and mechanisms that regulate whatever restrictions there might be on how individuals access the attributes they value in a particular public space, be they physical access to the site or the access to a facility or activity.

Secondly, the expectation is that people who have access to that space would be able to use it and enjoy its attributes – that is, the right of *use* – without other restrictions than those dictated by broadly accepted social norms of behaviour and rights of other users. Rights of use refer to the rules and codes of behaviour, and to enforcement mechanisms that regulate how individuals that have access to a public space can enjoy its attributes, be they physical or the confirmation of a symbolic function.

Thirdly, people would expect that users of a public space, the public, would have the right to a say on key decisions regarding its management and future, including the setting of rules about access and use. This would represent a third basic right, the right to *accountability*. Rights to accountability refer to the rules and mechanisms through which the different stakes in a particular public space

are heard and recognised in its governance and management, and through which conflicts and disputes between them are solved.

Drawing on Ostrom's (2003) conceptualisation of the governance of common pool resources, distribution and exercise of rights to access, use and accountability is itself shaped by a negotiation process that involves the allocation of rights to manage, regulate, exclude, dispose and so forth, which make up public space governance (see also Foster 2011; Garnet 2012). In other words, the negotiation process through which these rights are defined, bundled up, unbundled and allocated defines public space governance, which in turn affects how the rights that characterise publicness are themselves allocated and exercised.

Using that analytical framework, the chapter turns to four cases in London in which local authorities and other public bodies have reallocated the governance rights that shape publicness to different stakeholders.

Devolved publicness and stakeholders' rights

A cursory look at the main public spaces in many areas of London will show a collection of public space governance regimes, replicated in various degrees elsewhere. This chapter focuses on those cases in which the transfer of governance rights away from the public sector has been more extensive, and the rights transferred more significant in their impacts on publicness. The chapter looks at four cases within walking distance of each other, in the South Bank area of London, across the Thames from the West End (Figure 5.1). This leaves aside the more obvious cases of privately
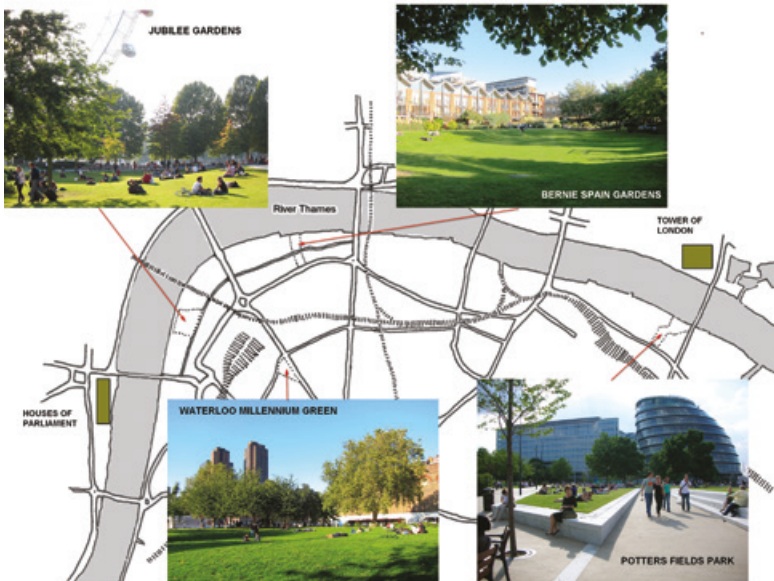

Figure 5.1   The four cases (author)

owned public spaces, where the rights associated with publicness were defined and allocated through the mechanism of planning obligations, and focuses attention on those that still belong to local governments but whose governance has been fully and successfully transferred to other social actors. They are particularly important as the former tend to represent new, additional public space (although not always), whereas the latter refer to existing and often long-standing public spaces.

The first case is Potters Fields Park, a one hectare park across the river from the Tower of London. It was leased to the Potters Fields Management Trust by Southwark Council in 2005 for a period of 30 years, renewable for another similar period. The Trust is a not-for-profit company constituted to redevelop the park and subsequently manage it. It is run by a Board of Directors made up of two representatives from the local authority, one from the Greater London Authority, one representative from each of the two neighbouring residents' associations, one from the adjoining More London business estate and one representative from the local BID. The lease gives the Trust full autonomy to manage the park, including the right to raise income through hiring parts of it for private events. As with other leases of this kind, it includes a Service Level Agreement with detailed specifications on cleaning, health and safety, maintenance, gardening and hiring the park for events.

Waterloo Millennium Green is a relatively small but centrally located park just south of Waterloo railway station. It was leased in 2014 by Lambeth Council to Bankside Open Spaces Trust (BOST), in an exceptionally long lease (999 years). The Trust, set up in 2000, is a charity specialist in horticulture, gardening and the management of urban open spaces in the South Bank area of London. It is governed by a board of 12 trustees and has connections with several residents' groups from public and private housing estates. The lease gives the Trust full responsibility for management and maintenance, which includes securing funding and empowering the local community to take on greater responsibility for the park.

The other cases involve land that belonged to the Greater London Council (GLC), the former London-wide government disbanded in 1986, and subsequently transferred to other public organisations before being leased out to the managing bodies described here. Jubilee Gardens is a highly visible park by the Thames, across the river from the government buildings in Whitehall and next to the famous London Eye. It was originally a patch of grass transferred to the Arts Council England and leased out to the Southbank Centre (a complex of theatres, concert halls and exhibition space), which gave a 135-year sublease to the Jubilee Garden Trust in 2012. The Trust is a charity set up in 2008 to take over the management of the park after its redevelopment. Its board has up to 16 trustees representing neighbouring landowners, local businesses, residents and up to four co-opted members (the local authority being one of them). It is chaired by the Chief Executive Officer of the South Bank Employers Group, a partnership of 17 of the major organisations in the South Bank area, created to promote it as a destination for leisure and business, and which now works as the executive arm of the South Bank Business Improvement District. The lease gives the Trust full responsibility for managing

the park, including enforcement of rules and regulations, but significantly not the power to generate income from the park.

Nearby Bernie Spain Gardens is also located on land that previously belonged to the GLC. It is a small central park facing the busy Thames riverside walkway and bordering the Coin Street housing cooperative buildings. It was leased to the Coin Street Community Builders (CSCB) for 99 years, renewable for a similar period. CSCB is a social enterprise that owns the lease on the land and the cooperative housing around the park, controlled by a board elected by its members, all local residents. Its main activities are the development of cooperative housing and accompanying facilities in sites around the park. The lease gives CSCB full autonomy in the management of the park and adjacent Thames riverside walkway, including its initial redevelopment, its maintenance and revenue-raising rights.

All four sites are open to the wider public without significant barriers. All allow for a great variety of activities to happen in them, akin to a local authority-managed public space. There are differences, though. The extent of the governance rights residing with the management bodies, notably in the Jubilee and Bernie Spain gardens, makes them almost solely responsible for setting out regulations for access and use of the spaces, with codes of behaviour and restrictions on some activities (Figure 5.2). These restrictions might include activities such as cycling, using skateboards, ball games, large and/or political gatherings and rough sleeping, and they have their origin in concerns with legal liability, but they also express the needs and aspirations of the stakeholders those bodies represent. In Potters Fields and Waterloo Millennium Green, such regulations are the result of complex negotiations between

Figure 5.2   Jubilee Gardens use regulations (author)

the local authority freeholder and the trust and, although not dissimilar to the two previous cases, they tend to be closer to the by-laws applying to other surrounding public spaces. Nevertheless, in all four spaces the 'local community' (surrounding residents, landlords and businesses) have a greater impact on the way openness and accessibility are defined and regulated than any other stakeholder, and in that they differ, even if subtly, from local authority-managed public spaces.

Accountability rights refers to the right of stakeholders to have a voice in the governance of a public space. The four cases in this category have a trust board as their main locus of accountability, providing a direct and transparent forum for all those stakeholders represented in the management body, to voice and negotiate their aspirations. However, this does not apply to all socially relevant stakes. By their own constitution, all these cases privilege the interests of particular groups of stakeholders, who have formally received the right to oversee the management of 'their' public space on behalf of themselves and the public interest.

A first group of stakeholders, clearly recognised in almost all the arrangements, is that of local residents – that is, those living in the immediate vicinity of the public space, whose interests in it as users or property owners are recognised as those of the 'local community'. They are directly represented on the boards of three of the four charitable trusts (Potters Fields, Jubilee Gardens and Bernie Spain Gardens), albeit with different strengths. They also have seats on the steering group overseeing BOST, the managers for Waterloo Millennium Green. Locally based businesses and commercial property owners small and large are also part of the 'local community' where they are relevant: they have seats on the boards of the trusts in all cases except Bernie Spain Gardens, where surrounding business are tenants of the housing cooperative CSCB – and therefore indirectly represented by it.

Other legitimate stakeholders and the wider public have no direct access to those forums. Any accountability to them is less direct and largely depends on the mediating role of the local authority. Local authorities do have a seat on two trust boards (by rights in Potters Fields, and as a co-opted member in Jubilee Gardens). As freeholders, they have also set the scope and the limits for the trusts' power through the drafting of lease terms, as in Potters Fields and Waterloo Millennium Green, or through policy 'lock-in' with the involvement of the trusts in partnership agreements and policy initiatives, as in Jubilee Gardens and Bernie Spain Gardens. However, this indirect form of representation of interests contrasts with the direct accountability benefitting key stakeholders. Its effectiveness depends on the local authority's interpretation of the 'public interest' at any moment in time, on a match between that interpretation and the interests of any particular section of the public, on the local authority's negotiating ability, on the effectiveness of the lease terms and accompanying Service Level Agreements, and on the strength of sanctions for non-compliance with them.

To the vast majority of their users, those four spaces look and feel public and generally well managed. To a large degree, that is what they are, but the key attributes of publicness are determined and shaped largely by the particular

interests and aspirations of those represented in the management trusts rather than a more inclusive 'public interest', however defined. As freeholders and lessors, local authorities or other public agencies still retain the basic rights to determine how open access shall be, which results in the general public retaining most access and use rights. However, full management rights, together with some exclusion and alienation rights (e.g. the right to lease out space for fee-charging events), now belong to surrounding residents, businesses, property owners, civic groups and other selected parts of the local community. They also own an important element of governance rights, namely the right to be heard in decisions about the space and have their aspirations and interests counted in a direct manner: it is to them that the trusts are directly accountable.

This suggests a public space governance model with a break-up of the bundle of governance rights between the local authority and what are effectively 'clubs' of local stakeholders. This particular form of governance arrangement explicitly privileges some stakeholders (i.e. surrounding residents, businesses and property owners, and civic groups with local focus) over others, and separates their needs and aspirations from other more diffuse, dispersed and less articulated but equally legitimate interests on the basis of their geography, strength of stake and mobilisation capacity. This allows for the empowerment of those with their stakes recognised in the governance arrangement; a better match between the aspirations of that 'club' of recognised stakeholders and the management of 'their' public space; and more direct and transparent accountability lines between management bodies and that community of stakeholders. However, it does so at the cost of formalising differences in rights and at the risk of disempowering other stakeholders who are not included in the governance arrangements. Whether or not that risk materialises depends on how well the governance arrangement balances the directly voiced aspirations of the 'club' and those of others, how conflicting they might be and how capable local authorities are of detecting and expressing the latter.

So far, those and similar forms of public space governance and management have worked well. All four parks are well managed and adequately meet the needs of their users while freeing their corresponding local authority from the burden of maintaining them. Conflicts between the interests of the trusts, their constituent members and other sections of the population have so far been minimal, or at any rate no more frequent than those occurring in local authority-managed public spaces. However, as the governance of more and more public spaces is transferred to groups of stakeholders with their own sets of interests, the chances of conflict increase, as does the prospect of a fragmentation of the public realm.

Conclusions

This chapter has looked at a few cases of emerging arrangements for the governance and management of public spaces in London to explore their potential implications

for publicness. The first observation is that most of the debate so far about changes in public space governance in London and elsewhere has insisted on linking the off-loading of governance to third parties to an increase in corporate power and privatisation. This might hold true in some new public spaces resulting from large urban regeneration projects, especially in the so-called POPS. However, the exclusive focus on potential corporate control has ignored the subtler and finer-grained process of negotiation over the rights that make up publicness in existing public spaces and therefore fails to incorporate a more nuanced understanding of the relationship between different communities of stakeholders, elected government and society. As the four cases suggest, the disengagement of local government from public space management in London seems to be leading to a complex and varied process of reallocation of different rights over publicness attributes, creating a landscape of multiple 'publicnesses' catering to diverse groups of interests, rather than a narrow contraposition between public and private, or between individual and corporate.

The second observation is that the four spaces have remained essentially 'public' in the sense that most rights of access and use are enjoyed as they would be in a 'normal' public space and are experienced as such by most people. Municipal by-laws still regulate access and use in some of those spaces, and when they do not, the rules that apply are not very different from them. However, there is a fundamental difference, which might not be perceived and felt in the daily use of those spaces: this concerns who has the right to have a say in the governance and management of the space, that is, the right to make public space management bodies accountable. In all the cases these rights were transferred to something akin to a club of self-selected stakeholders, whose membership was defined by where they reside or work or the strength of the stake they or their business might have in the public space. This is particularly important as it is through that right that stakeholders can realise their aspirations for public spaces, including the way they look and feel, and ultimately what might or might not happen in them.

What would then be the implications if we consider the aggregate impact of these arrangements for London as a whole, or for any other large city following the same path? The disengagement of local government with public space governance and the transfer away of responsibilities to others provides answers to real demands upon public spaces, and therefore this trend is likely to continue. Local authorities can divert their shrinking budgets to other public services, financial and social capital from people with a stake in a particular space can be mobilised and invested, and business and residents can ultimately exert more control over their operating and living environment. The four cases examined in this paper suggest a city increasingly made up of constellations of public spaces with different governance systems, with fine-grained differences in publicness, playing different functions and catering for different sets of interests. This is a much more complex characterisation of the physical public realm than the dichotomy public/private often portrayed in the academic and professional debate.

The London cases so far have not presented the dilemmas associated with restrictions in public access reported in the American literature. However, as public

space governance arrangements that secured inclusion in most of the 20th century evolve to become something different, new challenges emerge. Foremost among these is how to benefit from the resources and commitment of groups and individuals prepared to invest in a public space, and at the same time ensure the protection of all other legitimate interests in that space, including those of wider society. This applies to the arrangements discussed in this chapter, but also to POPS and other forms of private management. Key here is the ability and the political will to create judiciously designed ways to decide whose aspirations and interests should count when devolving the governance of public spaces. In a foreseeable future of continued economic uncertainty and further public expenditure cuts in which stakeholder involvement in urban governance is a necessity, local authorities should pay close attention to ensure that, in the ensuing reallocation of rights and power, the 'public interest' and various legitimate aspirations for public spaces are protected and do not become collateral damage.

Notes

1. It should be noted that POPS in places such as Toronto, Hong Kong or New York are more clearly defined in their location, characteristics, opening hours and so forth through a regulated exchange between developers and local government of public goods or development rights above normal zoning parameters. Their equivalents in London, where there are no zoning mechanisms, are the result of case-by-case negotiations, with variable requirements for provision and long-term management, depending on the objectives sought by developers and local authorities.
2. BIDs are legally defined associations of occupiers and/or owners of commercial property in a locality, with powers to decide on a compulsory surtax, ring-fenced to pay for additional services and improvements to that locality. In the US, Canada and indeed most countries, BIDs are mostly composed of and run by local commercial property owners, whereas in the UK they are predominantly made up of commercial property occupiers.

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