A literature review on the privatisation of public space

MAIN REPORT

Prepared for: Grosvenor Group Ltd

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Foreword

This extensive literature review generates, for us, two key lessons:

First, that Grosvenor Group is at the forefront of thinking on the subject of providing publically accessible, privately owned urban space. The review explored all sides of a complex debate, and while some writers have voiced disquiet on the subject, many critiques focus on 1990s North America, highly branded international events and gated communities in very particular cultural contexts. From a UK point of view, Grosvenor, within the context of this paper, can be considered as thoughtful, sincere and enlightened.

Second, we are aware of the significance of the forthcoming 10 year anniversary of Liverpool One's completion. This study of privately owned public space is, therefore, pertinent. In marking that moment, Grosvenor might consider bringing together key thinkers mentioned in this paper, and others, in a public forum as a means of demonstrating, with confidence, its key role in shaping contemporary urban space.

This paper can therefore be seen as a tool to help Grosvenor locate itself within a dynamic, complex and global debate.

David Littlefield and Mike Devereux

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OVERVIEW

INTRODUCTION

Interest in the private role in the public realm (or, the public embrace of the private sector) is global; it is a subject of deep interest in western and Commonwealth countries, as well as in rapidly developing Asian economies, as well as in nations experiencing post-Soviet or Communist transition. What also became clear is the very contested nature of the subject.

CONTEXT AND CRITIQUES

The critiques of privately-owned public space can be polemic and damning, typically based on a suspicion of private motives, restrictions on behaviours, accusations of commodification and homogenisation, and (largely middle class) exclusivity. Others take a more pragmatic view; some of the criticisms levelled at private spaces also characterise publicly-owned ones. Further, public space should not be confused with a behavioural free-for-all: *"Ultimately, the rights and responsibilities associated with spaces… are far more important than who owns and manages them. How, not who, is key."* [Carmona 2015, p400]

WHAT IS PUBLIC SPACE?

A key question, and difficult to answer. Public space can be considered either as space owned by public institutions, or space used by members of the public. Additionally, writers describe "quasi-public" spaces, "third spaces", "parochial" and "domesticated" space and varying forms of public/private partnership.

OWNERSHIP

Defining public/private space quickly becomes a consideration of notions of ownership; writers take two distinct views on the issue: one of practice; and one of property law.

GOVERNANCE AND CULTURAL CHANGE

There is general agreement that the increasing role of the private sector in creating, funding, managing or controlling public space is a global phenomenon driven by factors including: globalisation; notions of public-private partnership; contracting out of public services; pressures on public finances; inner city regeneration; relocation of businesses to urban edges; response to incentives; the rise of the shopping mall as a typology.

ATTRIBUTES

Writers have used a variety of frameworks to define the characteristics and typologies of public space, including: type; function; user groups; emotional response. Difference between *public* and *civic*.

CONCLUSIONS AND SUBJECTS FOR FURTHER RESEARCH

The subject is a complex and nuanced one – which deserves great care when considering the implications, models and futures of privately-owned or administered places. Recent criticism is arguably a natural consequence of the social and economic patterns which are playing out at the interface of public and private domains. Further discussion and lines of enquiry might consider:
- definitions of "publicness" and ownership models;
- the notion of multiple "publics", and the variety of places designed to serve such a plurality;
- boundary and behaviour conditions;
- definitions of public and civic;
- comparative analysis of distinct zones, in both the public and private sectors;
- a "law of place".

MAIN REPORT: INTRODUCTION

This literature review was undertaken at the request of Grosvenor Estates in order to better understand the academic context and literature around the perceived phenomenon of the privatisation of public space. The review considered a range of print material including peer reviewed academic papers (the focus of the study), newspaper articles, and reports and position papers by public bodies / think tanks. During the course of the study, the authors reviewed more than 100 academic papers newspaper articles and reports. Further, the authors conducted face-to-face interviews with three people: Peter Rees (30.11.16), formerly head of planning at the Corporation of London and now Professor of Place at UCL; Jonathan Schifferes, Associate Director (Public Services and Communities), Royal Society of the Arts (30.11.16); and Matthew Carmona (14.12.16), Professor of Planning at UCL.

During the production of this review (November 2016 to January 2017), it became apparent that a great deal has been written on the subject in recent decades, both in the UK and internationally. Typically, academic papers have been published in journals dedicated to the field of urban design and planning, although the subject has also been considered in journals of sociology and law. In addition, it became clear that the consideration of the "privatisation of public space" leads to a wide variety of similar, inter-related concepts including: public access to private space; quasi-public space; relationships between ownership and use; and modes of governance which might be situated along a spectrum ranging between the polarities of public and private.

It also became clear that interest in the private role in the public realm (or, the public embrace of the private sector) is global; certainly, it is a subject of deep interest in western and Commonwealth countries (UK, Canada, Australia, USA, Netherlands), but also nations experiencing post-Soviet or Communist transition (Russia, Lithuania, Czech Republic, Vietnam). What also became clear is the very contested nature of the subject, with vastly different views expressed on the same case studies (such as New York's High Line as either an exemplar of post-industrial regeneration or exclusive, corporatist, middle class oasis). Similarly, accounts of the experiences of different social groups can differ (for example, Toronto teenagers enjoying the mall as a place of safety, while teens in Sydney are excluded for loitering), while consideration is also given to the balance between inclusivity and alienation, in that making provision for one social group may alienate another (such as the night-time economy based around alcohol consumption in British city centres, which largely caters for a particular demographic profile).

Broadly, the literature suggests the following pattern:
1. a response to the increasing role of the private sector in public spaces during the 1990s and onwards, as a result of pressure on public finances and an emerging model of public/private partnership. This response is often critical and even polemic, drawing on examples/language such as exclusion, homogenisation, commodification, the emphasis on safety and security, and the rise of the "consumer-citizen".

2. other (arguably more recent) literature, argues that the situation is not as bad as feared, and that the reality is more nuanced than has been suggested.

Overall, the literature addresses a range of issues (both theoretical and practical) pertinent to the question of how the private sector can best contribute to the delivery and management of public space, including a consideration of the following questions:

- Who is the public? (is there such a thing as a single public, or multiple publics?).
- What is public space? (space owned by the public sector? space accessible to the public?)
- What activities and rights of access are implied by public space?

- Are spaces such as open parks and covered shopping malls, or airports, equally part of the public realm, or quantifiably different?
- What is the relationship between ownership and control/use/access?
- Does ownership matter, and is private ownership privileged over what citizens might feel as their "rights to the city"?
- What rights do property owners have to limit the rights of those using their land?
- Should owners' rights of limitation themselves be limited if the public is invited onto private land, or is the issue of rights merely one of appropriate behaviour, especially within mono-functional spaces such as a shopping centre (as one writer put it: you might invite someone into your house to use your stair, but not to slide down the bannister)?
- How do different models of private involvement and governance (Business Improvement Districts, sponsorship, community action groups, contracting out of public services, outright private ownership etc) impact upon ideas of "publicness"?
- Does private sector involvement in the provision of public space represent a new model for society to comprehend and negotiate, or does private involvement merely mirror structural changes within society?

If there is a consensus within the literature, it is that public space and the role of ownership is harder to define than one might think. Ideas of public space, especially within urban environments, are complex and nuanced, and the varying models of governance being developed globally underline such subtlety and variety.

Further, some argue that the criticism of over-control and over-zealous security laid at the door of many privately-owned public spaces (such as no loitering, political demonstrations, rough sleeping etc) could be avoided if weak and undemanding local authorities adopted a tougher position at the start of the planning process. That is, if local authorities wanted private developers to provide the same level of access and rights as can be found on a public highway, then they should make such demands a condition of planning permission.

There is some recognition that cities, especially ones as large and diverse as London and New York, are capable of sustaining a wide range of public places, and that if all spaces were designed to appeal to everyone at all times, there is a danger they would appeal to nobody. This view derives from the observation that there are many publics, each with different needs, and that public spaces shift in character and expectation over time.

The literature on the subject is rich and diverse, often contested, but responsive to a changing situation driven by issues of globalisation, a shortage of public funds, the processes of regeneration and the perceived need for cities to compete for attention and branding. There is much room for further enquiry into, for example, the difference (if any) between public space and civic space, definitions of public space (especially as they relate to very different kinds of space: inside, outside; malls, parks) and the extent to which a place can be called public simply because the public puts it to use; and the spatial, legal and behavioural characteristics which can be observed at the thresholds or boundaries between private and publically-owned places.

CONTEXT AND CRITIQUES

The critiques of privately-owned public space can be polemic and damning, typically based on a suspicion of private motives, restrictions on behaviours, accusations of commodification and homogenisation, and (largely middle class) exclusivity [Minton 2009; Zukin 1995; Mitchell 1995; Loukaitou-Sideris 1996; Banerjee 2001; Voyce 2006; Garrett 2015; Stormann 2000]. Critics have described the death or splintering of public space.

Some of these critiques are especially stinging: "A key to all such privatised and splintered street spaces is that they abandon the principle of free, open and democratic access in favour of a policy of actively restraining and excluding those deemed not to belong." [Graham 2001, p365].

Hoai Anh Tran [2015] summarises the general criticism thus:
"Urban space production in private regimes is considered profit-driven and often geared towards exclusionary spaces that are oriented towards specific use and users. The urban spaces that are produced are spaces of order and control, of aesthetic homogeneity and uniformity. They form enclaves of predictability and serve as places of retreat for wealthy people who want to avoid encounters with differences . . . Public spaces and services are neglected or replaced with privatised and exclusive spaces such as corporate plazas, shopping galleries and malls. The urban qualities promoted by Jacobs (1961) and Gehl (2012), such as diversity, mixed populations, cultures, functions and built forms, and the focus on sidewalks as the arena for social interactions, cannot be found in the entrepreneurial city." [p82-3]

Others, though, take a more pragmatic view and, while careful to point out the dangers of privately owned/controlled public space, comment that there should not be opposition to the practice on principle [Kohn 2001; Carmona 2015; van Melik and van der Krabben 2016]. Indeed, many point out that some of the criticisms levelled at private spaces also characterise publicly-owned ones, and that ideas of public space should not be confused with a behavioural free-for-all:

"Ultimately, the rights and responsibilities associated with spaces and what this implies about their 'publicness' are far more important than who owns and manages them. How, not who, is key. In fact, the spaces of the city are owned and managed through multiple complex arrangements, many of which are not clearly public or clearly private, whilst restrictions on use apply to all spaces, regardless of ownership." [Carmona 2015, p400]

Further, commentators have also suggested that critics may be romanticising the public realm, mourning the loss of an open, democratic space that never existed [Jackson 1998]. Cybriwsky [1999] acknowledges that "almost all streets and sidewalks, parks, civic squares and other such spaces" in most 20th century cities were owned and maintained by government, but observes that this contrasts with earlier arrangements when "urban parks and gardens, at least in Western cities, were almost exclusively in private hands" [p225]. Further, he points out that New York's Gramercy Park, established in 1831, is a "carryover" from this earlier period, in that "it is still jointly owned and maintained by its surrounding residents and kept off-limits to the rest of the public" [p225].

Hogan et al [2012] offer a sharp rebuke to writers who appear to be unfamiliar with history and cultural context. Writing on the subject of Asian experience, including the role of the gated community, they pour vitriol on the dystopian attitudes of Western thinkers who look to US examples, such as Los Angeles, and extrapolate to the rest of the world. North American experience is not the "leading edge" of urban change, they argue, and neither should all case studies be reduced to a "North American city script" [p60]. In Asia, they write, urban space has long been in private hands, while spatial conditions such as exclusiveness and gated communities are rooted in tradition and cultural practice. In this paper, which is almost as polemical as well-established critiques of privately-owned public space, the authors argue that the private sector in an Asian context has provided the very inclusiveness that Western commentators say is missing from quasi-public

space: "If 'public' is understood as urban social interaction with strangers and casual acquaintances rather than as state ownership of land, private-sector development may be said to provide the possibility of expanding participation in public life" [p61].

WHAT IS PUBLIC SPACE?

This section explores the idea of urban space being 'public.' What is public is a key question, and can be considered either as space owned by public institutions, or space used by members of the public. Additionally, though, writers describe "quasi-public" spaces, "third spaces", "parochial" space and "domesticated" space – all terms which describe a mix of places including those owned/operated by some form of public-private partnership (such as a Business Improvement District); the public fora provided by spaces such as cafes and book shops; places appropriated by specific groups (to the exclusion of others); and places given informal functions (such as picnics or games) for which they were not designed.

Kevin Lynch, one of the most renowned of urban commentators, saw public space as being, quite simply: "all those regions in the environment which are open to the freely chosen and spontaneous action of people," [Banerjee and Southworth, 1990, quoted in Loukaitou-Siders, 1993 p.139-140]. The literature subsequent to Lynch's texts (written largely in the 1960s and '70s) suggested a much more complex reading of public space. Much, but by no means all, of the literature concerns itself (perhaps unwittingly) with public space that is physically open to the elements; but that is not to say that the questions being raised about such space would not apply equally to indoor space that is available to the public. They often do.

Who are the public?

The word 'public' is all too often used as a noun synonymous with 'everyone.' This generalisation ignores the range and diversity of the general population for whom 'public' space is being made available. It is an approach which, through its imprecision, makes it difficult (if not impossible) to assess the success or failure of a public space that is expected to provide for 'the public' as a whole, but predictably cannot achieve such an impossible mission. Some though [eg Zukin, 1995; Carmona, 1998] see the definition of 'the public' in a more nuanced way. Carmona [1998, p376] writes that the 'public' in public space "is not a coherent, unified group but a fragmented society of different socio-economic (and, today, often cultural) groups, further divided by age and gender. Each part of this fragmented society will relate to public space (and to each other) in different and complex ways." It is, therefore, inevitable that these multiple 'publics' will define public space according to their own values, and that these disparate values will be in competition with each other across the urban space [Goheen, 1988 p467]. As society becomes less dominated by a privileged political class and as it becomes more able to express its views to a wide audience via easily accessible social media there will emerge a wider and more vocally expressed range of demands from different groups as to how public space should be used. These voices will complement, or even replace, those views previously imposed by political elites.

A space of encounter?

For Sennett [1992, p17] the public realm is a social experience beyond that surrounding the family. It is the opportunity for people to see, meet and engage with others in society. Encounters can be organised events or take place by chance and can encompass an endless range of activities. The important point is that public spaces create the occasion for such meetings and for the exchange of ideas regardless of who owns the space [Worpole & Knox, 2007, p4].

For Zukin [1995, p362], a sociologist studying urban life in late twentieth century USA, proximity, diversity, and accessibility are the key characteristics of space that allow encounters to happen. She feels that, in reality, the public define 'public' by their use of space; so it can include restaurants, theatre lobbies and other places of encounter. Notions of public space can change constantly.

Cybriwsky [1999, p223], who has studied public spaces in the USA and Japan in particular, mirrors the above and defines the subject thus:

"By public space, I refer to those parts of these new developments that are freely accessible to the public and are intended for social interaction, relaxation or passage. Such spaces can be either indoors or outdoors (although the former are more common) and may include walkways, parks and other open areas, landscaped plazas or public squares, the lobbies of many buildings, and various other areas where people may sit, gather or pass through. Such spaces, or their historic antecedents, have always been important parts of cities, having much to do with basic routines in a city's life, as well as with the city's overall image and reputation".

The idea of a 'third place' (cafés and the like) as well as the new demands of an affluent society, digital communications and expectations of the night time economy demonstrate the dynamic nature of the concept of publicness [Banerjee, 2001; De Magalhães, 2010].

The idea of 'encountering' in public fora extends beyond interaction with known acquaintances. Public space provides the forum for the 'flâneur' – the urban stroller – [Shaya, 2004] The idea that public space provides a comfortable environment for the human being to feel part of a wide group is well expressed by Baudelaire [1863]: "To be away from home and yet to feel oneself everywhere at home; to see the world, to be at the centre of the world, and yet to remain hidden from the world". The idea of the casual interaction between citizen and the city continues today, its locus has simply moved on to include shopping malls and high street café chains. A deliberate mix of flânerie and consumerism is evident in their design and in this environment public ownership does not matter [Banerjee, 2001].

These encounters in the street are important in creating urbanity [Berman, 1988]. Embedded within this concept of an urban milieu, available to citizens to make use of for their engagement with the city, is the notion of civic identity. Urban space is space in which both "civic and social functions are performed regardless of ownership" [De Magalhaes, 2010 p561 referring to Ellin, 1996]. City centres, argues Balsas, are the "forums for civic life" [2007, p234]. Such space might traditionally have been provided by the public sector in the form of local or national government, and it therefore became the physical embodiment of the public sector [Scott Brown, 1990 in Lees, 1994 p.447] - and is thereby seen by the public as being within their control. Most cities have recognisable public gathering spaces; an equivalent of Trafalgar Square, Times Square, Red Square and Wenceslas Square with which the citizen can relate and in which civic or state sponsored events are held. That these spaces, despite their being labelled 'public', could at any time in the past be used by anyone at all, as he or she saw fit, is doubted by Atkinson [2003]. Rules, codes of behaviour and social norms have always been applied to such places.

A space of contention?
This appreciation of the city as a democratic place is a recurring theme. Minton [2006] traces it back to the Greek agora which joined "the concepts of democracy and citizenship into public space" [p9]. The city is seen as a place in which people can canvas their political or religious views, demonstrate and protest [Watson, 2006]. The relationship between public space and democracy is crucial. "Democracy requires places where citizens can gather together to discuss the issues of the day and work on solving problems. In the past architects recognised this and built public squares where citizens could assemble" [Mattson, 1999, p133].

The spaces so created, either deliberately or organically, have value placed on them by citizens; and different groups define their membership of the community by reference to such public places [Lees, 1994]. In public places the action of groups, or indeed the political elite, was made transparent and given credence by its visibility [Balmori, 1987]. In a world in which the role of the public body has changed in terms of its obligations and the expectations placed upon it when providing for its citizens, the question then arises: who (if anyone) should be providing space for contentious activity? Macleod and Johnstone [2012] observe that some contend "that the revived downtowns are increasingly privatized and intensely securitized, their 'publicness' thereby distorted in favour of commercial rather than civic interests" [Coleman, 2009; Minton, 2009] and that, in

Mattson's [1999] words: "unlike civic spaces of yore the shopping mall was created to encourage the private act of consumption". For Minton [2011] the new squares in the City of London "are not democratic spaces. Instead rules and regulations are enforced by uniformed private security and round-the-clock surveillance. A host of seemingly innocuous activities such as cycling, rollerblading and even eating in some places are forbidden. So is filming, taking photographs and political protest".

These new 'public' spaces, with their restrictions – whether physical or in terms of regulations – are not seen by some commentators as delivering the same sort of public space as was provided by the state or municipality in the past. They do not allow people to act "freely" [Rapoport, 1977, in Loukaitou-Sideris, 1993, p140]. But should they? Is this new space a different kind of 'public' space, and is the comparison between a traditional form of public space with a contemporary form of private space therefore incongruous? Furthermore, as social life has become less civil and ideas of citizenship are changing [Lees, 1994] civic spaces are often now neglected spaces, unable to be maintained by cash-strapped local authorities and are now the focus of crime; what incentive is there for the private sector to emulate such space? The 'broken window syndrome,' the lack of enforcement and the 'expropriation' of public space by drug dealers and the like is noted by Banerjee [2001] amongst others. Sack [1986] summarises this drift away from a need for traditional public space: "Public space has been emptied of much of its vitality; it has become increasingly impersonal and drained of the social meaning which previously attached to it, diminishing its relevance to community life" [Goheen, 1998, p490 referring to Sack, 1986, chapter 6].

Differentiating 'public' space

The idea of presenting urban spaces as being in opposition to each other – public or private - has been challenged and new paradigms are emerging that embrace the private-public space. Carmona et al [2003] consider public spaces differentiated thus: external public space (public squares), internal public space (libraries) and quasi-public space. Meert et al [2006, p3] see these quasi-public areas as:

"Places that are legally private but are a part of the public domain, such as shopping malls, campuses, sports grounds and, in some countries, privatised transport facilities. These are places which are privately owned but where everyone should have the right to enter. To deny a person admittance has to be explained or justified by arguing that the person is violating specific rules and regulations."

For Minton [2006, p10] these quasi-public spaces in which "beggars and homeless are moved on by private security, while behaviours ranging from skateboarding to rollerblading are banned" take the public realm back to the Victorian era, being owned and managed as they are by individual private landlords. For others, though, this development is part of a more nuanced and complex picture. Carmona [2015, p394] notes that: "Instead, public spaces in London are often shaped through complex partnerships between a wide range of players – public, pseudo-private and private – with motivations that are equally complex". Saunders [undated] in writing about the US experience, notes that "the nation … is moving towards new and complex conceptions of public space and public life." [quoted in Lees, 1994, p446]

For Kohn [2001] it goes further. She raises the potential of a private space becoming public by use, not ownership. This idea of public space being one of use or appropriation, rather than a matter of legal ownership, is widely considered – a viewpoint also developed in the Demos report *The Freedom of the City* [1996, p12]:

"We would argue that what makes public space is use. As the geographer Doreen Massey has consistently argued, space is dynamic, and only comes into being through use over time. There are many public spaces in British towns and cities, as we discovered in our studies of town centres, and later of parks, which are regarded

as being dangerous and are consequently avoided by most people. In our opinion, this renders their definition as public space null and void."

This is a view developed by Galanakis [2013] in relation to Toronto. Drawing on the work of Wood and Gilbert [2005], he explores the argument that "public spaces are a matter of practice, not ownership" [p75]. Indeed, Galanakis quotes a policy officer from the City who declares public spaces to be "those that the public make their own" and that "public space is respectively a matter of access and of inspiring feelings of belonging and safety" [p75]. Galanakis is sanguine about the role private concerns can play in the provision of public space – indeed, welcomes it. Far from adopting a position of deep suspicion of commercial interests, which tends to be the norm among many critics, he considers private enterprise as being a force for public good:

"Privatization by commercialization is often perceived as a matter of private interests undermining public interests, a form of 'fraud' at the expense of the public at large. However, privatization of public space in the name of public life rather than sole corporate profit is a social act that expresses certain aspirations that need to be discussed and not dismissed, even if it means reviewing laws, policies and norms that permeate our lives and dictate what should be public and private. The omnidirectional process of privacy corrupting publicness is, however, a social construction and not an unbreakable fixity. Publicness could be seen as a condition, sphere and space (with architectonics) that accommodate open-endedness, playfulness, and innovation in unexpected ways." [p83]

Regardless of legal ownership, De Magalhães [2010, p 563] argues for a liberal interpretation of public space:

"Most people would expect of a public space that it should be provided and managed in a way that secures a relative openness of access to most members of society, allows them to use that space without other restrictions than those dictated by broadly accepted social norms of behaviour, and guarantees them some say over key decisions regarding the running of the space."

At the hub of the discussion between these opposing views lies the question of ownership and with it the rights of access and codes of behaviour that determine how private space is to be used by the public. It is to that question that we now turn to in the following section.

OWNERSHIP

Land ownership is a complex arrangement of titles, rights and responsibilities spread among large institutional owners, state agencies, local government and private individuals. It is often difficult to establish precisely who owns what, what land is public and what rights can be exercised over any particular parcel of land. Those concerned about the privatisation of public land worry that this lack of transparency allows for a continuing and creeping privatisation. On top of this, an increasing number of legal and planning protocols (eg Section 106 planning agreements) add a layer of complexity to the picture of ownership, rights and rules pertaining in any particular part of the city. Garrett [2015] suggests a systematic mapping of public land to try and work a way through this confusion and make it clear to everyone what is public.

The focus of much disquiet about 'privatisation' of space is the shopping centre (or mall) and today these are often only part of wide ranging city centre redevelopment projects that include residential, leisure, office and other spaces. These often come about through a protracted process of land assembly, master-planning and planning applications. Concerning the UK explicitly, Macleod and Johnstone [2012], drawing on Minton [2009] and Turner [2002], conclude that:

"Through the legal concept of compulsory purchase, the ownership of an ever-increasing number of urban centres has been relinquished by elected city authorities to international property developers and investment companies: a relatively hushed yet significant privatization of downtown, probably more far-reaching than that experienced in US downtowns"

For Layard [2010] this has created a new way of looking at the law. Instead of being national, local or individual she argues that there is now a "law of place" that applies to assembled sites and that distinguishes them from their surroundings. Such sites then have applied to them "a series of legal rules to aggregate a collection of previously heterogeneous and diverse sites into a single and homogenised legal whole" [Layard 2010, p414]. The threshold between these assembled sites and their rules and regulations, she argues, is often physically invisible to the public, yet the way the public might be allowed to behave either side of that threshold can be markedly different, and is often dictated by the developer's vision of the experience being created.

Codes of behaviour

Waldron [1991, p1] states it clearly: "[o]ne of the functions of property rule, particularly as far as land is concerned, is to provide a basis for determining who is allowed to be where" and by extension, therefore, what they can do when there. This leads us to the questions of accessibility and control, on which much has been written.

The shopping mall has become a feature of the American urban and suburban landscape and therefore the subject of much of the writing and legal interpretations of 'publicness.' Kohn [2001] and Fisher [2007] both explore US law. The courts have pondered over questions surrounding the first amendment (the right to free speech) and the fifth amendment (the right to private property and compensation if that right is diminished) and its implications for public behaviour on private land. Kohn and Fisher explore three main cases in the USA (and many others).

There the courts have ruled that a company town, albeit a private development, is a public space and that the public can expect to be allowed to do things normally associated with public space – distribute leaflets, canvas views etc… (Marsh v Alabama 1946). Much turned here on the degree to which the company opened up its land to the public (in effect, invited them to spend money there) and (importantly) the multiple activities being carried out in the company town which reflected those of a normal town. In summary, the private company was performing public functions.

It is this last point that was again considered key, but with a different outcome, in a later case involving an indoor mall space (Lloyd v Tanner, 1972) which was used entirely for shopping. The ruling went in the mall's favour with the judge emphasising that the implied invitation to enter the private space was, in this case, solely for the purpose of shopping, and not any other 'public' purpose.

In the third case (Pruneyard Shopping Centre v Robbins, 1980) the courts saw things in a somewhat more balanced way. Here they found that the right to exclude certain people from a mall would be appropriate only if the private owners could prove it detrimental to their business should the 'public' in question remain in the mall. In other words, private ownership did not necessarily give complete control over the space owned.

These three cases each present a different approach; and there are other cases that have not supported a more public interpretation of the mall (eg: State of Minnesota v. Wicklund, 1999). They all considered complex questions of the American constitution so are summarised only briefly here. However, as more and more malls present themselves as multi-use centres the question, raised by Kohn and Fisher, as to where *is* the public-private threshold when developments take on such a public persona is pertinent. Such places cannot, it seems, simply be treated as entirely private space. Some states have pre-empted this question and acted to make clear that there is a public role for private space. Mattson [1999, p135-6] lists the examples of "California, Oregon, Massachusetts, Colorado, Washington, and New Jersey [who] have ruled in favor of more extensive free speech activities and have validated the conception of malls as public spaces".

The issue is dynamic. Minaya [2007] cites the example of Silver Springs, Maryland. Silver Springs is a private development with a private roadway, Ellsworth Drive. Here, agents for the owner had approached an amateur photographer and prohibited him taking pictures of the mall area. The relevant local authority intervened to confirm that: "The County considers Ellsworth to be a public forum permitting the free and unfettered exercise of First Amendment rights," and that, whilst the owner can "maintain order and promote the safety, security and economic success of the Downtown Silver Spring Project . . . these rights do not change the character of Ellsworth Drive as a public forum".

Turning now to the UK, the regeneration of inner cities and the trend towards out of town shopping malls in the late twentieth century has provoked a comparison between the public and private realms, the latter now consisting of relatively large swathes of city centres compared with the recent past. This has highlighted the different approaches to managing behaviour that ownership bestows on space. Layard [2010] has explored the three main tools used by the public sector to help (or "collude" as she puts it, p429) redevelopment and to control activity in private space:

- compulsory purchase orders: must be exercised for the public good, but the term "public" has a wide-reaching meaning in this sense;
- stopping up orders to allow roads to be closed for the redeveloped scheme: rarely refused;
- planning permission, including the masterplan: often subject to post-hoc change and a perfunctory public consultation process.

Once established, the boundary between the private ownership and the nearby public ownership is important. The rules change on either side. On the public side of the threshold the law, in an appeal case (DPP v Jones, 1988,) has affirmed:

"The question to which this appeal gives rise is whether the law today should recognise that the public highway is a public place, on which all manner of reasonable activities may go on. For the reasons I set out below in my judgment it should. Provided these activities are reasonable, do not involve the commission of a public or private nuisance, and do not amount to an obstruction of the highway unreasonably impeding the primary

right of the general public to pass and repass, they should not constitute a trespass. Subject to these
qualifications, therefore, there would be a public right of peaceful assembly on the public highway."

… the ruling continues …

"Nor can I attribute any hard core of meaning to a test which would limit lawful use of the highway to what is
incidental or ancillary to the right of passage. In truth very little activity could accurately be described as
"ancillary" to passing along the highway; perhaps stopping to tie one's shoe lace, consulting a street-map, or
pausing to catch one's breath. But I do not think that such ordinary and usual activities as making a sketch,
taking a photograph, handing out leaflets, collecting money for charity, singing carols, playing in a Salvation
Army band, children playing a game on the pavement, having a picnic, or reading a book, would qualify. These
examples illustrate that to limit lawful use of the highway to that which is literally "incidental or ancillary" to
the right of passage would be to place an unrealistic and unwarranted restriction on commonplace day-to-day
activities. The law should not make unlawful what is commonplace and well accepted."

The government has also issued guidance explaining that local authorities, when acting as a public body,
should not restrict (through bye-laws) a wide range of activities from taking photographs to glue sniffing
[Layard, 2010, p430]. Significantly, such 'rights' to do as one pleases on publically owned land designated for
public use (eg parks, highways etc..) do not carry over to private land, including shopping malls and the like.

On this point, Garrett [2015] reflecting on the 'Occupy' protest in Paternoster Square, reminds us that an
injunction was passed on 14 October 2011 "preventing 'persons unknown' entering or remaining in or
trespassing on (Paternoster Square)" which is open air private-public space. For Doherty et al [2008, p291]
access to such private places is available "only to those who engage in permitted behaviour" but he recognises
that total exclusion is rare, often being by time and activity. Macleod and Johnstone [2012, p4] echo many
others in asserting that the regeneration of UK inner cities seems to be "increasingly facilitated by a plethora
of legal, architectural and corporate technologies of streetwatch — town centre management schemes,
business improvement districts, pervasive CCTV coverage and a 'muscular police family'." [Coleman, 2004a;
2009;; Cook, 2008; Minton, 2009] These tactics can be classified as 'hard' (such as removing people) or 'soft'
(such as not providing easily accessible toilets) [Loukaitou-Sideris, 1993].

Jones et al [2016 p496, referring to Mullins, 1999] describe the rational for controlling access: "Accessibility to
high quality sites of consumption is of prime importance, especially to middle and high-income groups. They
have therefore become more than just places to acquire goods, but also places to fulfil higher values such as
self-actualization". To match that demand, shopping centres have introduced a plethora of management tools
described above. For Sahlin [2006, p3], deploying an especially strong metaphor, many of these city
management techniques are similar to the medieval control of lepers, with newer technology.

Of course, there is no automatic assumption that publically-owned mall space would be controlled any
differently [Layard, p430]; indeed, many local authorities use private security and CCTV to control their urban
property portfolios. Writers such as Carmona, researching public and public-private open space in London, are
not convinced that such space is subject to over-control. He sums up his work thus, while adding the caution
that findings from London may not necessarily apply elsewhere:

"From the detailed case-study work it was concluded that despite initial impressions, the doom-laden critiques
of public space are typically far from the mark... In fact, the sorts of large-scale homogenisation, privatisation,
securitisation, commercialisation, sanitisation, and exclusionary and formula-driven approaches to public space
that are so criticised in the literature prove to be largely illusory in London, at least as regards the often over-

inflated claims regarding their impact on the creation, regeneration and user experience of public space."[Carmona 2015, p395-6]

What is also clear is that different models of private ownership are emerging and being recognised in the literature, perhaps with the benefit of experience and perhaps also as a reflection on the criticisms made of earlier entirely private schemes. The Kings Cross redevelopment scheme, for example, has seen the developer, Argent, hand over the roads and some open spaces for adoption by the local authority – the London Borough of Camden [Layard 2010]. It is difficult, except by looking carefully at road signage, to spot the difference between public and private control in this redevelopment, never mind identify ownerships. This is however, like the spaces in Carmona's study mentioned above, very much an open air project – unlike mall developments such as Westfield (Stratford and Shepherd's Bush) and Cabot's Circus (Bristol.)

So where does this leave the debate? The important points are: who has access, and what can those granted access do with it? It seems that the contemporary dynamic of urban development has elevated the implied invitation extended to the public to enter private space to shop, to pass through (on the chance of being tempted to stop and shop,) or to partake in organised activity in or on the land to a new level of public participation. In a way such spaces have become a victim of their own success. They are clean and attractive, and offer to many a good day out. They attract the public in large numbers and are being judged as 'public' space. However, the customs surrounding such places, the regulations in place and the laws that can be called upon to judge issues of publicness have not fully caught up with the trend. For Kohn [2010, p71] this means that the question we should now be asking is this:

"Is it ownership or use that determines whether a particular place is truly private?"

To try and address such questions Layard [2010, p437] argues that matters have got to a stage that we should perhaps now consider separating the control of space and place from the ownership of land. She argues that "private property need not equate to private space. Nor need public property equate to public space (we cannot demand entry to 10 Downing Street, for example). In practice a more nuanced approach is required, which reflects both a site's spatial and social context". To achieve a better outcome she suggests that "rights to access" could be compared with planning permission. The private owner (of, say, a shopping mall) would have to apply to exclude certain rights, just as they would have to apply for planning permission. If rights were grouped (as is development in the permitted development orders) then some private space could be excluded from control (the right to access to a house) whereas others (such as rights to a piazza) could be enshrined in perpetuity, regardless of ownership. In this system space and the rights that go with ownership are separated from each other [Layard, p438-439].

This approach chimes with ideas of the *Right to the City* [Lefebvre, 1968] and the World Charter for the Right to the City, proposed by UNESCO [2004], which states:

Article I
"All persons have the Right to the City free of discrimination based on gender, age, health status, income, nationality, ethnicity, migratory condition, or political, religious or sexual orientation, and to preserve cultural memory and identity in conformity with the principles and norms established in this Charter."

and:

Article IX:
"All persons have the right to associate, meet, and manifest themselves. Cities should provide and guarantee public spaces for this effect."

This right to the city could be a variation on the idea of the right to roam. This brings with it thoughts of mass trespass (as preceded the establishment of National Parks and Access to the Countryside Act, 1949) to achieve such a goal. The likes of Garrett [2015] and Self [in Townsend, 2016] have put such an approach forward but it can be countered by the need for security. According to Low and Smith [2006]: "From city park[s] to public streets, (from) cable and network news shows to internet blog sites, the clamp down on public space in the name of enforcing public safety and homeland security has been dramatic. Public behaviour once seen simply as eccentric or even protected by First Amendment rights is now routinely treated as a potential terrorist threat".

What is apparent from the literature is that the debate on ownership and the consequences of owners choosing to exercise their rights as private owners is a dynamic one. It is a debate being held in real time against a backdrop of ongoing urban (re)development. Neither the debate nor the approach to providing for the public are static in time. In the words of Adams and Tiesdell [2013, p106] "successful places come about through effective coordination between the many different actors involved in their production and consumption, and perhaps that more than any precise demarcation of ownership and rule-making is the key".

Galanakis [2013] offers a different perspective – that the term "privatisation" can be recast and considered as an informal public act, and one which offers a parallel system to formal planning policy: "There is a certain kind of privatization that takes place whenever some people make a space public with their actions that has little or no relation to commercialization. This kind of privatization via appropriations of public space I call *domestication*… Domestication is more welcome as a healthy democratic reaction to top-down policies." [p83]

GOVERNANCE AND CULTURAL CHANGE

This section looks at recent trends in the governance and management of the public realm. It is not intended as an overview of post-war urban and retail policy. Its purpose is to identify the contexts for current public-private involvement in redeveloping urban space and providing public place. For a detailed and historical overview of the relationship between urban planning and governance, see Ward [2004].

Two important post-war decisions have played a major role in determining how government has handled public place in the UK. The first is the decision that planning was to be prescribed as a regulatory function of local government (therefore more reactive than proactive); and the second was the decision that the act which cast that regulatory function into law - the 1947 Town and Country Planning Act - would neither encourage design, nor even mention the word 'design' [Charrington & Devereux, 2012]. Whilst parks and play facilities might be provided and managed by a leisure or recreation department, it rather left the question of the design and provision of urban public place in limbo. Writers also note that, certainly in the UK, the provision of public space (and its on-going upkeep) has traditionally been fragmented across public authorities, with different offices or agencies responsible for matters such as highways, parks and refuse collection [De Magalhães & Carmona 2006; De Magalhães 2010]. This has had the effect of impoverishing public spaces, certainly in the post-war era, and making alternative models, such as Business Improvement Districts and Town Centre Management Plans, rather attractive. The post-war rebuilding of the country and the development of New Towns was the chance to establish town planning's credentials in this area but, as Punter [1990, p9] observes: "Post-war planning contributed significantly to the demise of the public realm". To a large extent this was 'achieved' through poorly conceived New Towns and traffic dominated inner city rebuilding.

Although much criticism is directed at contemporary public-private developments, as though this is a new idea, public-private development is nothing new. Ward [2004] describes the public-private post-war redevelopment schemes in cities such as Plymouth and Southampton and the emergence of development companies such as Ravenseft specialising in such projects. But for Wightman [2012] the 1950s onwards saw a decline in local democracy and decision-making as many local services were incorporated into nationalised bodies and local government reorganisation moved power upwards.

The attempts to provide public space in the 1960s and '70s came in for much criticism, with Punter (1990, p10) resolving that public space around new out of town shopping centres was made as "uninteresting and uncomfortable" as possible. The further decline of the public sector as a proactive planning agency and provider of public space was signalled when large urban regeneration projects were given over to development corporations in the 1980s. This led to major redevelopment projects such as Canary Wharf which are heavily criticised by those announcing the death of public space [eg: Minton 2011], including celebrity author and commentator Will Self [Townsend, 2016].

"During the 1980s, Canary Wharf and the Broadgate Centre, the two emerging finance centres in east London, were virtually the only high security, privately owned and privately controlled places that functioned like this. They were also exceptional places created in response to the deregulation of the financial markets and 'big bang' of 1986, with its demands for big banks and large trading floors. Now, a generation later, this model has spread out, not only throughout the City but to towns and cities across the country that are increasingly characterised by privately owned places, from small 'mixed-use' enclaves to enormous shopping complexes such as Cabot Circus in Bristol and Liverpool One, which spans 34 streets in the heart of Liverpool".
[Minton 2011].

Urban Task Force

Something of this pessimistic view of inner city space was reflected in the setting up of the Urban Task Force, which reported on the state of public place in 1999. Macleod and Johnstone [2012], quoting the report,

highlight the turn this introduced towards making town centres appealing (rather than functional.) The report, they say, is a political phenomenon: "Politically orchestrated endeavours to induce an urban renaissance appear to be increasingly intertwined with gentrification and a punitive urbanism" [p1]. Macleod and Johnstone quote the report further: "Achieving an urban renaissance is not only about numbers and percentages. It is about creating the quality of life and vitality that makes urban living desirable. To stem a long period of decline and decay, pessimism and under-investment, we must bring about a change in urban attitudes so that towns and cities once again become attractive places in which to live, work and socialise". (UTF 1999 vii).

These 'attractive places' need to be paid for, yet the picture in local government as the century drew to a close was one of severe public spending restrictions. Atkinson [2003, p1830] was already concerned about the existing public spaces when he wrote: "Cutbacks in local spending have left some of these spaces damaged and untended, furthering the image, if not necessarily the reality, of a dangerous space". The phenomenon was not confined to the UK. Banerjee [2001, p11] notes: "Budget cuts of the mid-1970s had a disastrous effect on cities' ability to even keep up the current stock. New York City, with some 26,000 acres of public parks, is a case in point: its maintenance staff was cut almost in half during this period … With declining maintenance, parks became vulnerable to abuses and were shunned by the public."

This lack of money to invest is recognised throughout the literature. Langstraat & Van Melik [2013, p430], drawing on MacLeod [2002] and De Magalhaes [2010], address why the public sector has not been as proactive as many demand in engaging with public space, highlighting the point that: "They are unable because confronted with decentralization, deindustrialization, rising structural unemployment and a shrinking fiscal capacity of the state, their financial abilities to invest in public space are limited".

This is not confined to the UK. Loukaitou-Sideris [1993, p140-141] charted the history of change to the way local authorities worked in the USA during the 1980s. She suggests three reasons for the change in public to private sector provision of open space: (i) financial reasons – local authorities suffering economic cutbacks; (ii) the willingness of the private sector to get involved (and this was often, especially in NY, associated with deals on plot ratios) as it would benefit their development ideas; and (iii) there was a market demand from parts of the public to separate themselves from problem groups who assembled in undesirable public spaces. These three went hand in hand with major regeneration projects in downtown cities. Additionally, she found three further reasons why the private sector would want to strictly control the 'public' space once it has been made available to users: (i) maintenance – it keeps costs down; (ii) liability – it reduces risk; and (iii) marketability – it is commercially advantageous [p154]. As a result of these trends she concluded that there was a "corporate dominance of public policy" and that there was a further "dependency of the public on the private sector" [p158].

There are those who see this private involvement as an almost sinister development in public sector activity. Critics see it as being a "project of social control" [Coleman, 2003, p21] or even revanchist local authorities, to varying degrees: dictating approved uses; carrying out zero-tolerance policies of so called anti-social behaviour; deliberately projecting dystopian views to excuse the involvement of the private sector and beautifying of place to attract investment [Atkinson, 2013, p1833]. In a similar light, Graham [2001] notes an altogether more subtle and pervasive privatisation of the streets, in this case through the move in the UK (and elsewhere) from publicly-owned to privately-owned urban infrastructure. Although the phenomenon has not yet extended to the roads themselves (new motorways and bridges aside) most of the infrastructure beneath the street has now been privatised, with associated rights transferred to these companies to obstruct, excavate and reinstate public space more or less at will.

This need to attract inward investment in competition with rival cities has been a major feature of recent public policy. For new urbanists, building on the work of the Urban Task Force, this was an opportunity to create places for private business and public activities (libraries, parks etc) while creating something of a civic spirit [Mattson, 1999]. This requires high quality, well-managed spaces and for that there needs to be cooperation between the public and private sectors to achieve the objectives [Madanipour, 2003; Langstraat F & Van Melik, 2013]. Not only do cities compete with each other but the literature recognises that the city centre competes with other retail and leisure attractions within the city. For Balsas [2007, p255] exploring the cases of Lisbon and Porto, and drawing on the work of others: "City centres now have to compete with other activity centers, but they can only remain liveable if they reinforce their uniqueness and sense of place, which come from their public space and the organic mix of diverse uses… They should diversify their anchors (entertainment venues, public markets, retail stores, cafes, restaurants, etc) not only to attract people to city centres, but also to keep them there at different times of the day and different days of the week." [Lynch, 1972]

There is general agreement that the increasing role of the private sector in creating, funding, managing or controlling public spaces is a global phenomenon driven by a range of factors including:

- globalisation;
- political acceptance (or embrace) of public-private partnership; the contracting out of public services to the private sector;
- the adoption of north American models of private sponsorship (such as BIDs) and the responsiveness of the private sector to incentives (such as flexibility over zoning codes);
- increased pressures on public finances (often causing local authorities to apply charges to what were once free amenities);
- inner city regeneration and inter-city competitiveness;
- the decline of the tradition High Street (at least in the UK) and high vacancy rates;
- rising land values;
- the phenomenon of "edge cities", whereby business locates at urban edges, emptying the central business district of archetypal 20th century cities;
- the rise of the shopping mall as a typology (and, in north America, the extension of the mall into something approximating a town, with the provision of public services and even housing within the same development);
- Further, some writers have considered the role of the internet and social media on the role of public space, asking whether the ubiquity of digital technologies, and the personal/political expression they enable, has eroded the political role of the physical space [Banerjee 2001].

Additionally, Miao [2011, p179], looking at public space in China, identifies three principal forces: "window-dressing" of public space by government; privatisation; and gentrification defined in China as "the tendency to ignore the needs of mid- and low-income residents in public facilities".

To achieve the aims of designing, paying for and maintaining high quality space, the public sector at both state and local levels has drawn upon a range of tools. Carmona divides these into 'formal' (eg legislation) and 'informal' (eg audits of urban realm). The amount of advice on how to deal with public space is at times overwhelming. Charrington and Devereux [2012] list a "plethora of 'design policy'; generalized guidance and procedures, all culminating in recent prescriptive 'tick-box' design standards that seek not only to augment the limitations of the planning system, but also to compensate for the skills that have atrophied in the planning profession over the last sixty-five years". And, they argue, "when government ran out of words for policy, it set up quangos" [p5]. These included the Commission for Architecture in the Built Environment

(CABE) which from 1999-2011 was heavily involved in the production of guidance, consultation process and critiquing of public 'place' projects.

The masterplan is one preferred tool used to make a scheme 'public' in that it can appear to stitch the new private development seamlessly into the urban fabric, but it is open to subsequent amendment and reshaping as a project moves on [Layard, 2010]. In order to implement and manage a 'public' place project a range of legal tools have become commonplace, from compulsory purchase orders to planning agreements (as mentioned above, p13). These are often signed after prolonged discussions and as something of a trade-off between floorspace and public space [Banerjee, 2001]. Against this background local authorities have taken on a much greater coordination role than ever before, but they often then come in for criticism as they (as well as the private developer) cannot satisfy the competing claims of the various 'publics' who see them as their agent, and who themselves do not always engage equally with the debates [De Magalhães, 2010]. Such criticism can lead to frustrations on both sides as revealed by a letter to *The Observer* from Trevor Skempton, (University of Liverpool School of Architecture; former urban design adviser to Liverpool City Council):

"Many of us worked hard to ensure that Liverpool didn't end up with yet another giant enclosed shopping mall, as it sought to re-establish its lost status as a regional centre. Consultations with the people of Liverpool were exhaustive, and a city that had been condemned to "managed decline" by successive London governments [Thatcher and Blair], formed an unlikely long-term partnership with the oldest of old money. Grosvenor, which has a 250-year lease on Liverpool One, also owns the most valuable streets on the traditional Monopoly board, but I don't hear the London academics criticising its stewardship of Mayfair". [28 February 2016]

The criticism levelled at the public sector for encouraging and aiding the privatisation of 'public' space is not confined to new projects. It has become clear, perhaps because of the successful public-private creation of safe and clean urban spaces, that attention would turn to managing the existing public realm that was in danger of looking shabby in comparison. Various initiatives such a Town Centre Managers have been tried. The latest iteration of these, 'Business Improvement Districts' (BIDS), has emerged from the American experience. Macleod and Johnstone [2012] identify the increasing use of BIDs in the UK in which, within a defined area of a city, business owners pay for services such as street cleaning, maintenance and surveillance. They have been seen as the public sector promoting consumerism. Minton [2006, p2] in a report for the RICS describes them as "…. paving the way for private control of town and city centres through the payment of a levy by local businesses". Wightman [2012] sums up the criticism in his example from Edinburgh which is worth quoting in full:

"More recently, the public realm has been attacked by the creeping privatisation of what little remains of public space. In Edinburgh, from 1716 to 1808, the town council used the Common Good Fund to acquire all the land for the development of the New Town. The streets and many of the open spaces in this World Heritage site are thus the common property of the citizens of the city. In 2008, however, the City of Edinburgh council handed control of much of the central area for five years to a private consortium of businesses, Essential Edinburgh Ltd, as a Business Improvement District governed by Part 9 of the Planning (Scotland) Act 2006. Out of 15 directors of the company, only one is from the council, and he is an official, not an elected member. Apart from the chief superintendent of Lothian and Borders police, the remainder are private businesses including Harvey Nichols, RBS and Macdonald Hotels. The council is prohibited from having more than 20% of the membership to ensure that 'the company shall not be under the control of the local authority and the quorum for a directors meeting is a mere two'."

Others see it differently. Steel & Symes [2005] studied BIDS in the USA. They considered the criticism that the public street was becoming, in effect, like a private shopping mall and concluded: "...this is to ignore the clear

differences between a mall and a public street. The owners of a mall have a legal right to refuse admission. Malls also have clear opening and closing times. Neither of these applies to public streets". [p329]

The change in retail patterns made manifest by the changing high street has led to some highly publicised thinking about how to reinvent and reinvigorate these public spaces. Amongst them the Portas Review [2011] stands out. The recommendations emerging from that report included a clear emphasis on the value of BIDS:

- Put in place a "Town Team": a visionary, strategic and strong operational management team for high streets;
- Empower successful Business Improvement Districts to take on more responsibilities and powers and become "Super-BIDs";
- Legislate to allow landlords to become high street investors by contributing to their Business Improvement District;
- Town Teams should focus on making high streets accessible, attractive and safe;
- Government should include high street deregulation as part of their ongoing work on freeing up red tape.

It is reasonable to conclude that there now exists an ever more affluent society which demands more of the urban realm. The city is now a 24/7 environment. Shopping is a leisure activity and is often combined with other leisure activities. It is both an individual, a group/family activity. For users and business alike, the vast majority demand a safe, clean and well- presented environment. Van Melik and Van der Krabben [2016] have carried out a well-balanced study of US practices of 'co-production' (essentially public-private partnerships) and how they can translate positively to the Dutch context. They feel that "because of the blurred lines between public and private, it might seem logical for local authorities and private entities - ranging from individual citizens to largescale corporations - to cooperate with each other in terms of the development and management of public space."

Van Melik and Van der Krabben draw on the work of writers such as Nemeth and Schmidt [2011], who have examined the creation of "privately-owned public spaces" (POPS) in New York since the introduction of zoning exemptions in 1961 – provided private developers create publicly accessible spaces such as parks, arcades and wider pavements. These authors analyse such examples of planning gain across a matrix of "inclusive/open" and "exclusive/closed", attempting to score spaces in terms of their potential for publicness (they are there, and members of the public are able to walk in) with their actual publicness (characteristics such as signage, branding, security and architectural design may have the effect of making certain social groups feel unwelcome). They conclude that New York's private spaces do indeed tend to "code" for a certain exclusivity, largely through emphasising security and safety – though they find also that such spaces are successful in attracting users, who may be attracted by the promise of a secure environment. Publicness, they conclude, is a "slippery" concept [p21]. Nonetheless, says Cybriwsky, "New York City… has succeeded in having more people come together for enjoyment in parts of the city that were once all but abandoned" [1999, p223].

Such trans-Atlantic inspiration appears indicative of shared, changing conditions. Loukaitou-Sideris observed in 1993 that privatisation in Los Angeles represented not just a change in the "delivery system of a public amenity", but rather: "a process in which the meaning and purposes of public open space are redefined and reshaped in the context of changing socio-economic and political relationships. It is a symptom of powerful social trends with ramifications in the production, consumption, use and physical representation of public open space" [p160].

This author also warned that such changes were beginning to allow corporations to dominate public policy and cause the public sector to develop a degree of financial dependency on the private sector [p158]. However,

Pierre [1999] argues that urban governance should be understood as a process of "blending and coordinating public and private interests" [p374]. He continues:

"What is at issue here is the role of local government in governance… Government can play a wide variety of different roles in such governance, ranging from being all together absent to being the key coordinator of public and private action. In urban politics, however, local authorities enter governance with an agenda and get involved in governance to attain these goals. The extent to which this pursuit of political and organizational objectives requires the inclusion of other actors depends on national political traditions, the nature of the policy sector and the nature of the urban political economy." [p390]

UCL's Carmona shares this view, arguing that the modern city has arisen from a hybrid of public and commercial interest, and that it is "hardly surprising" that the private sector is determined to take responsibility for its own investments (especially as the public sector has often done such a poor job of managing its own assets) [2010, p145].

Perhaps, though, there is a fear among some of what Germans refer to as *Schwellenganst* - the fear of the threshold. "It refers to the spasm of doubt that can afflict you when you step over a demarcation between public and private space. Or even the demarcation between a public space and a public space, for that matter" [Sutcliffe, 2007]. For Balsas [2007, p253] the comparison between city centres and malls is useful one: "Although city centres will never be like shopping malls, the metaphor was appropriately used to convey the need to manage central areas in a more efficient and entrepreneurial fashion. Foreign experiences throughout Europe and North America have shown that this can be done with very positive gains for the liveability of city centres".

With increased experience of public-private initiatives and some fine-tuning of the public-private model the symptoms of Schwellenganst might well be reduced; possibly the question concerning the design and provision of public space, left unanswered in 1947, will finally be resolved.

THE PHYSICAL CHARACTERISTICS OF PUBLIC SPACE

Writers in recent decades broadly agree on the desired social qualities of public space, and the manner in which their form or other characteristics prompt, encourage or subvert such qualities. The Urban Task Force argued in 1999 that an "urban renaissance" required cities to become "attractive" and "desirable", including the creation of open spaces [UTF 1999, page vii]. The Commission for Architecture and the Built Environment (2007) agreed, commenting that plans for the long-term management and funding of open spaces must be considered from the outset of any regeneration proposition. Indeed, a range of academics [including Goheen 1998; Zukin 1995] have written on the importance of the public square in terms of a regeneration centrepiece, venue for public discourse, sign of civic confidence and private-public interface. Moreover, public spaces will ideally contain defined centres [Jones et al 2016], channelling pedestrian and vehicular traffic. Three decades ago Gehl [1987] argued that streets ought to be considered as social spaces rather than just channels for movement. This view is echoed by Mehta [2013], who writes that streets must be spaces for people to "stop, gather and linger" [Jones et al, 2016, p497].

Some writers have attempted to quantify the characteristics of public spaces to a much greater degree. Carmona [2010 and 2015] lists the types of public space to be found (ranging from parks and plazas to memorials and atria) and the types of function they perform (eg movement; third space; and privately provided public functions such as retail). Others, such as Burgers [1999, quoted in Carmona 2010] and Dines & Cattell [2006] attempt to equate types of public space with user groups or the feelings different spaces are designed to inspire, such as: memorial, meaningful or exalted space; everyday space; displayed and spectacular space; marginalised and neglected space. Interestingly, Lees [1994] draws a distinction between public and civic space, writing that shopping malls can be considered public, but not civic.

One of the key attributes of public space would appear to be, almost by definition, that it accessible to "the public" (whatever the public is). Thus public space is, ideally, free of restrictions and accessible to all, at all times. However, practice demonstrates that this is not always possible – one writer points out that access to Downing Street is all but impossible, and it is worth adding that limitations on access to other public facilities (schools, government agencies) is generally accepted. Nonetheless, access remains a common theme among critics of many public spaces; although the argument is often based not so much on rights of access to publicly-owned spaces but a perceived denial of access in privately-owned ones. The characteristics and "design cues" of private spaces are quantifiably different from traditional public ones, argues Loukaitou-Sideris [1993]: "Characteristics such as introversion, enclosure, protection, escapism, commercialism, social filtering and exclusivity are seen as resulting in environments that are congruent with the private interests but not always beneficial to the general public." [P139]

The argument turns on the role of control. Writers such as Minton, Voyce, Mitchell and Miao draw attention to the tools of control by which members of the public might be excluded (or at least lead to feelings of discomfort and self-exclusion) such as: gates, CCTV and uniformed security guards. Others, such as Zukin, Loughran and Nemeth & Schmidt, consider the softer forms of control and exclusion such as signage, branding and the type of consumer choices available (which, while attracting some consumers, will deter others). Indeed, Zukin used the term "pacification by cappuccino" to describe the way in which many spaces in New York were being developed in the 1990s [1995 p28].

Kohn [2001] comments that users crave such environments: "One of the appeals of the mall is precisely that it provides an environment carefully designed to exclude any source of discomfort. The soothing lighting, polished surfaces, pleasant temperature, and enticing displays are not the only allure; part of the fantasy involves entering a world where no homeless person, panhandler, or zealot can disturb the illusion of a harmonious world" [p76].

Loukaitou-Sideris describes this as an "urban pathology" – that public parks and squares are often perceived as the "locus of urban problems" and there is therefore a market for spaces that are produced, maintained and controlled by the private sector [1993 p141]. "The private sector… markets 'pseudo-public' settings to cover the needs of its clientele. Plazas are characterised as more successful if they bring certain sections of the public in, but also keep other sections of the public out" [155].

Allen [2006] agrees that developers are simply meeting users' demands (or exploiting the "embryonic tastes that are already present", p448). He suggests, however, that such private spaces (with a focus on the city centre mall typology, albeit one without gates or other forms of exclusiveness) are much more subtle, and indeed deliberately inclusive. Considering the Sony Centre in Berlin's Potsdamerplatz, Allen observes that the architecture and branding serve to seduce potential consumers and welcome them, though offering limited choices once people have entered. Nonetheless, he makes the point that the public is not a single, passive, homogenous group open to being duped by corporate interests; people always have the choice of not consuming and simply walking away. The Sony Centre is a place of "inclusion rather than exclusion. Power in this instance works through the ambient qualities of the space, where the experience of it is itself the expression of power" [p441].

Voyce [2006] also considers the mall typology (this time a Westfield-owned development in Hornsby, Sydney) and suggests that the rise of surveillance technologies and an increase in order and efficiency are characteristics of contemporary commerce [p273]. Part and parcel of this, he argues, is a large degree of uniformity, the presence of global (rather than local) brands, and often the emergence of a depressed retail area nearby. Accusations of homogenisation are common in the literature, and this is often linked with notions of gentrification and social exclusion. Cybriwsky comments almost casually on the "ever smaller, more internationalized and more homogeneous world in which we live" [1999, p230].

Akkar [2005] comments on the (then) newly redeveloped Grey's Monument Area of Newcastle-upon-Tyne and, though not a private project, only grudgingly welcomes the revitalised and broadly popular works: "Unlike conventional public spaces, which brought various groups of people together and performed as common grounds for all segments of the public, new public spaces are seen as enhancing gentrification, social stratification and fragmentation" [p96]. This analysis is similar in tone to that of Sack, quoted by Goheen [1998]: "Public space has been emptied of much of its vitality; it has become increasingly impersonal and drained of the social meaning which previously attached to it, diminishing its relevance to community life."

Interestingly, Townshend and Madanipour [2008], also studying Newcastle and north east of England, are more sanguine about recent regeneration efforts, and find that fears of homogenisation and declining local identities are exaggerated:

"Users and providers believe that local distinctiveness and diversity of places are thriving, even if certain aspects of our towns and cities seem to be becoming more similar. The key dynamic of this is that people still value public places as spaces of social encounter as much as any other aspect. This use by people over time creates a distinct identity that cannot necessarily be predicted or controlled. People are not automata, passive of global forces and by the same token the spaces they create are not either. To this end while forces of globalization are undeniable, they do not necessarily in themselves destroy the uniqueness of place."
[2008 p327-8]

In summary, it is difficult to neatly define the physical characteristics of public space, other than referring to the notion of access, which itself defies simple definition. Further, it is equally difficult to define the physical characteristics of privately-owned (or quasi-public) space, although the typology of the mall (especially the physically bounded, gated, edge-of-town variety) lends itself to easier categorisation. Often, in terms of

recently developed privately owned and operated space, critics suggest the following as defining characteristics: homogenisation; gentrification; explicit surveillance; the high profile of commerce; branding; and exclusivity (even the elimination of undesirable groups such rough sleepers, skateboarders, campaigners and loiterers). Such accusations could also, however, be levelled at many publicly-owned spaces.

It is worth noting that the above comments draw on typically Western examples. Developments in Moscow are often characterised by their insensitivity to context [Aidukaite and Fröhlich, 2015], while Mexican plazas have also been the subject of redevelopment – with the accusation that private involvement has caused the loss of traditional uses and even kinship networks [Crossa, 2009]. Very large, privately-developed, mixed-use projects on the periphery of Hanoi, for example, are, according to Hoai Anh Tran [2015] simpler to define in terms of their uniformity, poor provision of public space and amenity, and featureless streetscapes.

Hogan et al, mentioned above in terms of their plea for a context-specific critique on the subject, offer the following example of the role of private place-making in Manila. It paints a rather middle class picture (rather than a highly inclusive one), which is the criticism levelled by most critics, but is worth quoting in full for two reasons: the private sector response to public need; and the popularity of the phased developments.

"In terms of the Western political left's conventional understanding of the public–private divide, the preponderance of private space in much of Asia resembles an urban nightmare. In cases where governments have failed to provide such public spaces as gardens and parks, sporting facilities, and community health centers, hardly failures that are unique to Asian cities, private sector initiatives have responded. Since World War II, Manila has been desperately short of large green spaces, plazas, and boulevards. Recent years, however, have witnessed some interesting responses to this lack. One private city developer developed Eastwood City by first building an entertainment district with a large array of cafes, restaurants, and night only two or three stories high. The city also includes a large park containing a children's playground and concert stand. The middle class of Manila flock to Eastwood City every night of the week, exemplifying public life flourishing in privately owned spaces. Having reached its market, the city was built in stages behind the initial front stage. Large, high-density offices and condominiums were offered for rent and for sale, cheaper than in competing private cities at Ortigas, Rockwell, and Makati. Next, the social infrastructure was secured via schools, a hospital, and supermarkets. A privately owned and regulated space has thus given rise to quasi-public amenities not evident in much of the metropolitan region, including in spaces that might be considered public." [2012, p61]

CONCLUSIONS AND SUBJECTS FOR FURTHER RESEARCH

The privatisation of public space, no matter how it is defined, has been a subject of considerable discussion among academics and other commentators for some years (beginning in earnest in the early 1990s, though roots go back further than that). Much of the comment has been negative, with many observers critical of a perceived loss of public space and its replacement with a polished, exclusive, high surveillance, bubble of homogenous corporatism in which the middle-class can exercise its rights as consumer-citizens. The concern is one of social fragmentation and dispersal, in which the idea of a "general public" disappears, along with the spaces in which such a public can meet, encounter difference and exercise political rights of speech, association, protest and simply "being there".

This is, of course, a generalisation of a particular viewpoint, but it is widely held and it is to some extent attractive; it is a view which makes for easy headlines and likely appeals to a certain suspicion of private values and motivations.

It is also a view which has not gone unchallenged. Some commentators point out that many public spaces are so poorly maintained that they are not worthy of the name, and that the private sector has responded to the need for regeneration in such a way that once low quality and/or post-industrial spaces have become both attractive and accessible. Indeed, the point has been made that the phenomenon of privately-owned public space is not necessarily one of a corporate take-over, but one of the private sector creating access to space that was not accessible to begin with. The question becomes, therefore, not one of ownership, but access.

The more thoughtful observers take care to consider definitions and, when one considers properly what constitutes public space (or even the public), it quickly becomes evident that definitions can be elusive, or at least nuanced. Legally speaking (from the point of view of property law), definitions are clear-cut: space is either under public ownership (the freehold is owned by the state or a representative agency) or a private concern. By extension, owners of private property may determine the rules to which visitors must adhere. However, a range of judgements have blurred such definition, and it is arguable that common rights (such as freedom of speech) carry more weight than land ownership. Possibly, there is room for developing some sort of "law of place", linked to ideas of "rights to the city", in which ownership of urban sites goes hand-in-hand with an acknowledgement of citizen rights.

Considered in terms of practice rather than law, though, definitions of public place might include those spaces which are simply put to public use – if the public uses it, then it is public. Similarly, any publicly-owned space ignored by the public (in that people fear for their safety and stay away) might be described as not, in fact, public space at all. Further, notions of ownership are not always clear-cut, and the public/private polarity performs, rather, as either end of a spectrum encompassing various models of partnership and "co-production".

Writers also draw attention to the fact that "the public" is not, indeed, a single undifferentiated group, and that public space should also be considered as a plurality, each serving different publics. While shopping malls generate special ire from critics of private space (with their emphasis on consumption, and behavioural strictures which tends to alienate "undesirable" groups), some writers point out the broad spectrum of public spaces which range from waterfronts, parks and plazas to cafes, atria and memorial sites. Each spatial type will have its own morphology, identity, symbolism and sense of space and ownership, each appealing to different segments of society (often at different times).

There are therefore legal, social, cultural and contextual dimensions to the subject; indeed, writers from non-Western contexts point out that the private sector can, in fact, provide public amenities in a way the public sector never has. Some jump to the defence of "quasi-public" places, arguing that such constructs are a

consequence of deep social and political shifts. Rather than damning all such developments, it is more productive to consider these shifting forms of public space as part of a wider cycle of history, subjecting management/behavioural/legal/contractual mechanisms to ever greater degrees of consideration and refinement, while remaining cognisant of the varying social models which created our urban centres over time.

The subject is, in short, a complex and nuanced one – and one which deserves great care when considering the implications, models and futures of privately-owned or administered places. This is not to say that the very vocal opponents of private-owned public space do not have a point – they do. Such criticism is arguably a natural and important consequence of the social and economic patterns which are playing out at the interface of public and private domains. However, any generic concern on the matter begs a range of questions, including:

- how is the public defined?
- how is public space defined?
- is there clarity over the extent to which private operators have assumed ownership of once public space, compared with providing access to space that was formerly inaccessible?
- do all public spaces have to serve all publics? Is there a danger that, in seeking to be open to all social groups, public spaces might satisfy nobody?
- do the boundary conditions clearly demarcate the public/private interface, or is the threshold zone more fuzzy and indeterminate? How does a user know where they are? Does the user need to know anything of the ownership of the space they are in?
- is there a distinction between private and civic space?
- how does society guide and moderate behaviours, and how does the control of these behaviours vary (if at all) between the public and private sectors?
- how might an urban "right to roam" change the user/owner culture? Might a "law of place" be a useful way forward?

In short, private provision of public space is a consequence of social change, with a wide variety of outcomes, models and critiques aimed at it. Drawing on the questions outlined above, as well as other directions explored in this review, the authors suggest that further consideration of the following themes might be fruitful:

- bringing together key thinkers mentioned in this paper, as well as others (such as public service leaders, built environment professionals and commentators), in a public forum to discuss the issues arising from this research, and demonstrate Grosvenor's willingness to learn and to lead. This could coincide with any planned events to mark the decade since completion of Liverpool One;
- deeper investigation into issues concerning: rights, codes and behavioural norms; boundary conditions; types of publicness. Liverpool One presents itself as an ideal case study.

The role of the private sector in providing public spaces is established and proven, yet still evolving. It is an important area of enquiry within the disciplines of law, planning and design and (like the internet) participants continue to negotiate a range of models which best answer the needs of commerce and society.

DL &MD 13.01.17

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END OF REFERENCES / APPENDIX FOLLOWS

APPENDIX / Search resources

This literature review is the product of desk-based research, in addition to the three interviews mentioned in the Introduction. The review made use of the following library resources (accessed through the library of the University of the West of England, Bristol):

Avery index: key search term "public private space".

Arts and Humanities Full Text: key search term "privatisation of public space".

British Humanities Index: key search terms "privatisation of public space", "public private space".

International Bibliography of the Social Sciences (IBSS): key search term "privatized public space".

Periodicals Archive Online: key search term "private public space".

PAIS Index (Public Affairs Information Service): key search term "privatisation public place".

NEXIS (UK and US newspapers): key search terms "public private space/place", "privatisation of public space/place"

In addition, the search included national newspapers and institutions including:

- **House of Lords Select Committee on National Policy for the Built Environment;**

- **House of Commons environment, food and rural affairs select committee;**

- **House of Commons Communities and local government select committee;**

- **Demos;**

- **Gov.uk**

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