Land readjustment as a global land tool: focus on the Middle East

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Findings in Built and Rural Environments

Sixty second summary

Many of us now live in cities that are hundreds or thousands of years old. An inevitable consequence of the organic and informal nature of the growth of cities is that radical change to their physical structure is needed from time to time, if they are to thrive and prosper. There needs to be some way in which the fabric of cities can be amended and re-structured to meet the ever-changing needs of the population. The means by which land can be reassembled for urban development has become a worldwide need. The two common methods – voluntary cooperation between land-owners and compulsory purchase by public authority – only represent opposite ends of the spectrum, and consequently other more intermediate methods are often ignored. This study by Rob Home of Anglia Ruskin University, UK, provides a background to land readjustment in order to raise awareness of its possibilities in the English-speaking world.

Although land readjustment has been used in urban settings since the beginning of the twentieth century in Europe, it has, with the exception of Japan, never established itself as a prime tool for urban planning. But it has been used in other parts of the world, often with great success. In particular, it has been used in Israel and the Lebanon. For instance, in Israel land was combined and repartitioned to create land for public use, rather than for resale to finance construction. However, even where it has been successful, its use is declining, possibly because of burden of the bureaucratic process involved.

The most promising area for land readjustment in the future is in the peri-urban areas of cities, particularly in developing countries. For this to succeed, it is recommended that this process needs sponsors and enthusiasts. If land readjustment is flexibly applied, according to Rob Home, it offers the potential for local community involvement, encouraging partnership between stakeholders, while maintaining an element of compulsion. In conclusion, land readjustment as a management tool for reorganising development should remain relevant, particularly within a rapidly urbanising world that has increased population upheaval and mounting pressure upon the increasingly scarce land resource.
Introduction

The world’s urban population has been growing rapidly and now represents over half of the total human population. Many of us now live in cities which in many cases are hundreds and in some cases, thousands, of years old. It is an inevitable consequence of the organic and informal nature of the growth of these cities that, from time to time, there is a need to make radical changes to their physical structure if they are to continue to thrive and prosper. However, given the nature of land ownership in most cities in the world – with land being held privately – it is often difficult to make radical changes.

As a consequence, land reassembly for urban development has become a world-wide need. There are two common land assembly methods for urban development:

- Voluntary cooperation between land-owners, or;
- Compulsory purchase by a public authority.

However, these two approaches represent opposite ends of the spectrum, meaning that other intermediate methods are often ignored.

For example, the fundamental review by the UK Department of the Environment, Transport and the Regions (DETR) in 2001 and the subsequent Planning and Compulsory Purchase Act 2004 made ‘little investigation of alternative methods for land assembly’. As Rob Home of Anglia Law School, Anglia Ruskin University, reports, suggestions were put forward for assisted land pooling, but this particular review did not take them seriously.

According to a study by Sanchez-Jordan and Gambaro in 2002, the potential for a transnational harmonisation of law and practice in land management is now receiving more attention – and evidence suggests that this does seem to be the case. For instance, in 1996 the United National Economic Commission for Europe created a Working Party on Land Administration with the aim of exchanging experience and promoting real estate markets for those countries in transition from socialism, wanting to join the European Union.

This study provides us with a background to land readjustment (LR) and further explores its use in a number of countries. Rob Home seeks to raise the awareness in the English-speaking world of new approaches to land management tools and land readjustment. He suggests that LR could be an attractive alternative to existing approaches, commenting that ‘this is particularly the case where public funds for compulsory purchase and infrastructure provision are limited.’

To begin with then, we need to consider what these approaches actually are.

The land pooling/land readjustment (LR) approach

Let’s focus on the LR method. How does it work?

Well, it facilitates development in three different ways:

- It combines the assembly and repurcilling of land for better planning;
- It provides financial mechanisms to recover infrastructure costs;
- It distributes the financial benefits of development (also known as betterment, or the added value that can be created by planning permission) between land owners and the development agency.
**Land Readjustment (LR) – Assessing the Facts**

While LR is the common term used, there are others. These include:
- Land pooling
- Replotting
- Land re-assembly
- Parcellation
- Repartition
- Kukaku seiri (KS) (in Japan)
- Umlegung (in Germany)

Whatever name it goes by, there are generally seven key stages of LR:

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So how does it work? Rob Home gives us a hypothetical example.

An individual plot of 0.4 hectares included in a scheme of 3.6 hectares would comprise 11% of the land area. Its value in existing use (agricultural) might be £4,000 per hectare (£1,600 for the plot), while serviced development land could be worth £200,000 per hectare. If 40% of the land is taken without compensation, the owner would receive back 0.24 hectare, now valued at £48,000, and representing a big capital gain.

The owner is then free to develop the plot for his/her occupation, or to sell it, and may enjoy certain tax exemptions. The development agency benefits from the sale of its plots to fund infrastructure, and avoids paying compensation for land expropriated.

But just how is LR used in practice?

The technique is applicable in a variety of situations, for example:
- Town expansion into peri-urban areas, where there is fragmented land ownership lacking planning or infrastructure;
- Tangled mediaeval or pre-industrial ownership mosaics requiring replanning for modern road layouts;
- Environmental protection areas, for example coastal or waterfront situations where environmental conservation would be facilitated by the rearrangement of frontage ownerships;
- Regeneration sites within urban areas where land assembly may be difficult, and where land-owners may try to get a higher price through ‘hold-outs’.

But, as Rob Home suggests, ‘LR needs certain conditions to work’. So what are they?
What are the conditions needed for LR to work?

For LR to work, there needs to be:

- A legal regulatory framework, with dispute resolution mechanisms;
- Adequate cadastral records;
- A development agency, that has public confidence and appropriate technical expertise;
- Political acceptance and willingness to share development values between public agency and private landowners;
- A functioning land market with accepted valuation rules, and rising land values.

Taking these conditions into consideration, what can we learn from the experience of others in implementing LR? Are there points for and against the use of LR?

Rob Home tells us that, on the one hand, LR facilitates fully-serviced urban development without direct public funding, and particularly suits high-value plots in a strong market. Planned development, suitable for modern requirements, can replace historical land patterns. In such cases, infrastructure can be funded from the shared profits of the development and the landowners get a value up-lift, which they would not have achieved under compulsory purchase rules. Through this process, landowners also meet their wider social obligations.

However, on the other hand, Rob Home states that ‘there is an element of compulsion, and procedures can be complex and slow but so is land assembly by other methods, and small owners may lose out if their plots are reduced to an uneconomic size.’

Now we know the facts, let's focus on the international growth of LR. As it is a relatively recent concept for urban situations, just how has it developed?

The international development of LR

In an urban setting its origins are in Germany and are often attributed to the 1902 Lex Adickes of Frankfort-am-Main. This city's expansion was hindered by ancient inheritance laws, which created long, narrow strips of land difficult to convert for development. The mayor of the city, Franz Adickes, steered enabling legislation through the Prussian Parliament, the application of which was extended by the Prussian Housing Act 1918.

But how did LR transfer to other nations? Well, the method was also subsequently applied in other parts of continental Europe. For example, French legislation, updated in the Code de l'Urbanisme 1985, empowered Reallotment and Development Associations. It was used by some small municipalities to reform unauthorised and fragmented land holdings.

Further afield, as reported by Nishiyama in 1982, and Siman in 1990, the transfer of German LR to Japan shows a striking international diffusion. As Rob Home explains, ‘German legislation was translated into Japanese, and adapted in the 1919 City Planning Act’. Reconstruction after World War Two led to 30 per cent of urban Japan being replanned through the application of LR by 2000. As Sorenson reported in 1999, and subsequently in 2000, this was the biggest application of LR by any country and is often referred to as ‘the mother of urban planning in Japan’.

Nevertheless, while its success was attributed to the long Japanese tradition of hierarchy and deference, landowners have recently forced the abandonment of many projects, claiming violation of their constitutional property rights.

Following the apparent success of LR in Japan, LR has now been applied to other Asian countries, including Korea, Indonesia, Nepal, Thailand and Malaysia.

On the other side of the world in the USA, LR has had limited success. Several states, including Hawaii, California and Florida, have tried to introduce LR. However, while the enabling legislation was promoted, the plans were later blocked by developers and LR has not significantly established itself.

We can see that LR has had mixed success across the globe, but how has it fared in the UK? As Rob Home reports, ‘In the UK, which prides itself as a pioneer of modern town planning, LR is absent’. This, he says, ‘can be attributed mainly to the British culture of private property rights and relatively concentrated land ownership’.


So it is evident that the UK has not yet embraced LR, but what has been its impact elsewhere?
Land readjustment as a global land tool: focus on the Middle East

Mixing of Ottoman and European systems has resulted in successful variants of land pooling and LR

LR and the Middle East

1858 – the Ottoman Land Code and Registration Act

Clan, or group, organised land generally prevailed over land owned by the individual until the twentieth century. In 1858 the introduction of the Ottoman Land Code and Registration Act required land owners to register their ownership. The reasons behind this were that it would allow the state to exercise greater control and would increase tax revenue. The Ottoman Code also produced new forms of land tenure.

The Middle East is often overlooked in LR literature but, according to this research, has the potential to be a prime location for LR to prosper. As Rob Home reports, ‘Ottoman law, which dominated the region for centuries, gave the Sultan ultimate sovereignty over land, and the Musha’ system provided for the periodic redistribution of village land in customary joint ownership, with temporary partitions and auctions at intervals of between two and nine years’.

Definitions

Miri land – this is state land, suitable for agricultural use. In Miri land, the land owner is the state but the legal rights to use and benefit from the property belong to the individual.

Musha – communal land, where the whole territory was undivided and jointly owned villages collectively farmed crops.

Tapu – an official document that states the legal ownership of a property, a title deed.

The 1858 Ottoman land code reaffirmed the state's ultimate land ownership rights, and included various provisions relevant to LR. Then, in 1935, Goadby and Doukhan reported that users and cultivators of Miri land had to record their rights in a state land registry (tapu), and then public authorities could tax betterment, and expropriate land for public purposes without compensation.

After 1918, the British and French governments assumed administration of a large portion of the Middle East under a League of Nations mandate. The mixing of Ottoman and European systems has resulted in successful variants of land pooling and LR.

The Middle East – a glimpse back into history

League of Nations mandate – There were a number of territories established under Article 22 of the Covenant of the League of Nations on 28 June 1919. These territories were once controlled by states such as the Ottoman Empire and Imperial Germany, who were defeated in World War One.

The mandate removed sovereignty of the previously controlling states and transferred mandatory powers to individual states amongst the Allied Powers (French Republic, British Empire, Italy, Imperial Russia, and the United States). Countries were divided into three different mandate groups. Palestine was one of the ‘Class A’ mandates over areas formerly controlled by the Ottoman Empire (together with Lebanon and Syria).

However, despite the seemingly favourable conditions for LR in the Middle East, it has been somewhat overlooked. Let’s take a closer look at some of the key cases in the implementation of LR in the Middle East to establish a clearer picture.

Case Study: Repartition in Palestine/Israel

The British Mandate administration in Palestine included in the 1921 Town Planning Ordinance LR provisions (called ‘parcellation’). Under these provisions building permit approval within a town planning scheme required prior approval of a parcellation scheme. In addition, local town planning authorities could impose their own schemes.

The state of Israel, which succeeded the British mandate for most of Palestine, incorporated similar provisions into the 1965 Israel Planning and Building Law. This meant LR schemes could combine and repartition land into jointly owned plots, with or without consent from the owners.

Repartitioned land was re-valued, schemes were registered with the Land Registry, and land-owners rejecting the scheme could call for the public authority to acquire their interest. After 1948, repartition powers were widely used for urban expansion in the fast-growing Israel. The process was driven by rising land values, and by the costs and delays of compulsory purchase; it allowed land to be reserved for public purposes and a better road infrastructure achieved, at minimal cost to the public authority.

The repartition tool is now well established and is used to create land for public use, rather than for resale to finance construction. Municipalities can claim a minimum of 40% of the land (sometimes up to 60-70% for schools and other public facilities).

Surprisingly however, despite evidence that indicates its success, the use of LR in Israel is declining. Why? Rob Home comments that a factor may be that owners are reluctant to surrender their capital gains to submit to a lengthy bureaucratic process.

In fact, recent court judgements have reflected the trend towards property-rights protectionism, eroding the 40% retention, and requiring the land use rezoning process to be separate from the repartition exercise. A study by Alterman in 2002 showed that the Supreme Court has maintained that the repartition procedure has not replaced or bypassed the municipality’s right to levy betterment, so that betterment levy is additional to the land tax for public use.

Is this reflective of the experience across Israel as a whole? Rob Home took a look at the Israeli experience of LR at a more local level.
Focus on Haifa, Israel

Haifa is a major port town and industrial centre in northwest Israel, located at the foot of Mount Carmel. It was occupied by the British Forces in 1918 and subsequently became part of Palestine, of Israel after 1948.

Haifa is a key example of repartition in operation. Historically in the Ottoman and Mandate periods Zionist development companies bought and subdivided land, particularly on Mount Carmel. Many such developments failed to recognise the hilly typography of the land, which made it nearly impossible to develop.

In 1934, the town planning scheme for Haifa provided for repartition. Later, in 1945, the planning scheme stopped future development in some areas pending repartition through a specialist service in the city planning department. This meant the municipality could claim 40% of the land without compensation for public purposes.

This service involved assembling the title deeds from the Land Registry, tracing and notifying land owners, depositing a draft scheme for comment and objection, and hearing objections before a local or district planning committee. As part of this process, the valuation took account of the degree of slope, reallocation of land for roads, and development costs. If two adjacent plot owners could not agree on a boundary the municipality was able to buy them out.

In Haifa, this procedure was largely applied to land with potential for high-value residential development where the development gain compensated the owners for surrendering land.

Repartition seems to be maintaining a strong presence in Haifa. Let's now travel north from Israel into Lebanon and consider the situation in Beirut.

Case Study: The Solidere Region in Beirut, Lebanon

The Lebanese civil war (1975-91) left Beirut severely damaged and divided into territories that were controlled by numerous religious-based militias. The city was largely divided between the predominantly Christian east, and the largely Muslim west.

A redevelopment initiative took place in the city after the war, and it slowly began to rebuild itself. Today, Beirut is the capital and largest city of Lebanon, and is a major seaport.

This post-war redevelopment gives an example of land-pooling for central area redevelopment. According to work by Stewart in 1996, damage from the civil war was estimated at US$25 billion.

The redevelopment of the city centre was seen as a political necessity, but was complicated by the extreme fragmentation of property rights between multi-generational family ownerships, and by complex tenancy structures. In 1991 the Lebanese parliament approved a master plan after intense debate and substantial modifications. This plan proposed a ring of urban motorways around an ‘island of modernity’ and required land to be assembled into large development sites, erasing much of the previous land ownership make-up, demolishing 80% of the old city area, and increasing development density four-fold.

The British model of the London Docklands Development Corporation partially influenced the move in Beirut to hand the central area over to a private development company. Municipalities were empowered by Lebanon’s national Law 117 of 1991 to create real estate companies for redevelopment of areas destroyed by war. This locked property owners and occupants in a compulsory association with property investors, with property owners offering their rights as equity, and property investors offering the equivalent in cash (after land valuation).

London Docklands Development Corporation (LDDC)

In the early 19th century the Docklands in London were thriving, employing people in international trade, warehousing, the manufacturing industry and many other businesses. However, during World War Two much of the docklands was ruined through bombing, and a lot of the infrastructure was destroyed. This initiated a steady decline for the Docklands, with many jobs eventually being lost.

LDDC, a quango agency set up in 1981 by the UK Government to regenerate the Docklands area of East London, was involved in the creation of London’s Canary Wharf, London City Airport and the Docklands Light Railway, to name but a few. Although local residents and their respective local council’s were initially opposed to the redevelopment, it brought new jobs and employment opportunities to the area, as well as highly coveted housing, and is now generally considered a success story of large-scale city development and regeneration.
Solidere, incorporated in 1994 and underwritten by $300 billion in bonds from foreign (largely in Saudi Arabia and the Gulf) investors, is the real estate company responsible for the redevelopment and reconstruction of Beirut central district. ‘Type A’ shares, issued to 100,000 existing property-owners, represented 65% of the total shares, at an estimated value of US$1.2 billion.

Phase 1 (1994-1999) concentrated on infrastructure and built a ring of urban motorways, separating the central area from the rest of the city. The Lebanese economy was not recovering quickly enough to make property development a profitable option. However, following the events of 9/11 Arab investors returned to Lebanon, perceiving it to be more secure than America, with a shared culture.

However, this redevelopment, and the role of land pooling within it, has created a debate in Lebanon about collective memory, contested space, and new cultural identities. The Solidere project has been criticised over the destruction of 5,000 years of material heritage, including both buildings and archaeological remains. According to a study in 1998 by Naccache, this was a result of the downtown area being redeveloped without archaeological assessment, resulting in a wasted opportunity for a new inclusive Lebanese history.

As Rob Home reports, ‘The dissolution of historic patterns of property removed the heritage and memory of the old city, a pattern typical of radical central area redevelopments, as economic activity moves to the suburbs.’

A consequence of the redevelopment of Beirut has been the rise of grassroots movements in reaction to the lack of public consultation and community criticism, and in order to preserve and protect the environment. Land-pooling in Beirut took place out of necessity – the redevelopment of the city centre was a political requirement. However, the redevelopment of the city has received criticism, as much of the city’s history was destroyed.

It is clear from this that LR has been tried with varying degrees of success in countries around the world, and in different settings.

This seems to suggest that LR has not been as successful as Rob Home feels it could be. So what can we take away from this research – will LR be a success in these and other areas in the future?

**Drawing conclusions from the research**

So, what does Rob Home think? Well, he comments that ‘LR offers the potential to re-plan areas without the costs of compulsory land acquisition, combining a measure of coercion with the opportunity for land-owners to benefit from the higher land values created by the scheme.’ He continues by adding that while LR can be used in a variety of situations, it is largely used for peri-urban development, as well as for reconstruction after both man-made and natural disasters.

Increased state registration of property rights, together with increased public control over land use rights, has meant that the legal tools for implementing LR are often considered to be part of the land management capabilities of the modern nation state.

Rob Home believes that for LR to become well-established it ‘needs sponsors and enthusiasts.’ In Britain and other jurisdictions of common law tradition, LR has not become an integral part of land management. This is largely due to the strength of individual property rights, despite post-war reconstruction offering a clear opportunity for land readjustment to be introduced. The 2004 Planning and Compulsory Purchase Act preferred marginal adjustments of existing compulsory purchase procedure, as opposed to the more radical or fundamental experimentation LR represented.

Despite there being recent examples of LR from Israel and Lebanon, which indicate both its strengths and weaknesses, there has been little reference to the Middle East in LR literature. As Rob Home summarises, ‘In Israel (and also in much post-war reconstruction in Europe, Japan and Lebanon) it offers the potential for forgetting painful or uncomfortable past, and this is perhaps one of its social roles.’

One last point: Rob Home concludes that the use of LR seems to have declined in recent years, and there has been an increased emphasis on private rights to property, and land owners’ opposition to official (rather than open market) valuations. But, one should not interpret from this that LR is becoming outdated. According to Rob Home, if LR is flexibly applied, it will allow for a choice of agency and offers the potential for local community involvement. It can also be sympathetic to current neo-liberal philosophies of partnership between stake-holders, while maintaining an element of compulsion.

LR as a management tool for reorganising development should remain relevant, particularly within a rapidly urbanising world that has increased population upheaval and mounting pressure upon the increasingly scare land resource.

As Rob Home concludes: ‘Much depends, however, upon availability of the necessary expertise and a willingness of legal and social institutions to adapt and innovate.’

**About the study**

This study was carried out by Rob Home, Professor of Land Management at Anglia Law School (Anglia Ruskin University), with a small grant from the RICS Education Trust, which allowed him to visit Israel and Lebanon to conduct field work in Haifa, Netanya and Beirut.
RICS (Royal Institution of Chartered Surveyors) is the largest organisation for professionals in property, land, construction and related environmental issues worldwide. We promote best practice, regulation and consumer protection to business and the public. With 130 000 members, RICS is the leading source of property related knowledge, providing independent, impartial advice to governments and global organisations.