'Clubification' of urban public spaces? The withdrawal or the re-definition of the role of local government in the management of public spaces.

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Abstract

This paper reports on a case study on the forms of urban public spaces governance that are emerging in the UK out of a rearrangement of governance responsibilities between local government, communities and private interests. Based on cases of public spaces in London under a variety of different governance arrangements, the paper critiques the dominant explanations of those processes and suggests a far more complex picture in which empowerment and disempowerment of stakeholders of various kinds happen at the same time, along complex lines defined by geography, strength of stake and representation of that stake in a formalised governance transfer contract. As the paper suggests, the resulting 'localisation' of governance, the devolution of governance responsibilities to those local actors with the stronger stake on them, does not intrinsically reduce the publicness dimension of public space, but it reshapes that notion towards one with a variety of 'publicnesses'- with their own governance dynamics and positive and negative consequences.

Key words:

Public space governance; publicness; club goods; contractual governance; London

Introduction:

Anyone walking around parts of London is very likely to encounter publicly-owned open spaces which, although seeming to conform to the traditional notion of 'public spaces' – i.e. owned by and maintained by local government on behalf of the general public - are in fact governed and maintained by a plethora of organisations outside the public sector, entrusted to secure 'publicness' through a variety of rather complex contractual arrangements. This paper looks at those public spaces and their governance, and examines the kind of publicness they express and its broader implications.

The off-loading of governance and management responsibility over public goods has a long history of controversy and opposition, but it has nevertheless been given a considerable push with the recent financial crisis and the austerity measures that have come to dominate many western economies (see e.g. Raco 2013, Hasting et al. 2015, Peck 2012). In the UK, the off-loading takes place in the context of a long process of redesign of the role of the state under a powerful mix of ideological aspirations for a reduced state and the move to adapt the economy and society to a globalised economy, which has been at play for around 30 years. Its latest incarnation has taken the shape of 'devolution of power' over many public goods, from government to regional, local government, and civil society, and goes hand in hand with a search for alternative ways to fund public services (Lowndes and Pratchett 2012).

Local authorities have used this devolution of power framework to transfer in part or as a whole governance and management responsibilities for local public services to interested parties in civil society, under what some have termed contractual governance (Peel et al. 2009, Vincent-Jones 2000). In what concerns the provision of public spaces in the UK, there has been a proliferation of long leases to allow the transfer of public land containing, or designated to contain, parks and green space to not-for-profit trusts. There has also been an increase in the use of the 2002 Right to Manage legislation to transfer the management of local authority housing estates and their grounds to resident-led management bodies. Public Private Partnerships and Private Finance Initiative mechanisms have been increasingly used to create build-operate-transfer contracts to re-develop and manage public spaces, especially when capital investment in them is an issue. Similarly, there has been a wider use of simpler contracting-out instruments transferring all or some public space governance responsibilities to a contractor and a multiplication of less formal arrangements that incorporate stakeholders in governance decision-making. The implications of this process for the nature of public spaces can be significant, even if the changes are imperceptible to, and go unnoticed by, most public space users.

Not surprisingly then, there is considerable literature on what has been perceived as the withdrawal of the state from the provision and management of public spaces (see Low and Smith 2006, Law 2002, Minton 2006, 2009, Németh and Schmidt 2011, Langstraat and van Melik 2013, Watson 2006).

This literature draws on long-standing debates about the changing nature of the state and of the relationship between state and markets, the public and the private, and the extension of forms of commodification into social life. In most of the pre-financial crisis literature, the decreasing presence of the public sector in the provision and management of public spaces is associated with a more assertive role of market forces in urban governance in the 1980s and 1990s –especially in large US cities (see Kohn 2004, Sorkin 1992). The literature explains this shift as the corollary of the dominance of 'neo-liberal' or pro-market approaches to politics and to policymaking, and the emergence of the 'entrepreneurial' city. That decrease was therefore seen as a process of privatisation in which corporate interests were taking over public spaces, through direct provision in the context of privately-led urban regeneration projects and the multiplication of privately-owned public spaces (Hayden 2006), or through the private management of publicly owned spaces, as in the case of Business Improvement Districts (Minton 2009, Ward 2006). Some have even suggested the 'death of public space' (Sorkin 1992) as the outcome of the commodification and privatisation of such spaces, increasingly submitted to the logic of profitability, with adverse consequences for an inclusive democratic polity.

More recently, the post-financial crisis literature focuses on the impacts of austerity policies and the search for resources to provide and manage public goods outside the public sector. Part of this literature follows up the theme of privatisation, as a cash-starved public sector sells its assets to the highest bidder in order to obtain the necessary resources to invest in underfunded public services (see Raco 2013, Whitfield 2012). Some, however, have focused on the potential for a new citizen-state relationship that process facilitates (see e.g. Pestoff and Brandsen 2010). At the extreme end of this argument and as regards public spaces, difficulties in progressing with capital-intense redevelopment operations have offered opportunities for the temporary takeover of public spaces by activists and community groups in the name of an alternative, more democratic publicness. These alternative forms of public space provision and management would represent a form of resistance urbanism, a creation of a new 'commons' countering conventional 'neoliberal' urbanism and suggesting embryonic forms of citizen empowerment (Kohn 2013, Lubin 2012, Gursozlu 2015, Eizenberg 2011).

Nevertheless, spaces widely regarded as public have not become islands in a sea of corporatised spaces. On the contrary, when looked in detail and with broader criteria there is evidence that old and new public spaces have flourished (see e.g. Carmona and Wunderlich 2012, Koch and Lathan 2014). Moreover, the few, occasional, and temporary acts of radical takeover have not brought about a new type of state-citizen relationship. Instead, by and large local governments and communities have been devising ways to secure that existing public spaces somehow meet their aspirations and fulfil the functions expected from them. Much more numerous than the emblematic corporatised spaces and their opposite, the protest takeover spaces - and more significant for the daily life of the majority of citizens - are those public spaces of the type suggested earlier, in which governance and

management regimes have changed as a response to austerity, but also often as a response to historical demands from those with a stake in them. This has taken place in some planned and some ad-hoc fashion, through various forms of transfer of governance and management responsibility from the public sector to a plethora of other actors from the private, voluntary, and community sectors, as indicated earlier. Whereas those governance transfers might not be as dramatic as straightforward cases of corporate provision or the opposite, activist takeover, they raise fundamental questions about the very nature of publicness. As a public realm uniformly owned and managed by elected local government agencies turns into a public realm with a varied mix of governance arrangements, involving stakeholders with their own specific interests, it might no longer be accurate to talk about 'publicness' as a homogenous concept.

However, whereas the conceptual frameworks for discussing 'privatisation' or 'commonisation' are well developed, there is not much reflection on the hybrid forms of governance that emerge from the transfers discussed here. Yet, they are becoming more and more widespread, raising concerns about how to secure an acceptable degree of publicness, however defined, once direct control by elected local governments is replaced by contractual dispositions that recognise the rights of particular bodies, be they made up of local residents or business interests to have some power to manage public spaces. Foremost among those questions are whether those changes have a systematic negative impact on some groups in society, whose interests might not be properly incorporated in those governance and management transfer mechanisms; who gains and who loses; and how a democratic society could oversee those transfers and make them accountable.

These are not purely academic concerns. There has been increasing policy concern in the UK with the poorly understood consequences of the proliferation of public spaces outside direct local government control (see e.g.,London Assembly 2011), reflected in turn in the popular press and informing some of the academic debate quoted above.

A starting point for understanding what those arrangements mean and their implications should be a characterisation of the sort of publicness they embed, and of the interests and stakes they express, as well as the governance regimes they give shape to. That would require a relational conceptualisation of publicness that could address the manifold stakes that people and groups of people might have on a public space, the relative power of those interests, the ways they are negotiated and prioritised, and how that process might be rendered accountable and acceptable to those involved and to society as a whole.

With that purpose, this paper adopts a non-normative understanding of publicness based on the distribution of the relative rights to access and use public spaces and their attributes and to have a say in their management. This approach is applied to the findings from a case study research on alternative public space management arrangements in London (RICS 2015) to examine how those rights are incorporated in those arrangements, how powers and responsibilities over those rights are

distributed among stakeholders and what sort of publicness(es) and governance systems those arrangements create.

The next section outlines the framework for looking at publicness through the lens of rights, with a discussion of how governance arrangements shape the allocation of those rights. That section also explains how the analytical framework was applied to the case studies. This is followed by a discussion of findings for the individual cases, which leads to the formulation of a number of emerging patterns of public space governance with their specific challenges. Conclusions follow on the potential implications of those diversified patterns for society as a whole.

The approach: publicness and governance rights

Defining 'publicness' is not a straightforward matter, as there are as many understandings of the term as there are papers about it. Most of the academic discussions on the subject adopt a normative stance, centred on an ideal model of publicness to which all individual spaces should aspire. The criteria defining that model vary considerably, from issues of ownership, to the nature of the users, to the type of relationships public spaces should foster, to design elements, etc. (see e.g. Ellin 1996, Varna 2014, Low and Smith 2006, Mitchell and Staeheli 2006, Watson 2006, Benn and Gauss 1983, Németh and Schmidt 2011). Publicness, therefore, would be an absolute concept with a measurable dimension, with spaces being more or less public the closer or further they are to the norm. However, whereas it might be desirable that all parts of the physical public realm should conform to the same norms and standards as the best public spaces, the fact is that they do not and, given the wide difference in purpose among urban public spaces, there is no reason why they should (Carmona 2015).

Drawing on the literature on property rights and the commons, this paper takes a non-normative view of publicness, understanding it as the result of the allocation of rights and responsibilities over a space and its attributes, and therefore a relative concept (Colding et al., 2013, Lee and Webster, 2006, Németh 2012, Boydell and Searle 2014). The outcome of this process can have many forms rather than a single ideal one, depending on the context and the interests at play (see De Magalhães 2010). By looking at the distribution of rights and responsibilities over a space, it is possible to conceptualise 'publicness' in a way that takes into account the conflicts and tensions that characterise the sharing of that space as well as the power relations within it. At the same time, it allows for an understanding of how these conflicts and tensions are managed and governed, and on whose behalf.

The idea of 'publicness' as a relative concept, shaped by the allocation of rights and responsibilities over a space and its attributes, can be linked to Arendt's work on the meaning of the 'public realm' and the 'common good' (Arendt 1998). Arendt traces the historical evolution of these two concepts

to demonstrate their 'hybrid' nature, meaning that both concepts entail public and private matters at once, which is different to their generally assumed 'public' nature. Drawing on Arendt's argument, the analysis of public spaces (a type of 'common good') should acknowledge the inherent conflicts between their private nature – the concrete individual interests over a concrete public space – and their public nature – the societal concerns about the management of that public space. Following up this logic, the idea of 'public space' as a 'common good' provided for an undifferentiated collective (i.e. 'the society' or 'the people'), would ignore the existing individual interests over that space. That, Arendt would argue, would be a misrepresentation of the true 'hybrid' nature of public space, linked to the negotiation process that happens when both individual and collective interests are considered (Arendt 1998). Accordingly, it would make sense to understand 'publicness' as a relative concept shaped by such negotiation process.

The focus here is on the basic rights associated with a space that is accepted as 'public'. The first of them is the right of *access,* since the general expectation is that a public space should be provided and managed in a way that secures a relative open access to most members of society. This formulation accepts Webster's (2002) point that that very few urban public goods – public spaces included - are public in the sense of absolute openness to access by everyone, and in many respects those spaces and their attributes will be accessed in a more restricted way by those excluded from them by e.g. access costs, property prices. Rights of access encompass rules and mechanisms that regulate whatever restrictions there might be on how individuals access the attributes they value in a particular public space, be they physical access to the site or the access to a facility.

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

Thirdly, people would expect that the users of a public space, the public, would have some say on key decisions regarding its management and future, even if indirectly. This would represent a third basic right, the right of *control* (or accountability). Rights of control and accountability refer to the rules and mechanisms through which a variety of stakes in a particular public space are recognised and heard in its governance and management, and through which conflicts and disputes between different stakes can be solved.

Therefore, publicness could roughly be defined as a function of the basic attributes of access, use and control/accountability, and the distribution and exercise of the rights associated with them (see De Magalhães and Freire Trigo 2017 for a fuller discussion). Drawing on Ostrom's (2003) conceptualisation of the governance of common pool resources, that distribution and exercise of rights to access, to use and to have a say is itself shaped by a negotiation process that involves the

allocation of rights to manage, regulate, exclude, dispose, etc., which make up public space governance (see also Foster 2011 and Garnet 2012) . In other words, the negotiation process through which these rights are defined, bundled up, unbundled and allocated defines public space governance, which in turn affects how the rights that characterise publicness are themselves allocated and exercised (Figure 1).
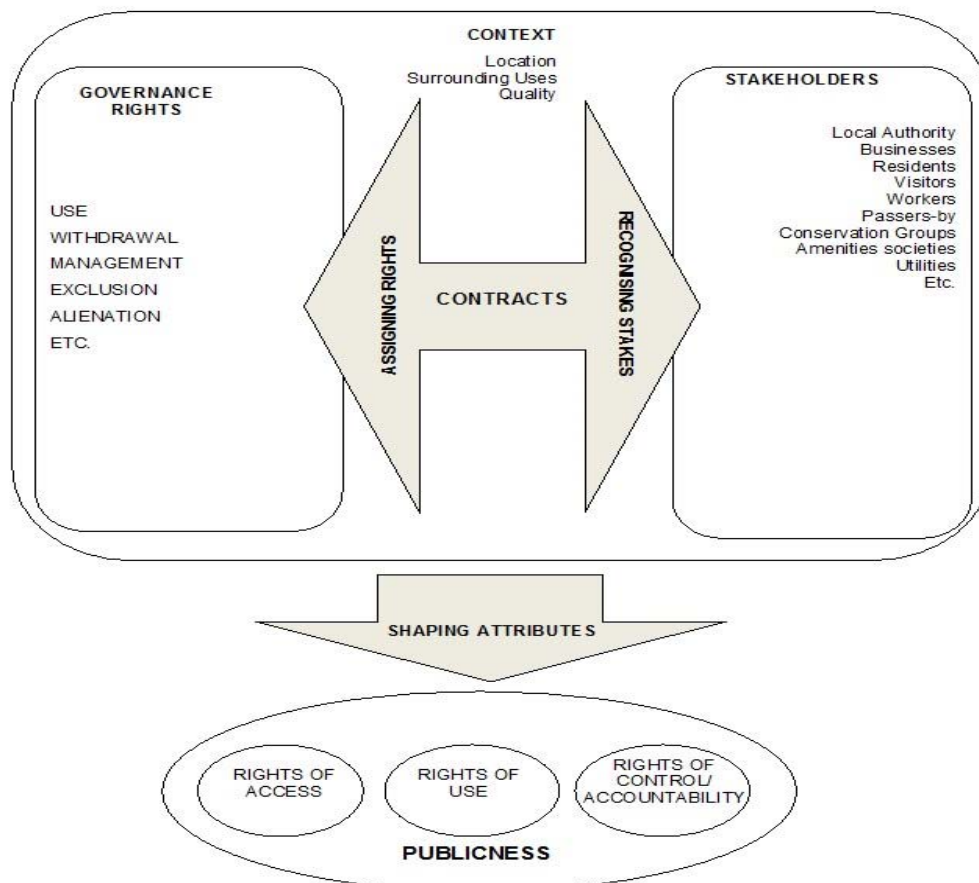

Figure 1: Analytical Framework. Relationship between management transfer contracts, the reallocation of governance rights and the impact on publicness

This analytical framework was applied to seven cases of management transfer agreements of open public spaces across the South of London (Figure 2), which have been drafted the last 15 to 20 years (see RICS 2015) (Table 1). The paper examined the transfer mechanisms by which local authorities reallocate the governance rights that shape publicness to selected stakeholders (trusts, residents' associations, private companies, etc.), who are then entitled to exercise those rights within the framework of the transfer agreement. The way those rights were exercised in each case inevitably influenced how different groups and actors could exert their rights of access, use and control accountability that we associate with publicness. The cases combined examples of different types of management transfer mechanisms, different types of organisation to which management

responsibilities had been transferred, and a diversity of locational contexts with their own pressures on public space management. All cases were publicly owned open spaces - i.e. the local authority or other public bodies are the freeholders of the land - but governance functions had been transferred to third parties.

In each case we explored how management contracts and agreements dealt with 'publicness', defined as right of access and use, and the nature, degree and form of exclusions and limitations; and the mechanisms of accountability for decisions about investment, layout, opening times, access rules and codes of behaviour. Information from each of the cases regarding the distribution of power and responsibilities over issues of openness/accessibility and accountability led to a 'typology of publicness' and its governance. The typology relates to the nature of management arrangements, to the variations in the attributes of publicness, and to the roles of the various stakeholders (i.e. the governance/management rights transferred to them). The typology was used to understand what sort of governance 'regimes' are emerging from the variety of management transfer arrangements, and what could be the implications of these 'regimes' for public spaces and for urban life.
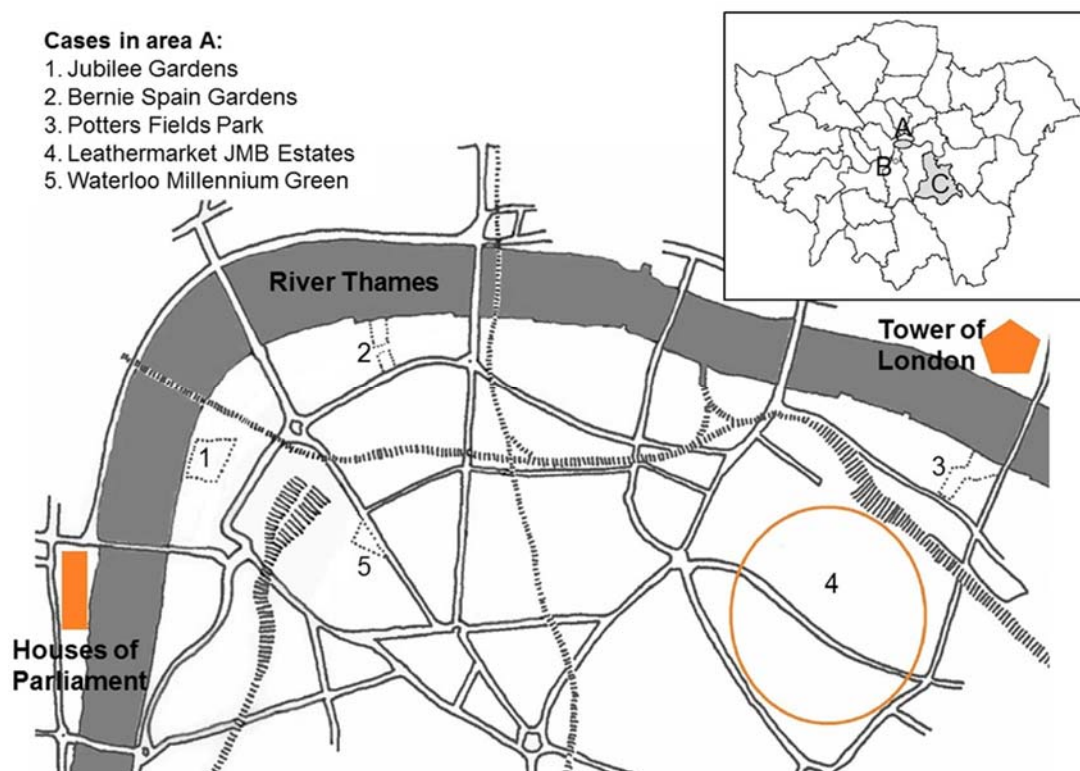

Figure 2. Location of the cases in London.
A) Cases in Lambeth and Southwark; B) Myatts Field North Estate (Lambeth); C) Lewisham Parks (Lewisham).

Cases	Type
Myatts Field North Estate	PFI management of grounds of social housing estate (25-year contract)
Leathermarket Area Estates	TMO (tenants' management organisation) management of public spaces in social housing estates (5-year renewable contract)
Potters Fields	Local authority park leased to private charitable trust (30-year lease)
Waterloo Millennium Green	Local authority park leased to community organisation (999-year lease)
Bernie Spain Gardens	Park in public land leased to a housing development cooperative (99-year lease)
Jubilee Gardens	Park in public land in a secondary leased to a private charitable trust (135-year lease)
Lewisham Parks	Contracted-out full management of all parks within Local Authority area to private contractor (10-year renewable contract)

Table 1: The case studies

The cases and the findings

The seven case studies suggest two basic types of publicness resulting from the variety of governance and management transfer arrangements. Each type is defined by the way governance rights are transferred to the main stakeholders, the extent to which they can determine basic rules of access and use, and the accountability regimes between the different types of stakeholders and the public space management body.

Stakeholder-shaped publicness

The first type corresponds to cases that have what can be termed a largely self-regulated type of publicness. The exercise of key publicness rights is to a large extent directly shaped and controlled by surrounding residents, businesses, and landlords, to whom a wide array of governance rights have been transferred. Potters Fields, Waterloo Millennium Green, Bernie Spain Gardens, Jubilee Gardens fall into this first type (Figure 3). Their managing bodies formally incorporate a wide range of local stakeholders and the arrangement secures the fullest possible transfer of governance rights to them, including defining rules of access, codes of conduct and, in most cases, the right to raise

revenues from rental of the space and facilities. The result is a form of self-regulated openness/accessibility and accountability mechanisms that are complex but direct and inclusive of the 'key' stakeholders, i.e. those formally recognised in the management agreements.

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

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

The other two cases involve land that belonged to the Greater London Council (GLC), the former London-wide government disbanded in 1986, subsequently transferred to other public organisations before being leased out to the managing bodies examined in the research. Jubilee Gardens was a patch of grass transferred to the Arts Council England and leased out to the Southbank Centre (a complex of theatres, concert halls, exhibition space), which gave a 135-year sub-lease to the Jubilee Garden Trust in 2012. The Trust is a charity set up in 2008 to take over the management of the park after its redevelopment. Its board is composed of up to 16 trustees representing neighbouring landowners, local businesses, residents, and up to 4 co-opted members (the local authority being one of them). It is chaired by the Chief Executive Officer of the South Bank Employers Group (SBEG), the organisation that managed the redevelopment of the gardens. SBEG is a partnership of seventeen of the major organisations in the South Bank area, created to promote it as a destination for leisure and business. The lease gives the Trust full responsibility for managing the park, including enforcement of rules and regulations, but significantly not the power to generate income from the park.

Figure 3: Jubilee Gardens: provided and managed by a trust with almost full governance rights. (Source: authors)

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

All the four cases in this category are open to the wider public without significant barriers. All allow for a great variety of activities to happen in them, akin to a local authority-managed public space. There are differences though, albeit many of them more in paper than in actuality. The extent of the governance rights residing with some of the management bodies, notably Jubilee Gardens and Bernie Spain Gardens, makes them almost the sole responsible for setting out regulations for access and use of the spaces, with codes of behaviour and restrictions to some activities. These restrictions, which include activities such as cycling, large gatherings, rough sleeping, and ball games, come out of concerns with legal liability, but also from the interests of the stakeholders those bodies represent. In Potters Fields and Waterloo Millennium Green, such regulations are the result of complex negotiations between the local authority freeholder and the trust and, although not dissimilar to the two previous cases, they tend to be closer to the by-laws applying to other surrounding public spaces.

Nevertheless, in all cases the 'local community' (surrounding residents, landlords and businesses) have a greater impact in the way openness and accessibility are defined and regulated than any other stakeholder (Figure 4).

Figure 4: Rules of access and use defined by stakeholders represented in managing Trust. (Source: authors)

Accountability rights refers to the way stakeholders are given a voice in the governance of a public space. The four cases in this category have a Trust or company boards as their main loci of accountability, which provide a direct and transparent forum for all those stakeholders represented in the management body, to voice and negotiate their aspirations.

However, this does not apply to all socially relevant stakes. By their own constitution, all these cases privilege the interests of particular groups of stakeholders, who have received the right to oversee the management of 'their' public space on behalf of themselves and the public interest. A first group of stakeholders, clearly recognised in almost all the arrangements, is that of local residents - i.e. those living in the immediate vicinity of the public space, whose interests in a particular public space as users or property owners are recognised as those of the 'local community'. Local residents are directly represented in the board of three of the four charitable Trusts (Potters Fields, Jubilee Gardens and Bernie Spain Gardens) albeit it with different strengths. They also have seats in the steering group overseeing BOST, the managers for Waterloo Millennium Green. Locally based businesses and commercial property owners have also been regarded as part of the 'local community' where they are relevant: they have seats in the board of the trusts in all cases but Bernie

Spain Gardens where surrounding business are tenants of the housing cooperative CCSB – and therefore indirectly represented by it.

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

Therefore, those four places are, and feel like, public spaces, but with the key attributes of publicness determined and shaped largely by the particular interests and aspirations of those represented in the management Trusts. As a public space governance arrangement, it gives strong voice to a selected group of stakeholders. As freeholders, local authorities or other public agencies retain most exclusion rights (the rights to determine who has access), which results in the general public retaining most access and use rights as a condition of the lease. However, full management rights, together with some exclusion and alienation rights (e.g. the right to lease out space for fee-charging events) are transferred to surrounding residents, businesses, property owners, civic groups and other selected parts of the local community. Moreover, those parts of the local community also have an important element of governance rights, namely the right to participate in decisions about the space and in having their aspirations and interests heard and counted in a direct manner.

This suggests a public space governance model with a horizontal break-up of the bundle of governance rights between the local authority and 'clubs' of stakeholders, in the sense of clear attribution of different rights to these two actors (Figure 5). The particular governance arrangements in each space that explicitly privilege some stakeholders and interests over others (i.e. residents of different types of housing, different sizes of businesses and property owners, and civic groups with local focus), clearly separates these stakes from more diffuse, dispersed, and less articulated interests on the basis of their geography, strength of stake and mobilisation capacity. This allows for the empowerment of those with their stakes recognised in the governance arrangement; a better match between the aspirations of that 'club' of recognised stakeholders and the management of 'their' public space; and more direct and transparent accountability lines between management bodies and that community of stakeholders. However, it does so at the cost formalizing differences

in rights. The downside is the risk of disempowering legitimate but disperse stakeholders, who are not included in the governance arrangements and therefore not part of the 'club'.
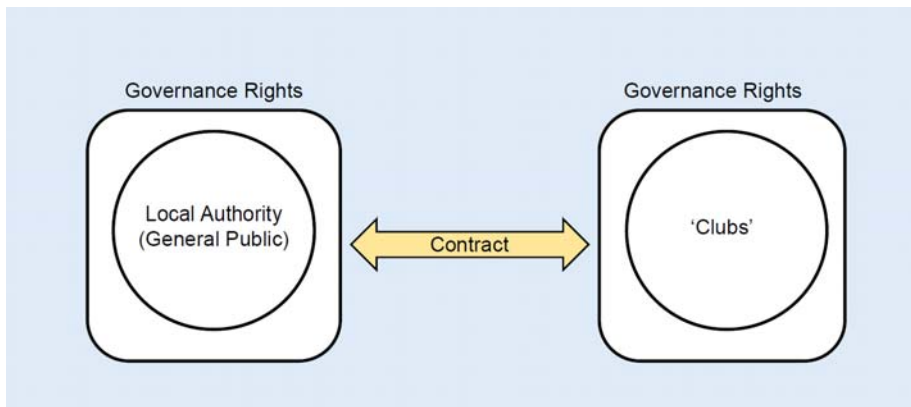

Figure 5. Stakeholder-shaped publicness and the horizontal break-up of governance rights

Contracted-out publicness

The second type indicates a fully contractualised form of publicness, in which governance responsibilities including rules for use, access, and accountability of management decisions are delegated to third parties and regulated through service contracts. These contracts establish a client-contractor relationship between the local authority and the management body and the interests it represents, and give the former a strategic overseeing role. In Myatts Field North Estate, Leathermarket Area Estates and Lewisham Parks the rights that make up publicness are managed by an organisation (either charitable or for-profit) acting as a contractor to the local authority/client (Figure 6). Those cases are still under council by-laws and regulations for most aspects of access and use, with some self-regulating rights, but within a very tight framework set out in detailed contractual agreements. Similarly, contractual specifications shape accountability mechanisms, in general privileging those interests directly represented in the contracts, but with a stronger role for the local authority as representative of the public interest due to their position as clients.

In Myatts Field North Estate, public space management is included in a 25-year Private Finance Initiative (PFI) contract between Lambeth Council and Regenter PFI Consortium, a joint venture between international infrastructure, urban regeneration and development businesses. It is a complex build-operate-transfer contract for the redevelopment of the whole estate and its open spaces, signed in 2012 after 6 years of negotiations, with the whole operation overseen by a Project Liaison Group (PLG) made up of 3 representatives from Regenter, 3 from Lambeth Council and 3 estate residents. The consortium is responsible for the capital investment in redeveloping more than 1,000 social and market housing units and related facilities – including a large park and smaller squares, recouped through the sale of the market housing and through service charges from the management of both the housing stock and the open spaces. The parks and grounds management

part of the contract is built around a full set of standards and performance indicators, which specify the nature of the management and maintenance service the consortium is expected to provide.

Figure 6: Leathermarket area estates: a series of public spaces managed by and for estate residents as contractors of the local authority (Source: authors)

Similarly, the London Borough of Lewisham has an all-encompassing, quasi-PFI open space management contract, which was awarded to a company called Glendale in 2000 for a 10-year period, and has since then been renewed for another 10 years. Glendale is a commercial supplier of green spaces management and maintenance services, with other similar contracts in the UK. The contract includes grounds maintenance of over 300 housing estates and management of around 50 parks and open spaces. The original agreement included a £1.5million up-front investment to upgrade parks and infrastructure over its first 3 years, payable back by the council over the duration of the contract. The renewed contract includes a 3% yearly efficiency saving component, to be achieved with income generated from the parks (Figure 7).

Finally, the public space management of Leathermarket Area Estates is part of the transfer of full managerial responsibility from Southwark Council to a tenant and resident-led body, the Joint Management Board (JMB), on a 5-year renewable contract originally signed in 1996. JMB is Southwark's largest resident-manged housing organisation, overseeing 1500 housing units alongside the grounds and facilities of their respective estates, and run by a board of directors made up of 10 residents, appointed by the participating tenants and residents' association. The contract

with Southwark Council is based on the Right to Manage legislation, which set the terms for residents' takeover of management of Council housing. It gives JMB responsibility for managing the housing stock, including redevelopment and tenant allocation, as well as the surrounding public spaces. Rather than a fee for their services, JMB keeps all the rent and service charge income from the housing in return for a 30-year investment plan and for taking over the debt related to the original capital investment in the housing stock.

Figure 7: Long list of management responsibilities by Glendale in Lewisham Parks suggests some managerial autonomy (Source: authors)

All the public spaces in those three locations are open to the wider public without major restrictions. Council by-laws incorporated into management agreements provide the overall regulation for issues of access and use, making them similar to council-managed spaces. The predominantly residential nature of two of the cases results in a larger power to residents to shape the detail of those regulations. For instance, rules about ball games or dog walking are decided by the residents' associations in the Leathermarket Area Estates while the residents' association at Myatts Field North Estate will run the sports facilities in the new park and set rules (and fees) for access and use.

Accountability to relevant stakeholders follows two superimposing lines. One is common to all cases and is defined by the client-contractor agreement itself, whereby the public space managers, as contractors, are accountable to the client, which in principle represents the public interest. Contractual compliance is measured against detailed service agreements and there are penalties for non-compliance. The second is the internal line of accountability between the managing body and the stakeholders it represents, and varies from case to case. In the Leathermarket Area Estates, JMB represents the estates' residents and is directly accountable to them. In Myatt Field North Estate, accountability is based on resident and local authority representation in the PFI steering group. In Lewisham Parks, where the managing body is a private concern, the direct accountability line refers to shareholders, whereas the local authority as the client remains the locus where other interests can voice and negotiate their aspirations.

Here as in previous group, the local community seems to be well represented in most arrangements. Resident representatives make up the board of JMB in the Leathermarket Area Estates, while the residents' association in Myatts Field North Estate has a third of the seats in the Project Liaison Group overseeing the PFI. It is only in the case of Lewisham Parks that there is no formalised direct resident representation. Residents' groups do engage with the management body Glendale, who has also the responsibility for liaising with the public, but their input is more akin to that of a consultee or lobbying group rather than that of a recognised part of the management process. Local businesses and commercial landowners are not directly relevant in the predominantly residential contexts of the Leathermarket Area Estates or the Myatt Field North Estate. In the case of Lewisham Parks, local businesses and employers' interests might be represented in local user groups where relevant, but again only on a consultee or lobbying capacity.

All other interests are represented indirectly by the respective local authority in its dual role as client and monitoring agency. In all the 3 cases the local Council is both the client defining the terms of the contract and actively monitoring the contractors. This suggests the scope for a more active representation of those dispersed stakeholders that make up the public interest than it is the case with the previous group.

The public spaces in those cases are public to most intents and purposes, and although local interests and aspirations have a strong influence in determining the attributes of publicness, that is moderated by a potentially more assertive local authority. However, that assertiveness depends on the capacity to monitor complex contractual arrangements, something that cannot be taken for given.

Those 3 cases suggest a different allocation of the rights that constitute publicness, coming from a different pattern of assignation of governance rights. In this case, the break-up of the bundle of governance rights previously concentrated on the local authority takes the form of a 'vertical' or hierarchical split into main and subsidiary rights. The local authority/client retains overarching exclusion, management, and alienation rights exerted on behalf of the public at large, who therefore retains them indirectly. The contractors (the managing bodies) receive extensive secondary

management rights and minor exclusion rights, with the exercise of those rights regulated through performance and contract monitoring. The way the accountability rights are exercised varies slightly: in general, community stakeholders have some form of direct say on operational matters but ultimately rely on the local authorities' normal lines of accountability for strategic decisions.

The public space governance model that emerges is one of contractualised devolution of operational decisions, shaped by a client-contractor relationship with continuous monitoring of contractual clauses and judicialisation of management conflicts (Figure 8). Wherever devolution is more extensive, as in the Leathermarket Area Estates, some stakeholders have considerable management rights on operational matters but these are framed in terms of contract compliance. As a result, any conflict of aspirations between stakeholders is to some extent de-politicised, and political processes of negotiation and bargaining are replaced by tests of compliance of contractual obligations. In this category, even if there is some formation of 'clubs' of interests, their position vis-à-vis the governance of their respective public spaces is not substantially privileged since their governance rights are in principle under close continuous scrutiny and constrained by the overarching rights of the local authority/client.
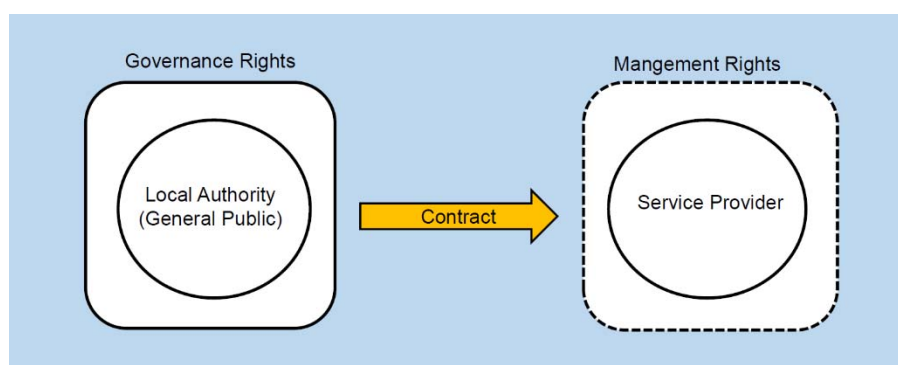

Figure 8. Contracted-out publicness and the 'vertical'/hierarchical break-up of governance rights

Conclusions

This paper has examined emerging arrangements for the governance and management of public spaces in London, which austerity and the search for local authority budget savings have multiplied. It started with the proposition that the tenor of the debate around recent changes in public space has focused solely on issues of ownership and the processes of privatisation, linking the offloading of governance rights away from the public sector to an increase in private - especially corporate - power over public spaces. In doing so, that debate has overlooked the subtler and fine-grained process of negotiation over the rights that make up publicness, and has failed to incorporate a more nuanced understanding of the relationship between different communities of stakeholders, elected

government and society. As the paper postulates, that relationship might be better able to explain process of change and transition currently affecting public spaces.

The case studies discussed in the previous section show how rights over public space governance are allocated, as a way of examining the complexities of how multiple interests and stakes over public spaces are negotiated and exercised, and in that process shape their publicness. The cases suggest a complex and varied process of redistribution of different rights over the space and its publicness attributes rather than a narrow contraposition between public *vs.* private, or individual *vs.* corporate. Those spaces remain essentially 'public', with most rights of access enjoyed as they would be in a 'normal' public space, and experienced as such by most people. The main difference seems to reside in who secures the right to have a say in the governance and management of the space, i.e. the right to make public space management bodies accountable.

Therefore, and with the caveat that seven cases might not represent the whole universe of public space governance and management transfer mechanisms, the cases suggest that those transfers do not per se compromise the access and use attributes of publicness. They do however change the accountability dimension: either towards something akin to a club of self-selected stakeholders or a client-contractor system. Moreover, the way those arrangements are set up would indicate systems of public space governance with different types of power relations between those with a direct stake on a public space, the general public, elected local government and the public interest. With the risk of simplification, the cases show traditional local authority power over public space, based on its previous holding of the full bundle of management and governance rights, breaking down into two forms. The first is marked by a 'horizontal' break up and allocation of that bundle of rights, with the main actors (i.e. the local authorities and the managing club) controlling parallel rights and interacting with each other at a similar level of power to manage and govern the public space. The second sees a 'vertical' fragmentation of the bundle of public space governance rights, establishing a hierarchy of power with the local authority in a dominant but highly formalised position vis-à-vis the contracted managing body. As these two forms impact differently in how public space management and governance is made accountable to stakeholders, they suggest two different types of publicness.

However, and perhaps even more importantly, taking in aggregate the findings confirm the point highlighted by Boydell and Searle (2014), of cities made up of constellations of spaces with different governance systems, with fine-grained differences in publicness making up the public realm, playing different functions and catering for different interests. This is a much more complex physical public realm than what is normally recognised in the academic and professional debate.

Finally, the findings also show the potential tensions that exist between the active participation of those with a direct stake in a public space and their more direct engagement in managing it, and the protection of other legitimate interests, including those of the wider society. The offloading of public space governance from the local authority to a variety of 'communities', be it through recognising

clubs of key stakeholders, be it through complex client-contractor arrangements, might not be the same as privatisation and might not herald the demise of a public realm, but it is not without its own challenges. Foremost among those, is the realisation that the leaner, more austere local governments emerging out of the crisis will need a different set of skill as regards public space, if societal aspirations are to be met. These refer to both the ability and resources to produce judiciously designed accountability mechanisms and clear decisions about whose aspirations are to be privileged in devolving the governance of public space. In a foreseeable future of continued economic uncertainty and further public expenditure cuts in which stakeholder involvement in urban governance is a necessity, local authorities should pay close attention to ensure that in the ensuing reallocation of rights and of power the 'public interest' and various legitimate aspirations for public spaces are protected and do not become a collateral damage.

Acknowledgements

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