Sharing the unearned increment: Divergent Outcomes in Toronto and São Paulo

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ABSTRACT

Land value capture (LVC) refers to the public sector's recovery of part or all of the land value increments ('unearned' income) generated by actions other than the landowner's direct investment, including public investments in infrastructure or administrative changes in land use norms and regulations. LVC is increasingly used around the world as a tool to raise funds for urban development. This paper analyzes two LVC tools, one used in Toronto and the other in São Paulo, to show how different approaches produce divergent outcomes in practice. Expert interviews and an analysis of secondary quantitative data show that São Paulo's formula-led approach is bureaucratized, compared with Toronto's politicized process and that benefits from Toronto's Section 37 are primarily located in the central wealthier neighbourhoods, while in São Paulo benefits are more dispersed. The comparison between the two cases highlights different approaches that reflect divergent values, rationales, socio-economic realities and political cultures which ultimately produce varied outcomes. The contrasting tools' distributional and equity outcomes in Toronto and São Paulo raise questions about how cities can best share the benefits of urbanization to ensure equity and justice for all city residents.

1. Introduction

Land value capture (LVC) is increasingly used around the world to raise funds for urban development (Alterman, 2012; Rabelo, 2017). LVC refers to the public sector's recovery of part or all of the land value increments ('unearned' income) generated by actions other than the landowners', such as public investments in infrastructure or administrative changes in land use norms and regulations (Smolka, 2013). By harnessing this unearned increment – any rise in land values due to public decisions or to the economy rather than landowners' efforts – the community at large benefits (Alterman, 2012). As Booth (2012) explains, land increases in value, often from public sector interventions, providing an argument to divert part of the increase in land value to serve the common good rather than private interests. Overall, four arguments support LVC: (1) capturing private gains resulting from public investment is fair and ethical; (2) using a land-based tax to pay for public investment is efficient; (3) land-based taxes can lower land prices and reduce land speculation, enhancing equity; and (4) such revenues can pay for sizable infrastructure investments, improving sustainability (Brown and Smolka, 1997).

In this paper, I focus on how LVC can support equity in particular, and relate its use to ideas about land rent, the urban commons and the social function of property. By comparing LVC tools in Toronto and São Paulo, I show how different approaches produce divergent outcomes. In Toronto, the LVC mechanism is found in Section 37 of Ontario's *Planning Act.* Section 37 allows a municipality to grant developers permission to increase height and density beyond the maximum permitted in zoning in return for the provision of facilities, services or matters, according to criteria set out in a by-law.[1] These exchanges are negotiated one at a time by city staff in consultation with the councillor and developer to determine allocation of contributions (Moore, 2013). I compare Section 37 to a tool in São Paulo within a context of vertical growth (Fix, 2007) called the "onerous grant of the right to build" (*outorga onerosa do direito de construir,* OODC). The OODC tool allows developers to build at higher-than-permitted densities in return for financial compensation to be used for social benefits. OODC uses a standardized formula to calculate the charge levied on developers (Sandroni, 2011). Money from OODC is deposited into a fund, and a management council, composed of equal numbers of public-sector staff and civil society representatives, allocates the money based on priorities in the city's master plan, including social housing, mobility projects, environmental conservation, and public and green spaces, among others. Although both approaches allow municipalities to obtain public amenities from private developers (Alterman and Kayden, 1988), the

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local context and the way the tools are applied produce different distributional and equity implications. São Paulo's formula-led approach is bureaucratized, compared to Toronto's politicized process. Benefits from Toronto's Section 37 are primarily located in the central wealthier neighbourhoods, while in São Paulo benefits are more dispersed.

One difference between the two cities was captured by New York City Commissioner of Parks and Recreation Mitchell Silver at an Economic Club of Canada luncheon in Toronto in November 2016. He contrasted 'deal-making cities' with 'plan-making cities.' Silver noted how "some places have these rules laid out in a plan that people follow. In other places, the rules amount, in effect, to a proposal to 'make us an offer'" (Keenan, 2017). On hearing this juxtaposition, Toronto's Chief planner at the time, Jennifer Keesmat, "nodded as if he'd crystallized something elusive and essential," that Toronto is a deal-making city (Keenan, 2017). While this dichotomy is not categorical, these comments foreground the often-politicized nature of deal-making in Toronto.

In the planning literature, this contrast between development-led and plan-led systems is based on the legal and administrative systems in which planning operates (Faludi, 1987). In development-led systems, state administrations may use their own discretion in land use decisions, and legally-binding land use rules are approved after negotiations over a development agreement. In this system, "the administrative structure…[is] linked to politicians and citizens in various ways that may change over time" (Ejersbo and Svara, 2012, 153). In plan-led systems, the rule of law prevails and zoning decisions are legally binding before developers put forward proposals (Muñoz Gielen and Tasan-Kok, 2010). The bureaucracy "operates according to its own rules, resists change, ignores outsiders… and [is] impervious to control," (Ejersbo and Svara, 2012, 152). While politics clearly plays a role in the São Paulo case, the distinction helps to see the cases' divergencies. Thus, the cases were chosen to illuminate a divide between one approach based on *deal-making,* and the other on *plan-making.*

Toronto and São Paulo are global cities, the financial and commercial capitals of their respective nations within federal systems (Sassen, 2013; Stren and Friendly, 2019). In Brazil, the Constitution empowers all three levels of government, including municipalities, resulting in municipal autonomy over land use planning. In Canada, municipalities are under the constitutional jurisdiction of the provinces, meaning that in Toronto, the Province of Ontario oversees land use planning. São Paulo's greater autonomy over planning compared with Toronto may also help illuminate the divide between the two approaches.

In this paper, I use an individualizing comparative analysis approach (Robinson, 2011; Tilly (1984) to explain distinct outcomes in the two cities. For Tilly (1984), the goal is to compare specific instances of a phenomenon to grasp the particularities of each case. As Robinson (2011) notes, an individualizing comparative analysis can lead to nuanced interpretations of causality in comparative research based on the complex spatialities of cities.

The qualitative data come from expert interviews on the politico-historical background of both tools. Between December 2015 and March 2016, I conducted 16 interviews in Toronto and São Paulo with city councillors, planners, lawyers, developers, and academics (see Appendix 1). Participants were selected using expert purposive sampling to identify appropriate interviewees. The interviews were transcribed and analyzed using narrative analysis (Riessman, 2008). The quantitative data document the number of projects subject to LVC, types of compensation, amount of funds per year, and, if possible, where the projects were located. In both cities, I had access to databases of developer contributions, which I analyzed using simple statistical analysis to explore the types and locations of benefits in both cities. In Toronto, the City of Toronto's Section 37 database (1998–2015) records the funds raised, the locations of the benefits, and types of benefits approved.[2] In São Paulo, data came from the *Situação Geral dos Processos* database since 2002, which tallies the resources raised by OODC.

Funds spent by OODC for 2013–2015 came from the Urban Development Secretariat.[3] Validity was ensured by using more than one type of data collection and checking the consistency of findings.

The next section develops a theoretical basis for this work using debates relating to land rent, the urban commons, and the social function of property, introducing a language of justice and rights to LVC discourse. In the following sections, I examine the distributional and equity outcomes of Section 37 in Toronto and OODC in São Paulo, illustrating the connection between LVC and equity. The findings show how elements of deal-making and plan-making in a range of contexts may promote a more equitable approach to LVC. This research highlights the need for a deeper discussion about the purposes of LVC tools and about the extent to which such tools could – or should – be used to share the benefits of the urbanization among all city residents.

2. Land value capture: between theory and practice

Drawing on David Ricardo's work on economic rents, 19th century political economist John Stuart Mill proposed taxing has become known as the unearned increment. For Mill, the state could take part or all of the increased rents because that value was created by the state. Mill (2001[1848], 941) noted that,

> Suppose that there is a kind of income which constantly tends to increase, without any exertion or sacrifice on the part of the owners… In such a case it would be no violation of the principles on which private property is grounded, if the state should appropriate this increase of wealth, or part of it, as it arises. This would not properly be taking anything from anybody; it would merely be applying an accession of wealth, created by circumstances, to the benefit of society.

In the United Kingdom of the late 19th century, the concern that landowners would profit from the land they owned provided a motivation to return some profit to the state (Booth, 2012). Since the unearned increment does not belong to the property owner, it should be reallocated to benefit society (Kohn, 2016). Indeed, discussions on the nexus between planning regulations and property values have largely occurred in the UK (Healey et al., 1995).

In the United States, 19th century political economist Henry George (2009[1881]) took up the idea that increases in land value should accrue to society because the collectivity created the value from land use. Like other classical economists of the time, this idea was based on the labour theory of value, that the landowner had not produced its worth through labour. The profits constituted a pure rent, imposing an unfair burden on those whose activities gave it value (Fainstein, 2012). George (2009[1881], 378) argued that the public capturing of land values represented "the taking by the community, for the use of the community, of that value which is the creation of the community." George further called for a single tax, noting that if the rent from land was paid to governments continually, it would finance society's public needs and avoid causing economic turbulence (Alterman, 2012; Brown and Smolka, 1997). Despite the relevance of George's ideas, the challenge is to ensure a balance between private property rights and public

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[2] This database was obtained from the City of Toronto's planning department, which has been collecting this data since the 1990s. While this document is publicly available, it is not available online.

[3] The *Situação Geral dos Processos* database shows OODC earnings since 2002, available online at http://outorgaonerosa.prefeitura.sp.gov.br/relatorios/ RelSituacaoGeralProcessos.aspx. In 2016, data on FUNDURB spending was made publicly available, resulting from the government's more open attitude in contrast to the pre-2012 years when such data was scarce and for a municipal bureaucrat, "a black box" (personal communication, December 7, 2015). This challenge likely results from weak bonds between planning secretariats applying OODC, and municipal treasuries collecting the charge (Furtado et al., 2006).

interests in land (Brown, 1997). Drawing on George's view that urban land belongs to all inhabitants rather to those with ownership rights, Fainstein (2012) highlights the equity argument for LVC: that the benefits of urban land ownership should flow to all city users to remedy disadvantages. While many discussions of LVC place the idea within 19th century debates, I consider LVC in the context of ideas about land rent, the urban commons, and the social function of property.

Land rent theory refers to an appropriation of revenue resulting from the surplus value created by the production process (Krätke, 2014). Harvey (1982) defines land rent as "a payment made to landlords for the right to use land and its appurtenances." Indeed, land values and the land market pertain to rent theory because the value of land is a result of its future estimated value (Ward and Aalbers, 2016). I use land rent theory to understand LVC through the lens of equity, in that land rent and land development raises issues not only about economic efficiency, but also about moral, social, and political matters. Grounding LVC in land rent theory thus recrafts the theoretical concepts about the production of cities, and the social and power relations involved. Situating LVC within land rent theory provides a political-economic perspective to analyze urban phenomena, given such processes' spatiality (Haila, 2016; Jäger, 2003). Processes such as LVC relate to the broader political economy, emphasizing the role of capitalist economic relations in the development of cities, and the impact of capitalism on the restructuring of urban economies, built environments and socio-spatial fabrics (Krätke, 2014). A political economy approach sheds light on the inequalities produced by financialization and on uneven real estate development under capitalism. As Scott (1980) shows, the urban real estate market and the appropriation of land rents are key in determining the spatial structure of cities and restructuring their built environments.

I also bring ideas about the urban commons to such debates to introduce the language of rights, entitlement, and justice (Boydell and Searle, 2014; Blomley, 2008; Kohn, 2016). For Marcuse (2009), commons planning raises the structural issues underlying the creation and exercise of power in social relationships, producing distributional injustices and inhibiting the achievement of a just city. Using an urban commons lens, there is not a single set of use rights; such rights are constituted by several potential uses and several perceived use rights (Boydell and Searle, 2014). As Kohn (2016) notes, the urban commons builds on the concept of the unearned increment: the return on urban land privatizes the value generated by public and social goods, and this unearned increment should be shared.

Attitudes towards LVC are also closely tied to the ways that the concept of "property in land" is understood (Booth, 2012). Thinking about property rights helps to focus on who owns what to determine who has the right to what (Porter, 2011). Indeed, the way that LVC is understood in different contexts is deeply tied to specific constitutional arrangements and legal traditions, involving an underlying debate about whether real property is equated with private rights or social

goods (Alterman, 2012; Booth, 2012). In some contexts, constitutional provisions include social obligations within property rights, known as the social function of property, or the obligation to use property in ways that contribute to the common good (Ondetti, 2016). French jurist León Duguit of the late 19th and early 20th centuries argued that property is not a right but a social function and that the owner has an obligation to make it productive because property should enrich not only the owner, but society. Therefore, the state should protect property when it realizes its social function (Foster and Bonilla, 2011). The social function of property has played an important role in Brazil, recognizing that private property has a social function in the 1988 Constitution (Friendly, 2019). This acknowledgement in Brazil, explicitly tied to redistributive land market instruments (Klink and Stroher, 2017), provides additional support to a socially oriented approach to LVC. Thus, ideas about land rent, the urban commons and the social function of property explain why some of the value created through urban property markets should be captured and redistributed to the community. With this reflection in mind, I turn to the two cases: Section 37 in Toronto and OODC in São Paulo.

3. Introducing section 37 and OODC

Density bonusing, sometimes called incentive zoning, has been used in North American cities since the early 1960s to secure public amenities in exchange for increased height or density in urban developments (Benson, 1969). Density bonusing has been part of Ontario's *Planning Act* since 1983 (originally as Section 36 of the *Act*), and was used even before the passage of establishing legislation (City of Toronto, 1988). The early 1980s in Toronto was an era of booming commercial development, allowing the city to negotiate public amenities by exchanging height or density to meet specific planning objectives. In the late 1980s, increasing public backlash against density bonusing raised accountability concerns over the process by which increases were authorized through backroom deals in the absence of clear guidelines. The social costs of density incentives were seen to be greater than the benefits received in return, and led to complaints about 'let's-make-a-deal planning' (Fulford, 1995; Leonhardt, 1988). Until 1993, Section 37 was applied to site-specific Official Plan amendments in the absence of density bonusing policies in the City's official plan (Devine, 2008). In the recession of the late 1980s and early 1990s, developers were unable to meet bonusing requirements, but an economic boom in the early 1990s provided an opportunity for the City of Toronto to establish density bonusing provisions in its 1993 Official Plan (Tamir, 2005). In 1990, the Ontario *Planning Act* underwent revision and Section 37 became the new name for density bonusing.

Section 37 allows developers to exceed height and density limits in exchange for facilities, services or matters provided either directly or through cash contributions or amenities (Province of Ontario, 2012). Under the *Planning Act*, a city that authorizes height and density

Section 37 Toronto
1. Heritage
2. Childcare facilities
3. Public art
4. Other non-profit arts, cultural, community or institutional facilities
5. Parkland/ parkland improvements
6. Public access to ravins/ valleys
7. Streetscape improvements
8. Rental housing to replace demolished housing or preservation of existing housing
9. Purpose build rental housing
10. Rented residential condominium units
11. Local improvements to transit facilities
12. Land for other municipal purposes
13. Other local improvements

OODC São Paulo
1. Social housing (30% required)
2. Mobility (30% required)
3. Environmental & conservation units
4. Neighbourhood plans
5. Urban & social tools
6. Public spaces
7. Green areas
8. Cultural heritage

Fig. 1. Section 37 and OODC possible benefits compared.

increases must have an Official Plan that includes bonusing provisions and contains a list of possible benefits. In Toronto's Official Plan, community benefits may include rental housing, public art, childcare facilities, or streetscape improvements (see Fig. 1). The Section 37 process begins when a developer submits a request for more height and density than permitted by the zoning limits.[4] Benefits are negotiated by City Planning staff in consultation with the developer and the councillor of the ward in which the development is proposed. During negotiations, staff determine what the contribution is worth based on the potential land value uplift, that is, the value of the additional density (City of Toronto, 2015a). However, the influence of city councillors in negotiations and the lack of a clear policy or planning objective associated with its use (Moore, 2013) led one municipal bureaucrat to note that the deal-making process often resulted in "pet projects by individual councillors" (personal communication, September 24, 2015).

How the Ontario Municipal Board (OMB) – a quasi-judicial body formerly in charge of hearing disputes over planning decisions in Ontario municipalities – interpreted Section 37 played a central role in shaping its implementation before 2018.[5] In 2007, the City of Toronto adopted Section 37 implementation guidelines, a response to the OMB's concern that the City's approach to Section 37 could be construed as an illegal tax (Moore, 2013). In fact, Section 37 was not intended to be a negotiated process. The decision not to use a formula was based on legal advice that this approach could be challenged in court as an illegal tax; opposition by developers to a standardized formula also led this decision (Moore, 2013; personal communication, March 4, 2016).

While the *Planning Act* does not specify where benefits should be located, the OMB decided that there must be 'an appropriate geographic relationship' known as a nexus between the community benefit and the increased height or density in the development (City Planning Division, 2016). Developments must also constitute good planning by remaining "consistent with the objectives and policies of" Toronto's Official Plan, and "comply with the built form policies and all applicable neighbourhood protection policies" (City of Toronto, 2015b, 5-2). In Section 37 negotiations, good planning must be a condition for the proposed development rather than a benefit gained through density bonusing. Developments should observe good planning principles, such as appropriate densities and built form, and conform to urban design guidelines (Jenset, 2012). While 'good' planning is used in density bonusing agreements, the term is open to multiple interpretations (Moore, 2013). This gradual regularization of Section 37 in the 1990s and 2000s can be seen as a trend in the direction of plan-making, showing that the dichotomy between deal-making and plan-making is not absolute.

Like Toronto, São Paulo has a rich history with LVC. OODC was enacted by the 2001 Statute of the City (*Estatuto da Cidade*), the national law regulating the 1988 Brazilian Constitution's urban policy articles (Fernandes, 2011; Friendly, 2013). It was inspired in the 1970s by French and US experience through a focus on *solo criado* (or 'created land'), OODC's conceptual inspiration (Rezende et al., 2009). In 1976, progressive Brazilian architects agreed to three principles in the Embu Charter resulting in the *solo criado* idea. These included: 1) a basic land use coefficient; and 2) the transfer of the right to build, which combined involved setting a single Floor Area Ratio (FAR)[6] for the whole city, allowing for the right to build to be transferred to another area; and 3) the proportionality between public land and private land, linking densification and the supply of land for social goods and urban services

(Azevedo Netto et al., 1977). Premised on the separation of the right to property from the right to build, OODC regulates charges for additional building rights by investing in urban infrastructure without favouring one property over another, allowing all landowners to share the benefits of public interventions (Macedo, 2008; Smolka, 2013). OODC imposes a charge for the right to develop land above a basic FAR above density limits in the city's master plan (Smolka, 2013). Since the parameters for building additional height are established prior to developer's engagement in the process, OODC exemplifies the plan-making approach. In other words, these parameters for ODDC are prescribed in a previously approved legally binding land use plan. Moreover, requiring developers to contribute to the costs of infrastructure in high-density neighbourhoods potentially makes OODC a redistributive instrument (Montandon, 2009).

São Paulo is considered a pioneer of *solo criado* as it applied two precursor tools starting in the 1980s, well before the Statute was approved (Nobre, 2015).[7] Despite challenges, both served as learning experiences for the use of new urban tools, instilling in developers the custom of payment in exchange for building potential, while public servants gained expertise in valuing land and increment value (Maleronka and Furtado, 2013). In 2002, São Paulo's master plan included a basis to apply OODC including how to calculate the charge and allocate resources. While the tool's validity was accepted due to the precursor tools, developers disagreed with using a basic FAR of 1 for the whole city, contending that land market values, property tax revenues and housing supply would decrease, and that urban property and unemployment would increase (Bonduki, 2007). The result was a basic FAR of 1 or 2 for most of the city, and a FAR of 4 for areas with specific uses and for priority public transport routes, allowing substantial potential to construct at higher densities without paying for OODC.

In 2014, Workers' Party Mayor Fernando Haddad approved a new master plan including an OODC formula with a basic FAR of 1 across the city, returning to *solo criado's* original, rights-based approach.[8] Funds from additional density would be invested in urban improvements across the city (Prefeitura de São Paulo, 2014). To tackle the city's peripheral sprawl (Maricato, 2011), the formula set a maximum FAR of 4 to boost growth along transit corridors and within special zoning areas for informal settlements (*zonas especial de interesse social,* ZEIS), to address the housing deficit, with the goal of balancing land uses.[9] The formula includes a social factor depending on the intended use, allowing exemptions in the charge for social uses such as education or social housing, and including a planning factor depending on the district to stimulate real estate production in areas needing investment.

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[4] Under the Official Plan, developments must exceed a threshold of 10,000 square metres of gross floor area to meet the Section 37 requirements.

[5] In 2018, the OMB was disbanded to rebalance powers between developers and communities, and replaced by a Local Planning Appeal Tribunal with less powers than the OMB.

[6] FAR is the ratio of a building's total floor to the size of the piece of land upon which it is built.

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[7] *Operações interligadas* facilitated social housing provision by exchanging zoning law exemptions, using private-sector 'dynamism' to resolve issues of informal housing, but was declared unconstitutional as it represented changes to the zoning law (Hewitt, 2001; Wilderode, 1994). Since 1991, *operações urbanas consorciadas* allows for urban interventions in predefined areas by exchanging development rights and releasing land use restrictions (Fix, 2001).

[8] Haddad lost to João Doria of the centrist Brazilian Social Democracy Party (PSDB) in São Paulo's 2016 election. In this period, Mayor Doria – succeed by Bruno Covas (PSDB) in April 2018 – planned to revise the master plan to rekindle the real estate industry which would include promoting construction jobs and revising the OODC formula, "balancing" the charge in high and low-cost areas. This would effectively lower OODC charges for the development industry. Doria's administration ultimately began revising the zoning law (Lei de Zoneamento), which had been approved in 2016. If approved, this would result in considerable changes to OODC including reducing the charge, increasing the maximum FAR, and de-stimulating housing density within transit corridors.

[9] These corridors, known as *eixos de estruturação da transformação urbana*, aim at by mobility and urban development by guiding real estate production to public transport routes and rebalancing the distribution of housing and employment based on transit-oriented development. ZEIS are areas with special zoning conditions for informal settlements, used since the 1970s to deal with growing numbers of *favelas*.

Moneys collected by OODC are deposited into a 'reserve' fund called FUNDURB (*Fundo de Desenvolvimento Urbano*), providing transparency and enabling their use for social purposes (Furtado et al., 2006). Funds from OODC are overseen by FUNDURB's management council, composed of equal numbers of public-sector staff and civil society representatives.[10] Allocation of funds must comply with the master plan's objectives, plans, and projects,[11] and the city's program goals for reducing inequalities in São Paulo. FUNDURB's council may allocate funds for projects that promote neighbourhood development, those that are 'paradigmatic' (that is, they serve as models) and induce urban and social development, and those linked to the program goals. Notably, the 2014 master plan designated 30 % of all FUNDURB funds for social housing within ZEIS, and 30 % for mobility projects such as bus and bicycle lanes or sidewalk improvements. For an overview of how funds can be used, see Fig. 1.

These cases illustrate a divide between two approaches – plan-making and deal-making, relating to contrasting decision-making processes in each case. Toronto's deal-making approach contrasts with plan-making in São Paulo based on the bureaucracy. In the Section 37 process, planners and city councillors have considerable discretion to interpret policy, leading to a perception that politics prevails (Biggar, 2017; Devine, 2008). Indeed, Canada's land use planning system legally permits a range of discretion in land use applications (Cullingworth, 2002). By contrast, OODC is tied to the city's master plan rather than to city councillors' preferences. The OODC case, functioning within a plan-making approach, highlights the primacy of land use regulations over discretion. Ultimately, the role of discretionary powers in municipal decision-making (Makuch and Schuman 2015) relates to the planning system within which both types of developer provisions function (Faludi, 1987; Muñoz Gielen and Tasan-Kok, 2010). As Booth (2007) explains, in the common-law tradition, complex, multi-dimensional problems – such as those present in planning – require discretionary freedom for planning to operate effectively. Therefore, the decision-making process in each approach, either based on municipal administrations more open to discretion, or those based on the rule of law, is integral in understanding the differences between the cases. In fact, the different rationales of the tools may be connected to distinct redistributive effects. I explore this point in the following sections through a focus on the distributional and equity outcomes of both tools in Toronto and São Paulo.

4. Implementing LVC in Toronto and São Paulo

In Toronto between 1998 and 2015, the amount collected through Section 37 was more than CAD$400 million, not including in-kind benefits that cannot be quantified. Similarly, in São Paulo between 2004 and 2015, the funds collected through OODC reached almost R $1.9 billion (about CAD$ 712 million). In these years, OODC represented 1 % of São Paulo's gross revenue. There is a possibility of increased charges from OODC (Nobre, 2016), which could challenge assumptions about limited OODC revenues shown in other cases (Furtado et al., 2006).[12] OODC, overall, is valued as a funding source directly applicable to urban improvements. In both cases, however, the tools are not the only funding sources for urban improvements. In Toronto, developers also pay for development charges, a revenue source channelled into general revenues for city-wide growth-related

expenses, although these charges are less flexible than those negotiated under Section 37. In São Paulo, other sources of funding include those for building social housing through a federal program known as Minha Casa Minha Vida.

To understand the cases' implementation, it is illustrative to look at how the funds were spent. In Toronto between 1998 and 2015, a fifth of Section 37 funding was spent on roads and streetscaping, culture, community and recreation programs, and parks, while a much smaller fraction was spent on affordable housing, public art, heritage, transit, other projects and libraries. During these years, 50 % of these benefits were "desirable visual amenities" – roads and streetscaping, public art and parks – "which a Councillor's constituents can see and remember" (Hanff, 2016, 16; Moore, 2013). Affordable housing accounted for the most in-kind benefits – one-fifth of all benefits – underscoring that developers may prefer to provide affordable housing when the in-kind option is used.

By contrast, in São Paulo between 2013 and 2015, almost a third of FUNDURB funds went to housing projects, nearly meeting the 30 % target of the funds allocated for social housing. In 2015, housing projects totalled almost 40 % of FUNDURB resources. Of the R$695 million investment in housing projects in 2015, 16 % came from FUNDURB (Secretaria da Habitação, 2016). Projects supplying social housing for the urban poor are also stimulated through a discounted OODC charge. Likewise, between 2013 and 2015, public transit, bicycle lanes, and road projects contributed to the 30 % mobility target. Since an increased share of funds for social housing and mobility projects was a demand of civil society groups in drafting the master plan, this result is viewed as a victory for the groups involved (Santoro et al., 2016). Table 1 shows a comparison of how Section 37 and OODC funds were spent.

Between 1998 and 2015, the City of Toronto entered into 926 Section 37 agreements across 43 of the city's 44 wards, the city's administrative districts (which have since been reduced to 25). Section 37 benefits are concentrated in Toronto's downtown core, north along Yonge Street and in southwest Toronto (the darkest shaded wards in Fig. 2). Benefits require an appropriate geographic relationship to developments, and most development is downtown. In the past decade, Toronto's downtown has undergone rapid growth, mainly in the downtown core; indeed, Rosen and Walks (2015) have tracked condominium development, which peaked in 2011.

In São Paulo between 2013 and 2015, the projects benefitting from FUNDURB moneys were located across the city, so that the entire city gained from urbanization (see Fig. 3). FUNDURB resources were prioritized in São Paulo's periphery (Nobre, 2016). As Santoro, Lopes and Lemos (2016) note, "the *prefeitura* not only broadens the amount of resources invested in the city, but also allows a better spatial distribution of infrastructure investments." The application of OODC captures funds in the city's most affluent regions, and the use of the funds in the poorest ones, in what could be called a "Robin Hood" approach to city-building, promotes expansion along transit corridors, directing growth in particular areas.

4.1. Distributional and equity outcomes in Toronto and São Paulo

While the justification for LVC is often not usually improved equity, it is useful to explore whether LVC measures include a redistributional component. For Levine-Schnur and Ferdman (2015), distributional concerns are relevant in the context of negotiations between local governments and developers. When piecemeal changes to zoning provisions result from requests from developers conditional on providing public contributions negotiated by local governments, distributional concerns may be taken into account. Using an approach oriented towards equity, the distributional outcomes of both LVC tools can be measured in terms of who benefits from them and to what extent. Indeed, focusing on who benefits and who bears the costs can shift the discussion towards a concern with equity (Fainstein, 2010).

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[10] Before 2014, the council's composition was not specified. Civil society representation was at the discretion of the local government and dependent on its changing political inclination (Nobre, 2016).

[11] There are six areas of focus: social housing; urban mobility; urban infrastructure; community equipment and public space; historical heritage; and environmental heritage.

[12] The Land Value Register was created in 2014 to calculate the charge. In the 2014 master plan, outdated property values were updated making them closer to market values, creating an expectation of increased OODC charges.

Table 1

Types of benefits used in Section 37 (between 1998–2015) and OODC (between 2013–2015), % of total.

Type of benefit	Section 37 (%)	Type of benefit	OODC(%)
Roads/Streetscaping	21	Housing	28
Culture/commiunity/ recreation	19	Drainage/sanitation	23
Parks	17	Mobility	21
Affordable housing	14	Pedestrian projects	10
Public art	12	Urban infrastructure/hubs	8
Heritage	7	Urban equipment	4
Transit	5	Public space	3
Other	3	Cultural heritage/green areas/neighbourhood plans	3
Library	2		

Section 37 agreements and 1 % of Section 37 funds. The *high-agreement group* accounted for 56 % of Section 37 agreements, yet as much as 72 % of Section 37 funds. The concentration of Section 37 funds in downtown wards is even more noticeable, totalling over $230 million, or 64 % of the city's Section 37 funds from 1998–2015.

There are clear socio-economic disparities between the groups (Table 2). The *low-agreement group* has a lower average household income relative to the *high-agreement grou*p and a higher average unemployment rate. *The low-agreement group* also has a lower percentage of residents with postsecondary degrees and a higher percentage of people born outside of Canada than in the *high-agreement group*. These groups fit into the classification of Toronto areas described by Hulchanski (2010). Indeed, most Section 37 benefits are located in the affluent downtown area, which "has become increasingly homogenous, less diverse, less multicultural, highly exclusive and thus only accessible
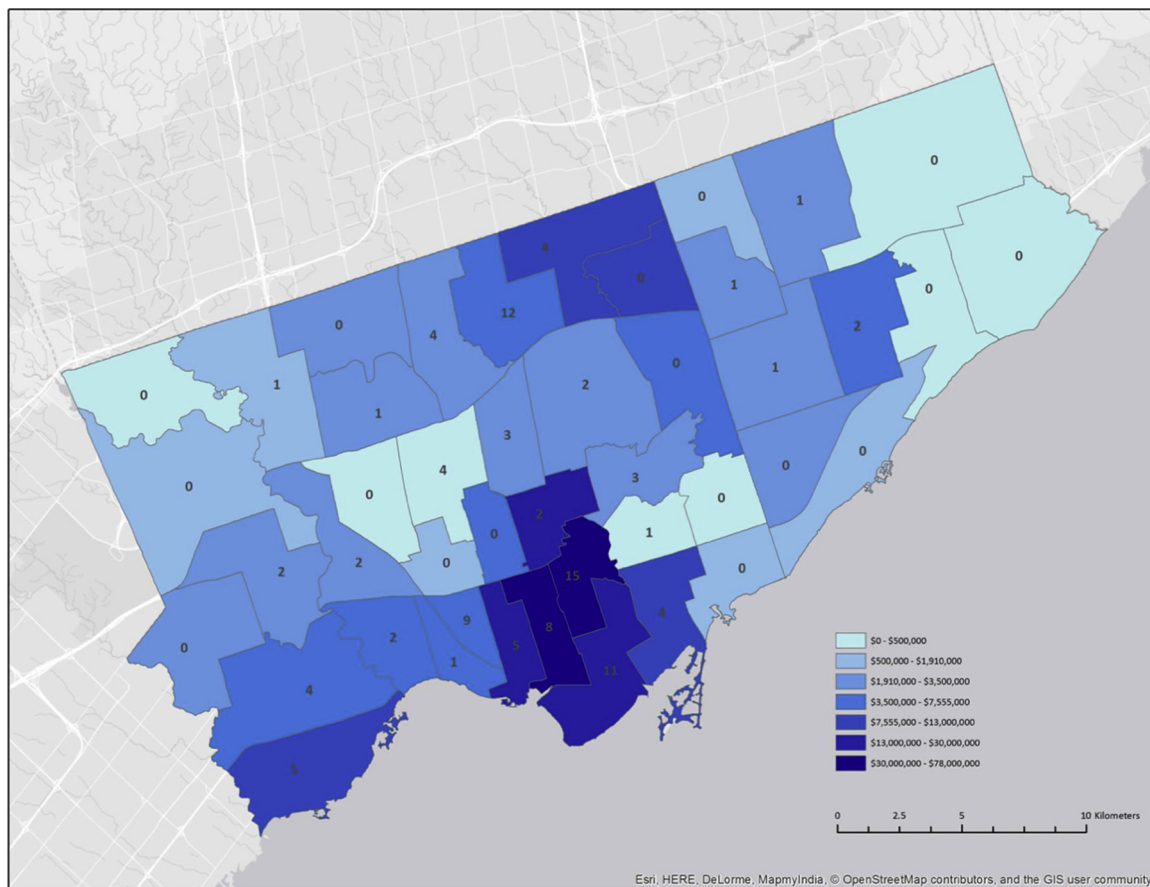

Fig. 2. Location of community benefits in Toronto by total funds and in-kind (1998–2015).

To analyze who benefits from Section 37 based on data from 1998 to 2015, I classified Toronto's wards into two groups: a *low-agreement group* consisting of the six wards with the fewest Section 37 agreements, and a *high-agreement group* consisting of the six wards with the greatest number of agreements.[13] The *low-agreement group* accounted for 2 % of

to higher income groups, who happen to be mostly white" (Lehrer and Wiedtiz 2009, 156). Combining research showing patterns of spatial inequality in Toronto (United Way Toronto, 2011; Walks and Bourne, 2006) with the spatial concentration of Section 37 benefits shows that many more benefits are used in more affluent neighbourhoods. As redevelopment targets urban areas yielding profit, areas of growth already experiencing reinvestment gain added benefits, thus socio-spatial inequalities are exacerbated (Rosen, 2016). Using data on OODC funds from 2013 to 2015, I classified São Paulo's administrative zones known as *subprefeituras* into two groups: a *low-project group* consisting of the zones with the lowest level of OODC funds, and a *high-project group* with the greatest level of OODC funds.[14] While the *low-project group* accounts

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[13] These groups were defined by including the six wards with the most and least Section 37 agreements between 1998 and 2015. Wards that fell in the middle were not included in the analysis. The *high agreement group* includes: ward 6 (Etobicoke-Lakeshore), 19 (Trinity-Spadina), 20 (Trinity-Spadina), 22 (St. Paul's), 23 (Willowdale), 27 (Toronto Centre-Rosedale), 28 (Toronto-Centre Rosedale). The *low agreement grou*p includes: ward 1 (Etobicoke North), 12 (York South-Weston), 29 (Toronto-Danforth), 31 (Beaches-East York), 42 (Scarborough-Rouge River), 43 (Scarborough East), 44 (Scarborough East).

[14] The *low-project group* includes: Parelheiros, Vila Mariana, Vila Prudente/
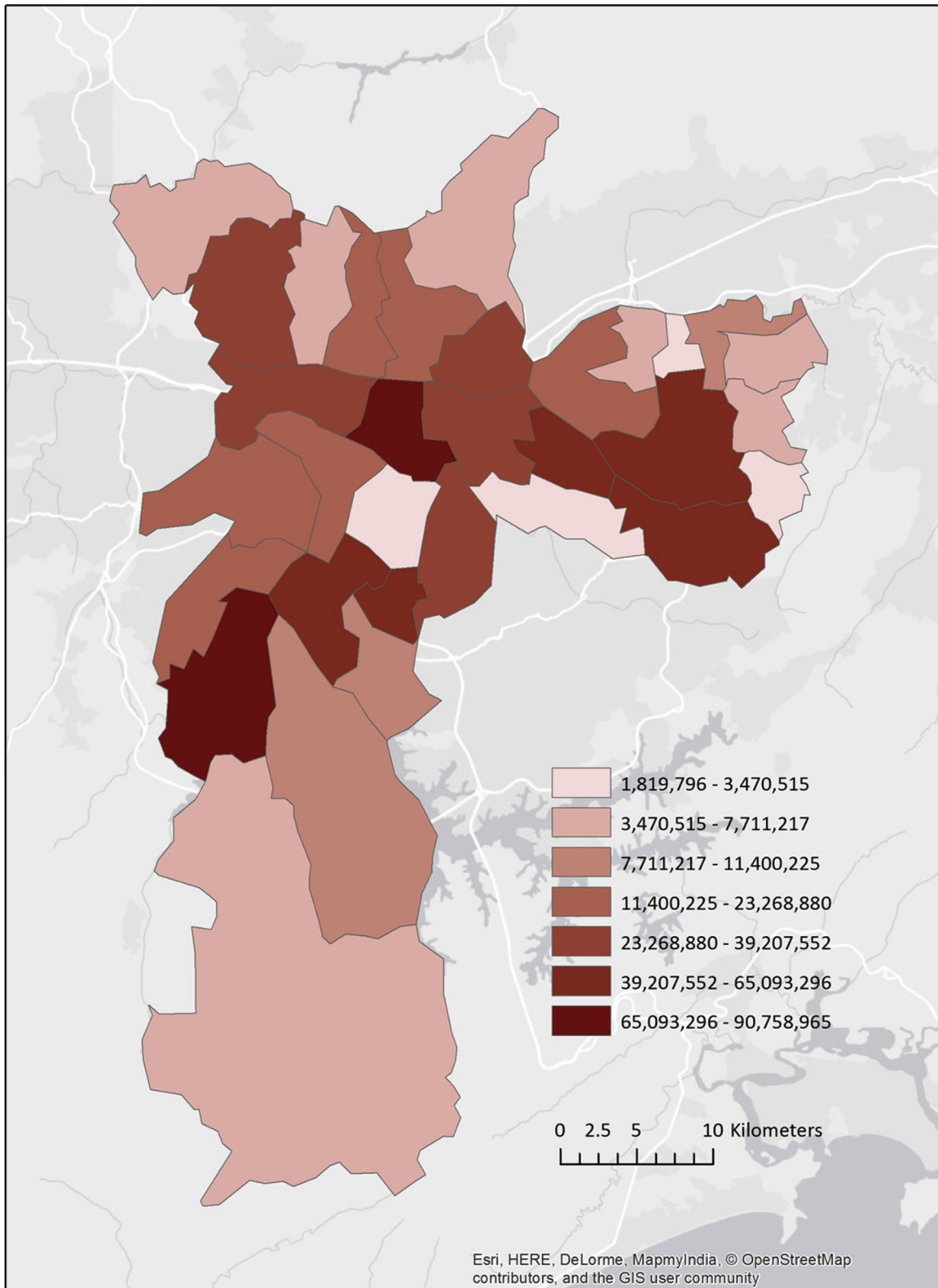
Fig. 3. FUNDURB spending by subprefeitura, administrative zones (2013–2015).

Table 2

Key socio-economic variables for low and high agreement groups (2011 Census; City of Toronto Ward Profiles).

	Average for low agreement group	Average for high agreement group	Toronto average
Average household income (CA $)	70,954	94,667	87,038
Unemployment rate	10.9	7.7	9.3
Average monthly rent (CA $)	886	$1,206	1,026
% with post-secondary certificate, diploma or degree	50	70	58
% born outside of Canada	53	46	51
% of dwellings built after 2000	7	23	12

Table 3

Key socio-economic variables for low and high project groups (Observatório Cidadão, www.nossasaopaulo.org.br).

	Average for low project group	Average for high project group	São Paulo average
% illiterate population 16 years or more	4.34	3.32	3.53
Average monthly income (Reais $)	1439.93	1,978.28	1,839.98
Average unemployment rate	10.85	9.57	10.00
% of households without sewer connection of total households in subprefeitura	19.81	13.57	18.91
% favela households of total households in subprefeitura	14.04	9.28	10.90

for 33 % of FUNDURB projects, it received only 9 % of the funds spent by FUNDURB, while the *high-project group* accounts for 30 % of FUNDURB projects, and 57 % of the funds spent by FUNDURB. There is less of a socio-spatial division between the groups compared with Toronto, because FUNDURB spending is spread across the city (Table 3).[15]

The *low-project group* had a higher average of illiterate residents than the *high-project group*, which was close to the São Paulo average. The *low-project group* had a slightly lower average monthly income than the *high-project group*. The average unemployment rate was also higher in the *low-project group* than the *high-project group*, just below the São Paulo average. The *low-project group* had a much higher percentage of its households without a sewer connection than the *high-project group*. Similarly, the indicator for the percentage of *favela* households was much higher for the *low-project group* than for the *high-project group*. Although FUNDURB project spending is relatively evenly spread across the city, the majority of the funds have not gone to the poorest neighbourhoods. In the next section, I return to the idea of equity and redistribution in the use of LVC tools.

4.2. How differences in policies affect the redistributive effects of LVC: Implications in Toronto and São Paulo

Toronto makes no mention of equity in Section 37 documents. The most common rationale for these agreements is the potentially negative effects of new developments on the surrounding neighbourhood; Section 37 offers a way to compensate local residents for the real or perceived effects of development by offering new amenities in the area (Moore, 2013). As most developments are in affluent neighbourhoods, the benefits go to these areas. For Makuch and Shuman (2015, 324–325), "the true beneficiaries are local councillors and existing neighbourhood residents, as Section 37 benefits are conceived of as a 'tangible benefit' to area residents in exchange for" increased densification, rather benefits for future residents who move into the development that was granted a density bonus. Nevertheless, while a sharing-the-wealth approach – by redistributing benefits to low-income neighbourhoods – is less central, it is still important (Moore, 2013). But because Section 37 requires a geographical "nexus" between the development and the benefit, low-income areas are unlikely to receive Section 37 funds, despite the need for neighbourhood improvements.

A contrasting approach in Vancouver shows how negotiation can involve some redistribution. In Vancouver, city staff weigh the possible

public goods against one another to ensure relative equity among city needs. As Beasley (2006, 7) notes, in Vancouver, this has been done by:

> Keeping negotiations strictly out of the hands of politicians. The council sets the policies and they approve finally, in public session, all of the bonuses; but they're not a part of the negotiations. We try to avoid those intimate, personal negotiations that have, frankly, plagued many of the systems around North America. This helps to maintain the focus on corporate policy and the management of equity among all kinds of public goods, but it also depersonalizes the system.

The more regulated approach in Vancouver suggests that stricter rules and guidelines – qualities of plan-making cities – could incline such processes towards redistribution, and therefore, greater equity. As Moore (2016, 426) notes in a comparison of density bonusing in Toronto and Vancouver, "the more centralised, hands-off approach adopted by city-council in Vancouver encourages a more uniform use of benefits" and "led the city to secure more redistributive and social benefits from developers." Thus, the Vancouver case shows that with more regulation, even within a deal-making approach, greater equity is possible.

The requirement that benefits should be located where development occurs suggests that benefits should both serve community needs and be tied to planning objectives. Toronto's Official Plan is guided by the goal of improving sustainability through social equity, environmental protection, inclusion, good governance, and city building (City of Toronto, 2015b). However, the *ad hoc* Section 37 process, negotiated with city councillors, departs from a comprehensive strategy to tackle social issues, such as the lack of affordable housing (Joy and Vogle, 2015). It be may politically more expedient for councillors to advocate for an amenity that many people can enjoy rather than negotiating a few affordable housing units that seem to benefit only a few households (Mah, 2009). Yet "Section 37 agreements, which could be used for a strict provision of affordable housing in Toronto, are used to provide art and park space rather than community centres and affordable housing, as the former more likely enhances developer's property values" (Lehrer and Wieditz, 2009, 149). As Valverde (2012) notes, local governance in Toronto is often based on ward politics, resulting in the failure of city councillors to take broader, more long-term policy positions. Instead, councillors react to short-term citizen-led campaigns, such as Section 37 negotiations.

In São Paulo, the redistributive OODC strategy is motivated by equity principles. As a professor pointed out: "The idea is to use it for other parts of the city… areas of inadequate urbanization. So the purpose of the grant is redistributive" (personal communication, January

19, 2016). *Solo criado* is based on the idea that privileged property owners should contribute to the costs of infrastructure in high-density districts (Souza, 2001), thus redistributing resources throughout the city. One principle of São Paulo's 2014 master plan is social and territorial equity, meaning "the guarantee of social justice starting with the reduction of urban vulnerabilities and social inequalities between population groups and between districts and neighbourhoods of São Paulo" (Prefeitura de São Paulo, 2014, 41).

In São Paulo, however, the *prefeitura*'s approach to OODC has moved away from redistribution and has become more about orienting long-term development. Thus, the planning factor and the transit corridors, key priorities of the 2014 master plan, should bring opportunities to underserved areas by directing growth in particular areas, while higher planning factors are applied to already developed areas. As a municipal planner noted, "these corridors began to bring real estate opportunities to regions that did not exist before, with higher density and more construction potential" (personal communication, December 7, 2015). The higher the planning factor, the less attractive the area for development as a result of a higher OODC charge. Paradoxically, however, the changes in 2014 resulted in a situation in which as the allowable FAR increases, the value of the OODC charge decreases. This meant that the more developers build, the less they pay as a way to stimulate increased construction. Using the planning and social factors as incentives therefore means that OODC is no longer a truly redistributive tool, in contrast with its original, more regulatory approach. A competing argument is that OODC cannot be an urban tool to balance uses in the city, because that would mean exceptionality in access to land.

5. Conclusion: towards a more equitable approach to land value capture?

This paper explores LVC through the lens of equity, drawing on debates related to land rent, the urban commons and the social function of property. Through a comparison of LVC tools in Toronto and São Paulo, I show how different approaches produce divergent outcomes in practice. In both cases, there are strong arguments for trading development rights for benefits, and considerable funds have been raised, which have been used for a range of social goods. The comparison between the two cases highlights two approaches that reflect divergent values, rationales, socio-economic realities and political cultures which ultimately produce varied outcomes. Table 4 shows the key similarities and differences between the approaches.

As I show in this paper, these divergent outcomes are indicated by looking at how those funds were spent and which parts of the cities benefitted from the funds, highlighted by contrasting socio-economic realities. Based on these divergent outcomes, I find that the practice of planning and the specific decision-making processes play key roles in the distributional and equity outcomes of the tools. Such contrasts relate to the distinction raised by Keenan (2017) between deal-making and plan-making cities, that is, between a politicized, *ad hoc* system and a bureaucracy that operates based on rules (Ejersbo and Svara, 2012).

Many differences between the cases are the result of context, history, and the legislation that developed in each setting. As Muñoz Gielen and Tasan-Kok (2010) note, the difference between the development- and plan-led systems relates to historical differences between the respective judicial systems. The distinction between deal-making and plan-making is not, however, hard and fast. These cases show that specific elements of deal-making and plan-making are relevant to understand equity. Without regulation, local politicians tend to favour the immediate surrounding area, such as in the case of Toronto, rather than the broad community. In Vancouver, however, with greater regulation, even within an overall context of deal-making, greater equity is ensured by keeping such negotiations out of the hands of politicians. While there is no causal relationship between the effects of deal-making and plan-making systems for equity, there is a relationship between plan-making and the achievement of other objectives, such as those that spread benefits beyond the immediate surroundings of developments. As I show in the paper, both São Paulo and Vancouver do achieve this objective through a more regulated approach.

The analysis of the types of and locations of the benefits in Toronto and São Paulo shows that the two LVC tools – to varying degrees – are only loosely tied to more socially-oriented conceptions of LVC. In Toronto, half the benefits are used for desirable visual amenities, although affordable housing seems to be a more suitable option when the benefits are in-kind. The wards that benefit most from Section 37 are also the most affluent, resulting in "a 'two-track' system in which the majority of new public infrastructure and amenities are dependent upon, and paid for by, new high-density development, while local government austerity means those neighborhoods not receiving new development have to fight for increasingly scarce tax dollars" (Rosen and Walks, 2015, 304).

In São Paulo, affordable housing accounts for almost a third of the benefits, likely a result of the targets set in the 2014 master plan for affordable housing, the discounted charge and the orientation towards the social function of property in Brazil (Friendly, 2019). While funding from OODC charges is largely spread around the city, the majority of funding has not gone to the poorest neighbourhoods of the city. This is likely a result of a change in orientation of the *prefeitura* away from true redistribution towards orienting long-term growth to the corridors. Therefore, rather than the fact that one system is better or worse for equity, specific elements of deal-making and plan-making are relevant to understand equity. This research thus distinguishes a more neoliberal approach to developer provisions in Toronto, in contrast to more a redistributive approach in São Paulo, yet marked by caveats.

As Levine-Schnur and Ferdman (2015) argue, distributional concerns matter in issues of land use and property rights. Juxtaposing such processes through debates on land rent, the urban commons and the social function of property, it becomes possible to highlight the role of equity to move towards a language of rights, entitlement and justice in LVC discourse. Such an orientation recasts discussions on developer provisions within a vision focusing on equity and social goods. This research highlights the need for a normative discussion based on justice and rights about the purpose of LVC tools and the extent to which they

Table 4
Key similarities and differences between Toronto's Section 37 and São Paulo's OODC.

	Toronto	São Paulo
Legislation	Ontario *Planning Act*; City of Toronto Implementation Guidelines	Master plan (2014); Statute of the City
Rationale	Negative externalities	Redistribution; also re-orienting development
Equity objectives?	No	Yes
Decision-making process	Negotiation (politics)	Decided in FUNDURB, even split between civil society & public sector, formula-based (bureaucracy)
Form of benefits	Cash or in-kind	Funds deposited into FUNDURB
Benefit location	Close to developments, primarily downtown	Throughout the city
Scope of benefits	Ward-based	Pooled

could – or should – be used to redistribute funds from high-income neighbourhoods where development is occurring to low-income neighbourhoods where infrastructure is needed. As Marcuse (2009, 101) notes, "searching for the Just City demands addressing the problems of the commons as a whole… To achieve a better city in a better society, we need something more than justice for individual practices. We need to deal with the ownership, control and use of the commons." Using the lens of the urban commons thus may help to shift attention towards an approach to LVC that shares the benefits of the urbanization process with the entire city.

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Declaration of Competing Interest

None.

Appendix 1 Interviews used in this paper

Interviewee	Case city	Date of interview
Municipal bureaucrat	Toronto	September 24, 2015
Municipal bureaucrat	São Paulo	December 4, 2015
Municipal bureaucrat	São Paulo	December 7, 2015
Municipal bureaucrat	São Paulo	December 7, 2015; December 10, 2015
Academic & former municipal bureaucrat	São Paulo	December 9, 2015
Urban planning consultant	São Paulo	December 10, 2015
Academic	São Paulo	December 15, 2015
Academic	São Paulo	January 19, 2016
Lawyer	Toronto	January 26, 2016
Former planning director	Toronto	February 8, 2016
Developer	Toronto	February 10, 2016
Provincial bureaucrat	Toronto	February 17, 2016
Academic	São Paulo	March 4, 2016
Former municipal bureaucrat	Toronto	March 4, 2016
City councillor	Toronto	March 18, 2016

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