

Section 106, viability and the depoliticization of English land value capture policy

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– SECTION 106, VIABILITY, AND THE DEPOLITICIZATION OF ENGLISH LAND VALUE CAPTURE POLICY

CHRIS FOYE

Abstract

In England, when land is granted planning permission its value increases dramatically. Historically, the question of who is entitled to this 'betterment value' uplift has been one of the central debates in national politics. However, from the 1980s to 2008, betterment value capture policy became depoliticized. This article seeks to understand how that came about. Focusing on the parliamentary sphere, it proposes that depoliticization took place across three 'faces'. First, economic interests: rising home-ownership and the broader rentierization of the economy strengthened support for house price inflation and private property rights, thus shrinking the space for political debate around these issues. Second, institutions: under Section 106 and the viability regime, the governance of betterment value capture became fragmented, incorporating an array of unelected 'experts', models and rules which worked to reduce the discretion of elected local planning authorities. Third, discourse: from the 1980s onwards, the Labour Party's discourse around betterment value capture converged with that of the Conservative Party. This convergence was partly driven by ideational changes in the Labour Party and in the discipline of economics. Taken together, these three faces help explain why betterment value capture policy moved away from the realm of contestation and contingency and towards that of fate and necessity.

Introduction

Following the nationalization of development rights in the UK in 1947, it has been necessary for English landowners to apply to the state for permission to develop their land. Over this period, the uplift in land value associated with the granting of planning permission for housing has risen rapidly, provoking a series of normative questions. Are rising land values for housing to be welcomed or suppressed by the state? When planning permission is granted, how much of the resultant 'betterment value' should go to the landowner versus the state? What powers should the state have to compulsorily purchase land, and at what value?

All these questions are contested. Answering them involves adopting a particular normative stance on the distribution of wealth and advancing the interests of one social group at the expense of another. It is therefore unsurprising that for three decades following the second world war these questions were the focus of a highly adversarial policy duel (Cox, 1984). On the one side, broadly speaking, was the Labour Party, which supported state intervention in the land market as a means of capturing betterment value and suppressing land and house values. On the other was the Conservative Party, which generally worked to restrict the ability of the state to intervene in the 'free market' (*ibid.*). In the first three decades after the second world war both sides battled it out, with each party rolling out or rolling back state intervention at the first opportunity.

I owe a debt to several people who informed, shaped and inspired this article. My initial interest in depoliticization was stimulated in no small part by conversations with John Myers, who provided useful comments on a subsequent draft. I'd also like to thank the following people who also provided useful comments: Ross Beveridge, Tom Kenny, Edward Shepherd and Craig Watkins. Finally, I am very grateful to the various anonymous IJURR referees whose comments have really tested my thinking and, I hope, made for a stronger article. All errors and judgements are mine alone. This work was supported by the Economic and Social Research Council (grant number ES/P008852/1). This is an open access article under the terms of the Creative Commons Attribution License, which permits use, distribution and reproduction in any medium, provided the original work is properly cited.

The next three decades could hardly have struck more of a contrast. In 1985, the right-wing Thatcher administration rolled back Labour's final attempt at a national betterment value tax, leaving the vast majority of betterment value with the landowner and developer. Gradually, however, local authorities started to fill this vacuum by capturing betterment value themselves through developer contributions—an arrangement that was formalized under Section 106 of the Town and Country Planning Act 1990, which allowed local authorities to negotiate obligations from the developer in return for granting planning permission. Since then, the S106 regime has expanded enormously, and today it is the primary vehicle for betterment value capture, providing for nearly half of all affordable housing in England and accounting for approximately 85% of all developer contributions (Lord *et al.*, 2018; MHCLG, 2019).

The obvious explanation for the S106 regime's longevity lies in its success at capturing betterment value without stalling development. A recent review of betterment value capture policy concluded: '[the Section 106] approach has been seen as relatively successful ... which is why it is often seen as an example to be admired if not copied' (Crook *et al.*, 2015: 269). We know, for example, that it has captured a higher proportion of betterment value than previous taxation regimes. But we also know that a large proportion—probably the majority—of betterment value still ends up in the pockets of landowners and developers.¹ And although S106 delivered a significant number of affordable homes, the numbers shrink in comparison, for example, with the 1.8m local authority homes delivered between 1948 and 1959 through the compulsory purchase of land at use value (Bentley, 2017).

In this article, I argue that if we are to properly understand the longevity and resilience of the S106 regime then we need to look at it through the lens of depoliticization. Starting with Hay's definition of politics as 'the capacity for agency and deliberation in situations of genuine collective and social choice' (Hay 2007: 77), I argue that what we saw from the 1980s through to the global financial crisis of 2008 was the depoliticization of the betterment value capture policy debate in the parliamentary sphere.

The article does not aim to present a causal model of depoliticization; it generally avoids the question of *why* policymakers engage in depoliticization. Nor does it address the valid normative question of whether depoliticization is good or bad. Rather, my contribution is to map out the key aspects of depoliticization, as reflected in the parliamentary sphere, which I argue took place across three 'faces': economic interests, institutions and discourse.

First, economic interests: as home-ownership grew to become the dominant form of tenure, and the economy more generally became 'rentierized' (Christophers, 2020), the coalition of actors with an interest in rising land and house values as well as strong private property rights became increasingly powerful and populous. Consequently, the political scope for capturing betterment value was reduced.

Second, institutions: under the S106 regime and subsequent viability regime, betterment value capture policy changed from being a highly centralized process driven by elected politicians, into a highly localized one governed by a 'marble cake' structure involving an array of unelected 'experts', models and rules, all of which worked in apparently technical ways to reduce the discretion of democratically accountable local planning authorities.

Third, discourse: from the 1980s onwards, the Labour Party's discourse around betterment value capture converged with that of the Conservatives. Both parties avoided any discussion of land nationalization or the injustice of economic rent; both parties prioritized economic efficiency over equity; and both parties framed housing unaffordability as a problem of too much state intervention rather than too little.

1 Estimates of total land value captured by S106 arrangements range from 25-50% (Dunning *et al.*, 2020).

All three of these dynamics, I argue, worked to reduce the capacity for agency and deliberation, moving betterment value capture away from the realm of deliberation and contingency and towards that of fate and necessity. Because these three faces often work in tandem—for example, when *institutional* changes are justified using a particular *idea*—it helps to look at them side-by-side. And because these shifts in economic interests, institutions and discourse took place over several decades, it also makes sense to conduct the analysis over a long time period. Thus, the scope of the article is necessarily broad.

Fortunately, however, there is already a voluminous extant literature on betterment value capture policy to draw upon, meaning that this broad scope need not come at the expense of empirical integrity. The main academic contribution of this article is to reinterpret the extant literature through the lens of depoliticization and, in doing so, to bring it into conversation with other relevant, yet previously disparate, literatures on multi-level governance and economic ideas, amongst other subjects.

The remainder of the article is structured as follows. The next section details Hay's definition and conceptualization of depoliticization. The following section then provides evidence of the depoliticization of betterment value capture under the S106 regime by tracking references in parliamentary debate and party manifestos. The subsequent section, which comprises the bulk of the article and represents its main contribution, details the three faces of betterment value capture depoliticization (economic interests, institutions and discourse) across different time frames. The final section concludes.

Defining depoliticization

In order to identify instances of depoliticization, we must first define ontologically what we mean by 'politics'. Here I turn to the political scientist Colin Hay, who defines 'politics' as possessing four main features. First, it involves choice. If there is only one reasonable policy option and no alternatives, then this precludes politicization. Following on from this, the second feature of politics is that it involves agency, in that actors have the capacity to do things which have consequences. Taking these two features together—choice and agency—we can see that fatalism and resignation are the antithesis of politics (Hay, 2007: 67). If political actors have both choice and agency, then this implies that some degree of deliberation should be required of them—reflecting, discussing, exposing themselves to diverse perspectives—when choosing between alternative courses of action. Thus, deliberation is the third feature. The final feature of politics is its social nature. Politics has implications for other people, including future generations. 'Politics', then, is 'the capacity for agency and deliberation in situations of genuine collective and social choice' (*ibid.*: 77). Depoliticization therefore occurs when an issue drifts away from the arena of deliberation and contingency, where action and change are possible, and towards the realm of fate and necessity, where nothing can be done.

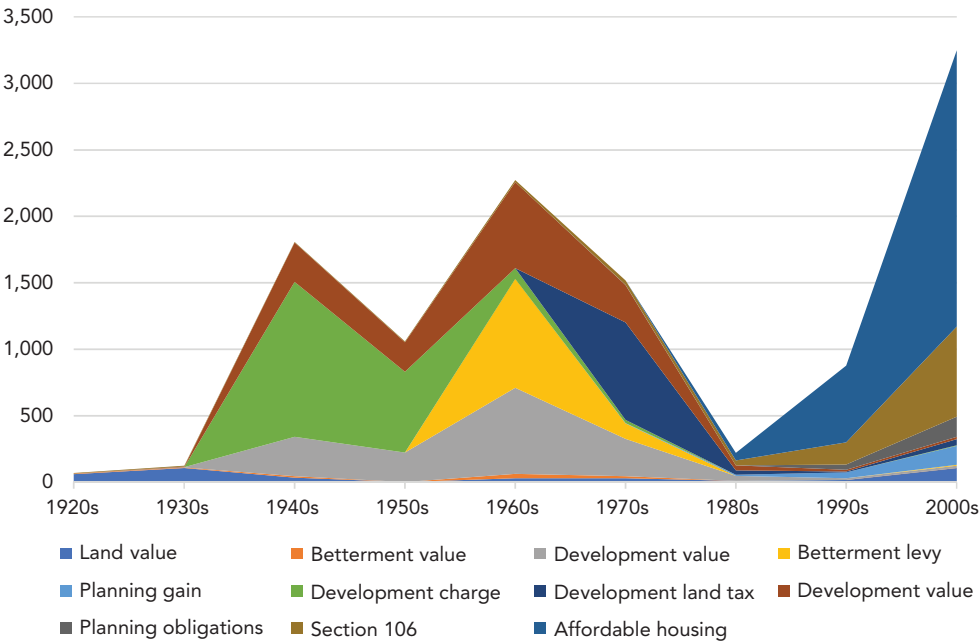
This definition does not specify *where* or *how* (de)politicization can occur: street protests, acts of terrorism, parliamentary bills, or conversations on TV chat shows can all be considered acts of politicization if they open up an issue to deliberation and contingency. That said, Hay's conceptualization does hold up parliament and the 'governmental sphere' as the pinnacle of politicization, as it is here that issues become the focus of national legislative debates, and where the capacity for policy change to take place is greatest. Before an issue reaches the 'governmental sphere', it must first exit the 'realm of necessity'—the least politicized sphere—and become a matter of private, then public, contestation. Hence, politicization involves the movement of issues towards the governmental sphere, while depoliticization moves an issue in the opposite direction (Hay, 2007: 79–85; Beveridge and Naumann, 2014).

Evidencing depoliticization

Based on the conceptual framework outlined above, if an issue had become depoliticized then we would expect it to receive less attention in the governmental sphere. Undoubtedly, betterment value capture was one of the most contentious political issues up until the 1970s. In the late nineteenth and early twentieth centuries, Howkins (2002) notes that land reform was ‘at the centre of English political life’. Weiler (2008), meanwhile, has argued that debates about land were crucial to the victory of Harold Wilson and Labour in 1964. Cox’s (1984) book on the post-war politics of betterment value capture is tellingly titled ‘Adversary Politics and Land’.

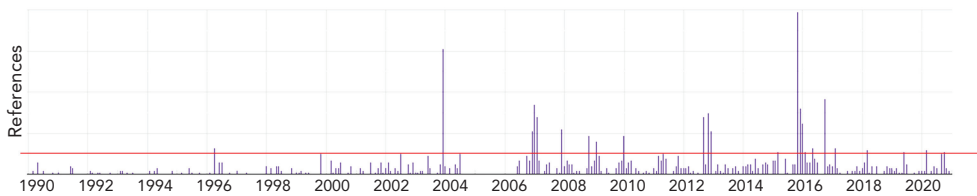
This trend of depoliticization is more concretely evidenced in Figures 1 and 2. Figure 1 tracks the number of references to betterment value capture terminology in debates in the House of Commons and the House of Lords from the 1920s through to 2005. If we exclude ‘affordable housing’ (the spike in blue from the 1990s onwards) and only look at the remaining terms, which relate specifically to betterment value capture (e.g. ‘Section 106’), then the number of references dropped dramatically in the 1980s and remained low until 2005. On the other hand, if we include ‘affordable housing’, then references rose steeply from 2000 to 2005, indicating that while housing (un)affordability became politicized, the issue had become decoupled from the betterment value capture policy debate.

If we extend our horizons beyond 2005 though, then there is clear evidence of an emergent *re*-politicization. Figure 2 shows references to ‘Section 106’ in speeches in the House of Commons from 1990 to 2020. The clear finding here is that Section 106 has become much more politicized since the global financial crisis. If we focus on the



NOTE: The numbers for 2000 to 2005 were doubled to make the period comparable with other decades.

FIGURE 1 References to betterment value capture terminology in speeches in the British Parliament from 1920 to 2005 (source: author’s calculations based on data from the Hansard Corpus of British Parliament speeches, <https://www.english-corpora.org/hansard/>)



NOTE: This graph contains parliamentary information licensed under the Open Parliament Licence v3.0.

FIGURE 2 References to 'Section 106' in the House of Commons from 1990 to 2020 (source: author's search using the 'Find' function in Hansard, <https://hansard.parliament.uk/search>)

red line, which indicates at least ten references in the House of Commons on a given day, then from 1990 to 2007 there were only seven days when references spiked above this level. Since 2008, there have been seventeen. A similar pattern appears in political manifestos. In 1989, 1992, 1997, 2001 and 2005 neither the Labour nor Conservative election manifestos contained any reference to betterment value capture reforms, but in 2017 both parties proposed capturing greater amounts of betterment value.² The drivers of this emergent re-politicization are not the concern of this article. My focus, rather, is on the period from the 1980s to 2008, when betterment value capture was depoliticized.

Three faces of depoliticization

Hay's definition allows us to define and roughly track trends in depoliticization, but it doesn't specify the mechanisms through which depoliticization works. Thankfully, there is a significant extant literature which does just that (see Flinders and Buller, 2006; Wood and Flinders, 2014). A central finding is that the process of depoliticization works through both institutions and discourse. In institutional (or 'governmental') terms, depoliticization can involve the 'delegation' of issues by politicians to arm's-length bodies, judicial structures or technocratic rule-based systems that limit discretion (Wood and Flinders, 2014: 165). Discursive depoliticization, meanwhile, focuses on the role of language and ideas to depoliticize certain issues by defining them as matters of scientific certainty or fate (*ibid.*: 165). These two faces of depoliticization often work in tandem, mutually reinforcing each other—as in the depoliticization of monetary policy by the (New) Labour government (e.g. Burnham, 2001). We therefore need both an institutional and a discursive lens to appreciate the ways in which betterment value capture policy has become depoliticized.

Whilst the depoliticization literature has proved adept at shining a light on the institutional and discursive faces of depoliticization, it has sometimes neglected to consider the structural context which constrains or enables acts and processes of depoliticization to occur (Fawcett and Marsh, 2014). This omission is particularly problematic when it comes to examining betterment value capture, where much of the contestation has been generated by conflicting economic interests (e.g. Cox, 1984; Coelho *et al.*, 2017). To address this limitation, I therefore include 'economic interests' as the third face of depoliticization. Put simply, I hypothesize that if the economic interests of a given society, and particularly economic interests with high levels of economic capital (Bourdieu, 1984), are in harmony around a particular policy issue, then—all other things remaining constant—we would expect them to be less politicized than if they were conflicting. To this end, I shall now map out the economic interests implicated in the betterment value

2 For all Labour and Conservative party manifestos from 1900 to 2001, see <http://www.labour-party.org.uk/> and <http://www.conservativemanifesto.com/>

capture debate, showing how (with some notable exceptions) they broadly converged between the 1980s and 2008. This represents the first ‘face’ of depoliticization.

– Economic interests: the (re)birth of the rentier nation

Since the nationalization of development rights, policy approaches to capturing betterment value can be placed on a spectrum ranging from the *laissez-faire* approach, which allows landowners to use their land as they like and recoup any uplift in value, to the full nationalization of land, whereby all betterment value would accrue to the state. Cox (1984: 54–58) identified three key interrelated axes along which policy approaches to betterment value vary: (1) the state’s control of land use (which has remained mostly unchanged since 1945); (2) the amount of betterment value that goes to the landowner vis-à-vis the state; and (3) the value at which the state is able to compulsorily purchase land.

In varying along these axes, policy approaches to betterment value align with or depart from the economic interests of different social groups, raising ethical questions about how wealth should be distributed. Those landowners who have large landholdings (a substantial portion of which is undeveloped) have an economic interest in limiting all three of the states’ powers—i.e. compulsory purchase, betterment collection and control of land use—as this allows them maximum freedom to develop their land in line with its most profitable use, and to pocket all of the uplift. Home-owners generally have a similar set of interests, with one key difference: because the existing use value of their land will be much closer to its highest use value than that of landowners, they are more likely to support state control of land use, as this will mitigate the risk of negative externalities (e.g. developments which compromise their house values) arising in the surrounding areas. Opposing them are renters who, without guaranteed tenure and controlled rent, generally have an interest in falling house prices and rents. Alongside this tenure divide, there is also a split between professional and industrial interest groups who lose or gain from house and land value inflation depending, among other things, on how much income they draw from land and property value inflation, as opposed to productive activities (see Cox, 1984).

Throughout the post-war decades, the economic interest groups on either side of these axes were finely balanced (see Cox, 1984). During the 1980s, however, the coalition which had an economic interest in land and house price inflation and stronger private property rights became much more powerful and populous. This was driven first and foremost by the rise in home-ownership, which accelerated from 57% in 1981 to 68% in 1991. Powered by the selling off of public housing under the Conservative government’s ‘Right to Buy’ scheme, this was part of the much broader rentierization of the economy—initiated by the Thatcher administration and continued under New Labour—which involved the privatization of a whole range of public resources susceptible to monopolistic control (Christophers, 2018; 2020). The rise of home-ownership was also powered by the deregulation and globalization of mortgage markets, as a result of which banks, pension funds and investors all acquired a stake in rising house values. Indeed, such was the extent of rentierization that house price inflation became a key pillar propping up consumer confidence, consumption, and the provision of social care (Coelho *et al.*, 2017).

Starting from the assumption that much (though certainly not all) of democratic politics within the parliamentary sphere is centred on competing economic interests which seek to influence policy through voting and deploying various forms of capital (Bourdieu, 1984), it should come as no surprise that—as rates of home-ownership accelerated and the economy became ever more rentierized—discussions of the state interfering to suppress house values or to compulsorily purchase land at scale for housing receded.

For much of the post-war period, Labour—the party of renters—explicitly mobilized betterment value capture policy as a means of suppressing land (and house)

values. The Labour Party's election manifestos of 1964, 1966, February 1974, October 1974, 1979 and 1983 were all critical of rising land values or land value speculation. As the party of home-owners and landowners, the Conservatives were less vocal, but even their 1970 manifesto was critical of Labour's interventionist betterment value capture policies on the basis that it had 'put up the price of land and houses'.

From the mid-1980s onwards, however, Labour election manifestos made no criticism of house price inflation, and under New Labour (from the late 1990s to 2010 under the leadership of Tony Blair and Gordon Brown), one of the explicit objectives of 'Housing Market Renewal', Labour's major regeneration programme, was to inflate local house prices (Clapham and Foye, 2019). This depoliticization of house price inflation also had a discursive aspect, with both the government and newspapers (even left-wing ones) tending to describe house price inflation in positive terms (e.g. 'house price growth') (Munro, 2018). This 'have your cake and eat it' narrative of depoliticization (Griggs and Howarth, 2018) appears to have had the effect of suppressing renter opposition: a 2014 poll found that less than half of all renters (of both private and social housing) thought that rising house prices were 'bad' or 'very bad' for the country (Opinium, 2014).

A similar trend occurred with respect to Labour's position on private property rights over land, another pillar of the rentier economy (Christophers, 2020). It had been a longstanding ambition of the Labour Party to nationalize land (Weiler, 2008), or at least to use compulsory purchase orders (CPOs) to obtain land for housing at scale (a policy successfully pursued in the 1950s; see Bentley, 2017, for example). During the 1970s and 1980s, however, as rates of home-ownership rose, the Labour Party retreated under Conservative fire. The Conservative election manifesto of February 1974 attacked Labour plans to nationalize land on the basis that it would prevent further increases in home-ownership. Placed on the defensive, Labour unequivocally stated in its own manifestos (February 1974, October 1974 and 1983) that attempts to nationalize land would *not* apply to home-owners, before dropping the idea of compulsorily purchasing land at scale altogether.

In sum, the gradual emergence of a large home-owning majority and the rentierization of the economy realigned economic interests in support of house price inflation and strong private property rights, thus constraining the extent to which any Labour government could intervene to capture betterment value. But only to a certain extent. As we will see, during the 1990s governments could have captured significantly more (or less) betterment value without driving down house prices or compulsorily purchasing land at scale. Thus, the key ingredients for politics and politicization still remained. To understand fully how betterment value capture became depoliticized, we therefore need to consider the role of institutions and discourse.

– Institutions: Section 106 and the viability regime

In this section, I explore how institutional changes to the governance of betterment value capture policy are likely to have contributed to its depoliticization. I begin by offering a brief summary of how the governance of betterment value capture has changed since 1945. I then discuss several depoliticizing trends, relating to both the inputs and outputs of betterment value capture policymaking.

FROM THE 1940S TO THE 1990S

In the post-war decades, interventions to capture betterment value were overwhelmingly driven from the centre by a succession of Labour governments in what Catney and Henneberry (2019) term a 'corporatist' approach. Typically, this involved setting a national rate of taxation on betterment value, and then providing the state with compulsory purchase powers to intervene if the requisite land was not forthcoming. In chronological order, the five attempts to introduce such taxation were: the Development Charge (1947–1952), the Betterment Levy (1967–1970), the Development Gains Tax

(1974–1976), the Community Land Scheme and the Development Land Tax (both 1975–1986) (Crook in Crook *et al.*, 2015: 47). Common to all of them was that they were driven and largely implemented by central government, and the majority of the taxation accrued also flowed in this direction.

The other similarity between these betterment value taxes is that they are widely recognized as having been ineffectual, because landowners withheld land in anticipation of the next Conservative government coming to power (e.g. Cox, 1984; Crook in Crook *et al.*, 2015: 60). More successful, however, were the activities of local authorities and the New Town Corporations (established through the New Towns Act 1946), which were able to acquire land for their own development purposes at existing use value, leading to the development of about 1.8m local authority homes and twenty-one new towns, housing approximately 2.8m people today. However, in 1959 and again in 1961, central government passed legislation to withdraw these compulsory purchase powers (Crook *et al.*, 2015: 287; Bentley, 2017).

By 1986, then, central government had mostly vacated the sphere of betterment value capture. This left a vacuum which, over the next decade or so, cash-strapped local authorities started to fill in a way that was uneven, loosely regulated and opaque. It started with a few pioneering local authorities that made the funding of infrastructure (including affordable housing) a condition for granting developers planning permission. From 1991 onwards, this arrangement became formalized as the government (and courts) allowed local authorities to include affordable housing targets within S106 agreements (Crook in Crook *et al.*, 2015: 78–80). By the early 2000s, planning obligations were being incorporated into most development plans, making them a material consideration in the determination of planning applications (Catney and Henneberry, 2019).

THE 2000S

As the deployment of Section 106 agreements became more common, two main concerns emerged regarding the level of contributions that local authorities were demanding. The first arose explicitly on the grounds of justice. A longstanding objection to S106 agreements from developers (among others) was that they should only be used to deliver public goods that were directly related to the proposed development (Crook in Crook *et al.*, 2015: 71). The Joseph Rowntree Foundation's 1994 inquiry into planning for housing concurred, opining: 'We do not think it any more reasonable to expect suppliers of new private housing to house the homeless than to make farmers responsible for feeding the hungry' (JRF, 1994; Oxley, 2008). On this front, however, central government consistently took the side of local authorities by affirming their right to include affordable housing targets in S106 agreements, provided that there was an identified need for it in the local plan (Crook in Crook *et al.*, 2015: 78–80).

The second, and more persistent, concern was that, as some left-leaning local planning authorities started to flex their muscles (e.g. the Greater London Authority), 'authorities risked asking for too much affordable housing, thereby threatening the viability of development' (DETR, 2001: 13). Although concerns about viability were framed scientifically, as a matter of 'development economics' (Christophers, 2014), it is important to note that fundamentally they centred on a trade-off between equity and economic efficiency. Once local authorities raise their affordable housing demands up to the level where certain sites in the local plan potentially become unviable, they then have two options: (1) to keep pushing higher on the basis that even if there are fewer financially viable sites, there will nonetheless be more affordable housing on those sites; or (2) to set the target below this threshold, thus ensuring that the total supply is maximized, even if this makes for a smaller number of affordable units.

Until the mid-2000s, local authorities were relatively free to make this economic efficiency vs equity trade-off for themselves. Thus, the Greater London Authority set its target at 50%, despite the fact that, according to the viability assessments it

commissioned, this would reduce the overall housing supply in a third of all London's boroughs (Christophers, 2014). From 2005 onwards, however, central government declared via a series of circulars that local authorities must not set affordable housing targets at a level which would threaten viability. To defend themselves against this charge, local authorities increasingly relied on viability models (see McAllister *et al.*, 2013) to show that their affordable housing targets would not compromise overall market supply. By 2008, every local plan had to be backed up by a viability appraisal (DCLG, 2008). In return, developers and landowners commissioned their own models, typically at the site level, to show that a particular development could not meet the affordable housing target and still be viable. Where the two sides were unable reach an agreement, it was ultimately decided on by the planning inspector (if it related to a local plan) or the courts (if it was a site-level dispute) (see Crosby and Wyatt, 2016).

TRENDS IN INSTITUTIONAL DEPOLITICIZATION

How, then, do we assess the role of these institutional changes in depoliticizing betterment value capture policy in the parliamentary sphere? Papadopoulos provides a useful framework for predicting which institutional contexts are likely to provide space for deliberation and agency (Papadopoulos in Fawcett *et al.*, 2017). Drawing on Sørensen and Torfing's (2013) proxies for 'democratic anchorage', he argues that depoliticization is more likely to be at its peak when certain institutional conditions are satisfied. At the input stage, technocrats would dominate the policymaking process, with elected officials (the 'shadow hierarchy') playing a relatively peripheral role. At the output stage, meanwhile, there would be a weakness of external oversight by democratic institutions and the media, often related to the absence of watchdogs or 'fire alarms'.

It is important to recognize that these institutional criteria do not *necessarily* align with Hay's ontological definition of 'politics': delegating the governance of an issue to technocrats rather than elected politicians could, in theory, open up rather than close down space for agency and deliberation. However, both the evidence and theory (as reviewed by Papadopoulos) suggest that the two are likely to be strongly correlated. Crudely speaking, we can think of these 'input' and 'output' criteria as institutional 'proxies' for Hay's ontological definition of depoliticization. To what extent, then, was the governance of betterment value capture depoliticized according to these institutional proxies, and is there any evidence that this narrowed the 'capacity for agency and deliberation', as we would expect?

From the 1940s until the 1990s, the overall shift in betterment value governance was one of decentralization, or the rise of 'multi-level governance type 1' (MLG-1) (Hooghe and Marks, 2001). Resembling federalism, MLG-1 refers to a dispersion of authority to general-purpose non-intersecting durable jurisdictions—in this case, local authorities (Hooghe and Marks, 2001). With this decentralization came increasing variation in betterment value capture policy, both in the amount of betterment value local planning authorities aimed to capture and in the amount they actually did capture. Local variation was explained not only by land values, but also in relation to the viability appraisal skills of local authorities, among other factors (Dunning *et al.* in Crook *et al.*, 2015).

In quite a banal sense, this increased variation in policies makes it difficult for the public, media and campaign groups—i.e. all those agents outside the parliamentary sphere which we associate with politicization—to scrutinize betterment value policy. Instead of there being one national tax rate for all types of development in all locations (Catney and Henneberry, 2019) and a single focal point for debate, policy and outcomes, there were now more than 350. Monitoring and scrutinizing policy was made more difficult still by the fact that negotiations between developers and local authorities were typically conducted in private, and the amount that was actually paid (as opposed to promised) by developers under S106 agreements often went unpublished. As

Transparency International's 2013 report 'Corruption in UK Local Government' put it: 'It is very difficult to hold local authorities to account in this area because data is held by around 350 different organizations and reporting arrangements are not standardized' (David-Barret, 2013: 30).

Indeed, it was partly in response to these concerns about accountability and transparency that central government took on a more active role in standardizing betterment value policy across England (Crook in Crook *et al.*, 71–72), most notably through the issuance of circulars controlling the level of affordable housing targets discussed above (Christophers, 2014). As with the introduction of other such 'rules' (e.g. Flinders and Buller, 2006), by placing a ceiling on affordable housing targets, central government reduced the opportunity space for deliberation and negotiation at the local authority level.

Crucially, though, central government itself did not specify how 'viability' should be appraised (McAllister *et al.*, 2016). If it had done, then it would have had to deal with an array of value-based questions, such as what constitutes an appropriate price for the landowner, or what represents a 'market' return for developers, as well as speculative assumptions about future house price inflation, all of which are crucial in determining whether affordable housing targets can be judged viable or not (Crosby and Wyatt, 2016). Instead, central government stepped back and left it to a range of unelected institutions to decide whether a local authority's affordable housing supply compromised viability or not (McAllister *et al.*, 2016). These included the consultants carrying out viability appraisals (*ibid.*), the organizations issuing guidance on methodology (Henneberry in Crook *et al.*, 2015: ch. 5), the viability models that are embedded and trusted (Christophers, 2014), and the courts or planning inspectors interpreting ambiguous legislation (Crosby and Wyatt, 2016)—all of which acquired significant control over betterment value capture policy.

It is important to recognize that local planning authorities did not necessarily *oppose* this loss of control. Indeed, the first viability appraisal was, as Christophers (2014) observed, carried out by a local authority to justify affordable housing targets in the face of developer opposition. In many contentious policy areas, politicians welcome having their hands tied by a particular rule, or delegating responsibility to some other 'scientific' or 'impartial' institution (Flinders and Buller, 2006). Viability consultants, as interviewed by McAllister *et al.* (2016), similarly note that local authorities often do not know what they are looking for from a viability appraisal and are willing to be led by the consultant.

Nevertheless, whether intentional or not, the fact that central government first introduced the viability rule, and then left viability unspecified, meant that a whole opportunity space opened up for unelected actors and agencies to make decisions that were previously the responsibility of democratically accountable local authorities and of central government before that. This infiltration of 'tool kits', 'models' and 'consultants' is demonstrated in the following quotation from a Bristol Council interviewee in 2008 (Burgess *et al.*, 2008: 10).

The biggest barrier is demonstrating viability on the site. We have spent a huge amount of money—used the 3 Dragons tool kit, got professional valuations, and now have a fairly robust model to help challenge developers—but it all depends on the data. We have bought Hometrack 'real demand' and used consultants (very successfully) because of the complexity of mixed-use sites in central Bristol.

Consequently, under the viability regime, betterment value capture was transformed from MLG-1, where it was largely a matter of local authority discretion, to Multi Level-Governance Type 2 (MLG-2), where its governance was performed by a

range of task-specific jurisdictions that overlapped and often contradicted each other (Hooghe and Marks, 2001). One of the obvious effects of this shift from MLG-1 to MLG-2 is to increase the power of those ‘insiders’ who are involved in, or at least understand, the policymaking process, relative to those ‘outsiders’ for whom policymaking resembles a black box (Papadopoulos in Fawcett *et al.*, 2017). If these insiders can come to an implicit agreement between themselves on a particular issue then there is little incentive for any of them to politicize it. And from the 1980s to 2008, with house prices rising, all the conditions for an ‘insiders’ agreement’ were in place, with plenty of betterment value to go round.

Viability appraisals provided the forum and the means through which this consensus could be manufactured. McAllister *et al.* (2016) provide evidence that the consultants producing viability appraisals for local plans often adjusted their inputs in order to reach a consensus among key stakeholders, including housing associations, developers and landowners (but not, notably, the general public or elected politicians). This is demonstrated vividly in the two quotations from a consultant interviewed by McAllister *et al.* (2016).³

Whilst we will have our own ideas about what we think are appropriate site sizes or property values or whatever, the important part of it is to engage all the stakeholders in agreeing those assumptions because they are a key part of the exercise (Respondent 03).

It’s the key part because what you are doing is getting buy-in from everybody so when you actually then produce the results you can say ‘well it’s based on the assumptions which we all agreed, isn’t it?’ So, if the methodology is agreed and the inputs are agreed, you can’t really argue with the output (Respondent 03).

Indeed, what we see here is something resembling ‘politics’—deliberation, agency, negotiation—taking place *through the viability model*, but instead of competing economic interests being recognized for what they are, they are ‘scientized’ as factual disagreements over assumptions in the model; instead of negotiations being overseen by elected officials and made transparent to the general public, they are overseen by the consultants and carried out behind closed doors; and instead of developments ultimately being decided on by the general public, they are decided on by the planning inspector, as demonstrated in the following quotation, also from McAllister *et al.* (2016):

essentially you’re getting buy-in from the development community and from the landowners, to a lesser extent I guess, in the variables that you’re going to be using to test viability. So, to be able to say to an inspector at an EIP [Examination in Public] ‘These developers came to a meeting where we discussed the variables, the inputs to the appraisal. They agreed them or they disagreed and we sought to use them for whatever reason it might be’; you can use that exercise to neutralize opposition (Respondent 10).

Hence, in terms of inputs, there is a strong argument that the rise of the ‘viability regime’ is closely associated with institutional depoliticization, in that local authority discretion was first constrained by the viability ceiling imposed by central government, and then much of whatever discretion remained was delegated to consultants, their models, and the courts or the planning inspector.

3 The fieldwork by McAllister *et al.* (2016) was conducted in 2012, but there is no reason to think their findings would not also apply to the period from 2005 to 2008.

So what about outputs? Were they likewise depoliticized? At first glance, quite the opposite seems to be the case. The viability regime standardized the criteria for setting affordable housing targets and made the calculations on which they were based more transparent. This led Crook to conclude that:

The greater formalization, transparency and accountability of planning obligations policy that has evolved over the last two decades since the Nolan and other reports has meant that there are now far fewer doubts about the legitimacy of policy and the integrity of practice than there were three decades ago (Crook in Crook *et al.*, 2015: 72).

In practice, however, transparency will only be converted into public scrutiny to the extent that the ‘watchdogs’ of democracy are able to understand and communicate what is going on, and see reason to do so. Discussing the governance of public-private partnerships (PPPs), Willems and Van Dooren (2016: 204) note that the ‘complexity and technicality of these deliberation impedes a broad political and public debate [taking] place’. A similar story applies to viability calculations, the rationales for which local planning authorities—never mind the general public and media—struggle to understand (McAllister *et al.*, 2016). Under MLG-2, public scrutiny is further obstructed by the ‘marble cake’ structure of governance, which makes it exceedingly complex, convoluted, and consequently nigh on impossible to work out who or what exactly is responsible for policy. In this way, politicians can use ‘the problem of many hands’ as a way of blurring the accountability space and distancing themselves and their own personal responsibility from the decisions taken (Bache and Chapman, 2008).

Overall then, we can discern two main shifts in the governance of betterment value capture policy, both of which depoliticized the inputs, and arguably the outputs, of the policymaking process. First, during the 1980s and 1990s betterment value capture policy became decentralized (MLG-1), meaning that instead of there being one central administration driving policy, there were over 350 local authorities with divergent, and often opaque, policies and outcomes. The second, and more significant, shift came with the rise of the viability regime in the 2000s (the change from MLG-1 to MLG-2), whereby the amount of betterment value local authorities could capture was first constrained by central government’s viability ceiling, and then much of whatever discretion remained was delegated to consultants, their models, and the courts or planning inspector.

– Discourse: what wins, what works, and the market

The third ‘face’ of the depoliticization of betterment value capture is its discursive—specifically, ideational—dimension. We have already considered some of the ways in which discourse has been used to depoliticize potentially contentious policy interventions, including the scientization of viability appraisal and the heralding of house price ‘growth’. There are many other discursive interventions we could have explored as well, such as debates over whether developers actually have a moral obligation to make affordable housing contributions or not (e.g. JRF, 1994).

Rather than embark on a comprehensive assessment of the role of discourse in depoliticizing betterment value policy debates, I instead focus on three areas of convergence in national parliamentary betterment value discourse which were particularly influential in narrowing the scope for deliberation and agency. I also attempt to identify the actors and ideas that drove this convergence, although I can do so only tentatively in the space provided. I focus specifically on the national Labour Party, as it is generally Labour which has adopted the discourse of the Conservative Party, rather than the other way around. Within these limits, my methodology was highly iterative, alternating between inductive and deductive approaches, and drawing on both primary

literature (party manifestos, policy papers) and secondary literature (academic papers and books) that could be accessed online.

THREE STREAMS OF DISCURSIVE CONVERGENCE

My central argument is that throughout the 1980s and 1990s the Labour Party's discourse around betterment value capture policy converged with that of the Conservative Party along three main streams of thought. The first two streams were normative. Until the 1970s, it was accepted across the Labour Party that increases in the value of land were largely due to social causes rather than individual effort. Since this 'economic rent' was unearned, there was a strong normative justification for the state to reduce house prices and compulsorily purchase land at close to its use value—policies which, as we have seen, Labour actively promoted. This view also pervaded society as a whole, with the Conservatives acknowledging in 1973 that people found 'offensive' the 'fact that with land an owner can quite fortuitously make huge windfall gains simply as a result of decisions made by planning authorities acting on behalf of the community as a whole' (Weiler, 2013). From the 1980s onwards, however, Labour Party manifestos dropped this normative interpretation, as well as the policies that flowed from it.

The second stream of normative convergence was the acceptance that enhancing economic efficiency ought to be the prime objective of any policy. Under New Labour, values such as 'equity' or 'social justice' were not entirely marginalized, but they became secondary values that were not to be advanced past the point where they compromised 'economic efficiency'. There is a long institutional and discursive tradition of protecting economic efficiency from other 'political values' which goes back at least to the eighteenth century (Judt, 2011) and was more recently advanced by the globalist 'neoliberals' such as Milton Friedman, James Buchanan, Friedrich Hayek and Richard Posner (Slobodian, 2020). Under New Labour, this position was made most explicit through the viability regime, which was consistently justified on the basis that market supply (efficiency) should not be inhibited by overly ambitious affordable housing targets (equity). In 2002, Charlie Falconer, then Minister for Housing, Planning and Regeneration, said that a planning system was needed which 'extracts the maximum number of affordable homes or their equivalent in money as planning gain *without choking off developments*' (see Wilson, 2004; emphasis added). In 2003, the interim report on the review of housing supply carried out by economist Kate Barker noted with concern that 'some local authorities may misuse Section 106 to delay or discourage development, by asking for unreasonably onerous levels of developer contributions' (Barker, 2003; para 3.48).

The third stream of discursive convergence was analytical. Throughout the post-war decades, when faced with rising house values and worsening affordability, Labour and the Conservatives tended towards very different causal explanations. For Labour, rising house prices were framed as a function of rising land values, which in turn were generally blamed on land speculation and the 'free market' in land (see the Labour manifestos of 1964, 1966, February 1974, October 1974 and 1979). The Conservatives, on the other hand, emphasized that the real driver of house price inflation was a shortage in the supply of land and housing, which they blamed first on the reluctance of local authorities to release land for development and second on Labour's tax measures which were causing landowners to withhold land. Without these 'bureaucratic' and 'unworkable' interventions, the free market would be able to operate properly (see the Conservative manifestos of 1950, 1964, 1966 and 1970). From the 1980s onwards, however, Labour adopted the framing of the Conservatives, generally attributing housing unaffordability to an overly restrictive planning system rather than insufficient state intervention in the land market (see, for example, the 2003 budget speech by Gordon Brown, the Chancellor of the Exchequer, in *The Guardian*, 2003).

In attempting to understand the role of ideas in propelling and channelling these three streams of discursive convergence, we need to look at the ideational and personnel changes that took place within both the Labour Party and the institutions from which it drew intellectual inspiration and legitimacy.

NEW LABOUR: 'WHAT WINS', 'WHAT WORKS' AND 'THE MARKET'

The rise of New Labour saw a transformation in the party's intellectual leadership, as academic (often Keynesian) economists and union leaders were replaced by transnational finance-oriented economists (TFEs), think-tank 'policy wonks', and media-savvy spin doctors. What united this new intellectual leadership was a shared emphasis on 'what wins', 'what works' and 'the market' (Mudge, 2018). In terms of 'what wins', for New Labour, public opinion was no longer considered something to be moulded, but rather, something that needed to be first discovered and then responded to with policies that would appeal to the target demographic. From the 1980s onwards, as the Labour Party's traditional working-class constituency fragmented, the party pivoted away from representing the interests of one group (the working class) over another ('the rich', 'land speculators') and instead sought to rebrand itself as a party advancing the collective interests of society as a whole, especially those groups which it had previously alienated. In the 1997 election, for example, the Labour Party wooed home-owners while promising to 'Stop the growth of an "underclass" in Britain' (Labour Manifesto, 1997; Kavanagh in Seldon, 2007). As part of this rebranding exercise, New Labour sought to distance itself from ideological conflicts invoking competing ethical values and instead claimed to be pursuing 'what works' and implementing 'evidence-based' policies that commanded broad support across the full spectrum of economic interests (Allmendinger and Haughton, 2012; Mudge, 2018).

Taken together, this emphasis on 'what works' and 'what wins' goes some way to explaining the first two normative streams of convergence between Labour and the Conservatives. Being indifferent to unearned betterment value (or economic rent) was a way of rendering home-owners blameless for the house price inflation they enjoyed. Focusing on economic efficiency, meanwhile, was a way of appearing 'post-ideological' and appealing to the electorate as a whole. However, if we are to understand the Labour Party's discursive repositioning more fully, particularly in relation to the third analytical stream of convergence, we need to extend our gaze beyond the party itself and consider its relationship with the discipline of economics.

In the post-war decades, academic economists were the primary intellectual driving force behind Labour Party policy (Mudge, 2018), and betterment value policy was one of their central concerns. Anthony Crosland,⁴ Harold Wilson,⁵ Arthur Skeffington,⁶ Hugh Dalton⁷ and Hugh Gaitskell⁸ were all lecturers in economics at some point in their career, all played key roles in betterment value capture debates and policy, and all were advocates for interventionist betterment value capture policy (Weiler, 2008; 2013).

New Labour likewise drew heavily on the expertise of economists, but in this case, a different *type* of economist—one whose identity, or 'habitus' (Bourdieu, 1984), was forged more in the fields of business, finance, consultancy, think tanks and journalism than in academia (Mudge, 2018). Thus, before becoming a member of the Monetary Policy Committee, in which capacity she conducted the two definitive reviews of the housing supply and the planning system (Barker, 2004, 2006), Kate Barker worked for a pension fund, the National Institute for Economic and Social Research (NIESR), Ford UK, and the Confederation of British Industry (CBI).⁹

4 https://en.wikipedia.org/wiki/Anthony_Crosland

5 https://en.wikipedia.org/wiki/Harold_Wilson

6 https://en.wikipedia.org/wiki/Arthur_Skeffington

7 https://en.wikipedia.org/wiki/Hugh_Dalton

8 https://en.wikipedia.org/wiki/Hugh_Gaitskell

9 https://en.wikipedia.org/wiki/Kate_Barker

Whilst they remained affiliated to the left, these TFEs saw the world in a more market-centred way than their predecessors. This generated strategic dilemmas for New Labour and demanded the expertise of policy specialists and strategists who could reconcile economic initiatives with electoral communication (Mudge, 2018). Thus, whereas the embrace of the market by Conservatives was normative, that of New Labour was normalized and necessitarian (Hay, 2004).

THE AMERICANIZATION OF ECONOMICS: THE RISE OF NEW URBAN ECONOMICS

To focus only on changes in personnel, however, would be to ignore the much broader transformation—specifically ‘the Americanization’—of the economics discipline as a whole. Eschewed by the Thatcher administration, and delegitimized by the onset of ‘stagflation’, Fourcade (2009) has shown how in the 1970s and 1980s mainstream economists in Britain followed their US colleagues by rallying round a tightly policed set of assumptions (rational choice theory), epistemic values (i.e. prioritizing internal logical consistency over the external fit with reality; deductive over inductive reasoning; and mathematization), and normative values (economic efficiency).

This Americanization of the discipline went with the flow of all three streams of discursive convergence. Just like New Labour and the ‘neoliberals’ (Slobodian, 2020), by focusing only on economic efficiency and outcomes at the aggregate level, the discipline eschewed contentious distributional questions and issues of ‘fairness’ that had previously motivated economists, especially British economists (Fourcade, 2009; Hirschman, 2019). Moreover, by mimicking the language and methodologies of physics, the discipline convinced itself and others that it was engaged in a ‘value-neutral’ pursuit of knowledge and could provide ‘objective’ policy recommendations—an orientation that aligned neatly with New Labour’s post-ideological ‘what works’ agenda (Mirowski, 2002).

The Americanization of economics also helps explain New Labour’s third stream of discursive convergence: its attribution of housing unaffordability to a restrictive planning system. One of the defining features of mainstream economics today is that it treats land like any other factor of production. This is in stark contrast with classical economists, who treated land as something distinct because of its various imperfections—its permanence, finitude and immobility—which limit the extent to which supply can sustainably rise to meet demand (e.g. Ryan-Collins *et al.*, 2017). This shift in thinking has been traced back to the rise of neoclassical economics at the end of the nineteenth century (Gaffney, 1994; Ryan-Collins *et al.*, 2017: ch. 3), but even in the 1950s there was still great scepticism amongst mainstream economists (including those within the Labour Party) about how allocatively efficient the land market could be, and a concomitant openness to widescale state intervention (see Munby, 1954, writing in *The Economic Journal*).

It was the rise and subsequent dominance of New Urban Economics (NUE) (McMaster and Watkins, 2006) that banished ‘heterodox’ understandings of land from the mainstream altogether. In line with the broader ‘Americanization’ of the discipline, NUE sought to construct sophisticated mathematical models of land and housing markets that were precise, tractable and generalizable; all held together by assumptions of rationally optimizing behaviour on the part of economic agents. Leading economic journals were dismissive of anyone who did not play by these rules, leaving little room for either classical economists who sought to emphasize the unique characteristics of land (Fourcade, 2009), or institutional economists who were concerned with the context-specific role of history and (political or legal) institutions in shaping the land and housing markets (McMaster and Watkins, 2006).

If land was no longer ‘special’, as the classical economists had it, and if housing and land markets were not fundamentally constrained and shaped by context-specific institutions, as the institutional economists had it, then there was no good reason why

housing markets the world over could not just behave like other markets: whereby a rise in house values would be naturally accompanied by a proportionate rise in supply, thus pushing the price of land all the way down to the existing use value and effectively eliminating the need for any betterment value capture policy whatsoever (Ryan-Collins *et al.*, 2017). In short, a pure NUE reading of housing and land markets (e.g. Cheshire, 2014) implied that planning regulations (or some other state intervention) must be to blame for the inelastic supply of housing (for further discussion on this, see Adams and Watkins, 2014: section 9). From an NUE perspective, therefore, it was difficult for the state to justify taxing the betterment value that would ‘not exist if public authorities did not restrict the supply of land below that which would exist in a free market’ (Foster and Glaisher, 1975). It would be a bit like the state placing controls on the number of pencils that could be supplied and then taxing the pencil manufacturer on the resulting uplift in pencil value. A far more coherent and efficient means of quashing unearned incomes would surely be to relax or reconfigure planning regulations so that supply could rise to meet demand.

Finally, in adopting this NUE causal framing, New Labour was careful not to point the finger at home-owners, whose economic interests were opposed to a more responsive housing supply (see the introduction to this article) and who were the fundamental driver of tight planning restrictions (see Coelho *et al.*, 2017). Rather, by criticizing a ‘restrictive planning system’, New Labour was able to imply that the housing shortage was not a political problem involving fundamentally conflicting economic interests, but a technical problem involving a broken ‘system’ run by a heavy-handed state (Inch, 2012). This thus represented New Labour’s final discursive turn in identifying a causal framing of housing unaffordability that was politically expedient whilst at the same time commanding scientific legitimacy.

Conclusion

Starting from Hay’s definition of politics as ‘the capacity for agency and deliberation in situations of genuine collective and social choice’ (Hay, 2007: 77), the main contribution of this article has been to examine and illuminate the various ways in which the three ‘faces’ of depoliticization—economic interests, institutions and discourse—have worked (often in tandem) to push betterment value capture to the margins of the political agenda and keep it there. I will now very briefly review these three faces before reflecting on the limitations of the article and some key areas for future research.

The first face of depoliticization was economic interests. In the post-war period, suppressing land values was an explicit and divisive objective of betterment value capture, but once home-owners came to dominate the electorate, and the economy became rentierized, both of the major political parties came to accept rising house and land values and strong private property rights, thus squeezing the political space for state intervention in the land market.

The second face of depoliticization was institutional, or governmental. In the 1990s betterment value capture policy went from being centralized, simple and transparent to being highly localized, relatively complex and opaque. The more significant shift in depoliticization, however, occurred with the rise of the viability regime in the 2000s, whereby central government first constrained the amount of betterment value local authorities could capture, and then delegated much of whatever discretion remained to consultants, models and the courts or the planning inspector.

The third and final face of depoliticization was discursive. From the 1980s onwards, the values that the Labour Party espoused and the causal framings that it advanced converged with those of the Conservatives, thus narrowing the scope for deliberation and contestation. This convergence was likely driven by personnel and strategic changes within New Labour, but also by broader ideational changes, particularly the ‘Americanization’ of mainstream economics (Fourcade, 2009).

As with any piece of research, this article has had to contend with empirical and epistemic trade-offs which have given rise to several limitations which future articles could look to address. Focusing on the parliamentary sphere has provided a useful nationwide, bird's-eye perspective on the depoliticization of betterment value capture, but it has also probably concealed more local instances of (de)politicization which may buck or complicate the trends outlined here. Future research could adopt a narrower scope for empirical study and focus, for example, on (de)politicization within one local authority. This would also allow for a more actor-centric approach, which can illuminate the key motivations behind depoliticization—a subject on which most of the depoliticization literature, including the present article, remains silent (Hay, 2014).

The most striking limitation of this article though is that the analysis ends in 2008. Since then, as already indicated, betterment value capture has become re-politicized, albeit not to the levels observed in the post-war decades. Inverting the three faces of depoliticization, we could hypothesize a number of plausible reasons for this emergent re-politicization. In terms of economic interests, the decline in home-ownership has given rise to a constituency of renters who are potentially more critical of house price inflation. In terms of governance, the sharp decline and then plateauing of house prices means that there is now less betterment value capture to go round. This has arguably strained the 'insiders' agreement' between local authorities, developers and landowners and led local authorities and campaign groups to apply greater scrutiny to the 'dark arts' of viability appraisal and the role of central government (McAllister *et al.*, 2016; Grayston, 2017). In terms of economic ideas, although neoclassical economics still remains dominant, the idea that land should be understood as a distinct factor of production has begun to receive serious consideration once more (e.g. Ryan-Collins *et al.*, 2017). These are all hypotheses which future research could fruitfully explore.

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