

RESEARCH REPORT

The Real Properties of Immovable Estates: Ambiguity and the Invention of the Coast

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The recent housing and real estate crisis in Spain is deeply entangled with the urbanization of the coast and the demarcation of the shoreline. With high rates of both tourist developments and second homes owned per inhabitant, the Spanish case is representative for the way in which the making of the shoreline affects the making of real estate value, and how the recent crisis is a result of unethical decision-making in governmental institutions. It is urgent to read the housing crisis as a crisis of democracy in the country at large: the act of drawing the shoreline exposes the controversial politics behind every twist of that line. The boundary demarcating where building land ends and the open seas begin is not a matter of landscape management, rather it increasingly constitutes an assemblage of forces that range from insurance companies to politicians defining epistemological questions around nature and the environment for purely economic interests embedded in real estate. After the recent financial crisis, there has been a political and market shift that applies the same speculative mechanisms of real estate investments to the definition of nature. This paper connects two moments in 2006: the re-invention of the shoreline after Katrina by US insurers with the bust of the housing bubble in Spain. Far from being local, isolated and faraway cases, the paper argues that these forms of construction of the coast are the essence of a neoliberal management of landscapes and modes of inhabitation. The conflict between politicians, real estate investors, insurers and coastal dwellers about the precise definition of the coastline is a paradigmatic situation. This paper considers margins, both in spatial and financial terms, as key components of ambiguity, arguing that in the struggle to own space, the ambiguity of margins is the basis of neoliberal forms of power.

Introduction

In September 2006, only a year after the devastating Hurricane Katrina, one of the largest homeowners insurers in the US, State Farm Insurance, changed the definition of 'coastal area' from 1000 feet to one mile (Fleischman 2006). By extending the littoral zone over five times inland in the name of security, existing houses were moved closer to the water than they had ever been. State Farm Insurance dropped coverage over such properties, which were now stuck in a newly fabricated coastal strip. This post-disaster decision took advantage of the ambiguity embedded in the definition between natural and building land. It reclassified the taxonomy of space as if the houses on the waterfront had already been flooded. Furthermore, this action contested the *de jure* demarcation of the coast by implementing a different *de facto* line; a more convenient version, which pre-empted million-dollar compensations from being paid by the multinational company, were another Katrina to strike local residents in the near future. Far from mitigating the collapse of coastal buildings through infrastructural engineering, this form of engineering reacting to insurance interests, or 'insurance-engineering' of the coast, simply defined a zone where inhabitants were not only at risk, but legally detached from any form of disaster relief provided by their home insurers (Wiegel & Saville 1996: 514). At the same time, the decision to push the coastline further inland left thousands of policyholders in a new legal limbo of potential eviction concerning the eventual loss of their mortgaged home. In the state of Alabama alone, State Farm Insurance decided not to renew coverage for about 2,600 policyholders (Mitchell 2007).

The economic value of those properties dropped as much as their protection coverage against disasters did. State Farm Insurance lost interest in securing houses that were *too far away* from the newly created safe ground. When insurers abandoned the coastal market, not only did they make mortgages go literally underwater, but they also invented a new definition of nature. Home insurance policies began to separate hurricane damage into wind damage [covered] and flood damage [not covered]. They disconnect the effects of wind from water as if they were two separate causes for insurable or uninsurable entities. The shoreline is not where the sea ends and the land begins, as Carl Schmitt long ago enunciated (Schmitt 1997). Bonnie McCay refers to the shoreline as a liminal space, where the littoral becomes neither one thing nor the other, but stays transitory, and is permanently situated on the threshold (McCay 2008). However, the shoreline is not the vertical threshold where land, water and air meet. This essay argues that the shoreline is a four-dimensional construct, ranging from microscopic to macroeconomic scales, that can serve as a tool to think of another form of production of space.

Looking at the coast from the perspective of ambiguity can shed light on how ecological events restructure territory, and how the financialization of the shoreline constructs inhabitable and uninhabitable space. Ambiguity is proposed here as a form of governance: not only ambiguity as a form of control, but ambiguity as a form of resistance. Hence, the conflict between US insurers and coastal dwellers about the precise definition of the coastline is a paradigmatic case: a new set of economic relations instrumentalized the demarcation of space. The liminal condition of being simultaneously part of the land and part of the sea constituted a powerful tool that State Farm Insurance took advantage of. The definition of the margins of the coast depended on the profit margins of the company and *vice versa*. Margins, both in spatial and financial terms, are key components of ambiguity. Therefore, a need for a conceptual framework to understand the production of ambiguous space from the perspective of neoliberal speculation emerges in order to detect opportunities to intervene in the making or unmaking of the built environment.

Calculated Ambiguity: To Be *and* Not To Be

The post-Katrina redefinition of the coast embodied a new class struggle, not from a Marxist perspective, but a struggle over the power to classify, and reclassify, space. The power to administer land use relies on the authority that shifts boundaries in convenience. Consequently, control over the demarcation of boundaries can be in itself considered an attack to democracy. Jean-Jacques Rousseau stated in his *Discourse on the Origins of Inequality*, that the first man who, having fenced off a plot of land, thought of saying, 'this is mine,' and found people simple enough to believe him, was indeed the real founder of civil society (Rousseau 1997). More than two and a half centuries later, Reinhold Martin remarks that this sort of inequality around the making of value is still perpetuated and carefully designed by forces in power; it is deliberately created and eventually it is the laws of real estate that govern us (Martin 2015: 92).

Constructive ambiguity as enunciated by Jacqueline Best becomes very relevant here. When analyzing the 1944 Bretton Woods Agreement, a key moment that would set the basis for international finance, Best argues that the reason why it failed to deliver its ambitious goals for a new global and transparent order was not that it was too ambiguous, as the media reported at the time (Best 2005). Ambiguity, to this day, has been taken as a synonym of uncertainty and largely associated with negative effects. Its stigma is based on its being perceived as against clarity and transparency, against rational knowledge, and against the production of *one* truth. Ambiguity is at odds with rational thought and the clear production of knowledge, and it has been turned into a malady to be eradicated. However, in a move beyond the stigma of ambiguity, Best argues that if we are negatively surprised by the idea of ambiguity as a constructive force, it may be because we keep thinking of our strengths in terms of the perfection of information (Best 2005: 2). Hence, Best remarks how the Bretton Woods Agreement actually failed, not because it was too ambiguous, but because it was not ambiguous enough: 'Whereas the emphasis in the postwar regime was on *managing* ambiguity by *regulating* capital [...], the contemporary reliberalized regime has focused on *eliminating* ambiguity by *deregulating* financial flows' (Best 2005: 2).

Attempting to eliminate ambiguity has eventually opened a Pandora's box. Contrary to Best's proposition, of embracing ambiguity and the opportunities it could facilitate, deregulated financial flows became too ambiguous without being acknowledged as such. The neoliberal strategy of financial liberalization has grown into the monster it supposedly wanted to avoid. Extrapolating this to the notion of offshore space, Jason C. Sharman has noted that extraterritorial financial flows have adopted intentional ambiguity as an inherent form of governance: 'The common feature among offshore financial products is calculated ambiguity: the ability to give diametrically opposed but legally valid answers to the same question from different quarters. Thus offshore allows individuals and firms to enjoy simultaneous ownership and non-ownership,

to be high profit and loss-making, heavily indebted but also debt-free, and for investment to be foreign and domestic' (Sharman 2010).

By referring to the offshore as calculated ambiguity, Sharman exposes the intentionality and need for governments to keep zones beyond their own reach of governance, in which economic transactions take place with minimal intervention by the state. Otherwise, the disappearance of offshore tax havens would imply the unimaginable disappearance of places like Luxembourg, Cayman Islands or the City of London.

The Highest Tide in History

On 4 April 2006 a municipal council was dissolved for the first time in the democratic history of Spain. I would signal that date, when democratic politics failed, as the moment when the recent housing crisis officially started in the country. In the Mediterranean town of Marbella, the core site of *Costa del Sol*, the Court of Justice unveiled a network of politicians who had turned into real estate investors. They had been using their legitimate power to adapt the limit between building land and the coastal commons to their own interests. The lack of independent mechanisms of control had led to a situation where the town-planning advisor had steadily signed over 900 urban-planning agreements and granted over 10,000 licenses behind the scenes over 15 years. Architecture had become a widespread tool to circulate capital from uncertain origins. Nothing about this was unexpected, as major real estate companies, developers and speculators, had been responsible for building up to the real estate crash over several decades, mainly since the 1960s. By creating a fever of homeownership along the coast, a nepotistic class of privileged politicians that had risen to power within Franco's dictatorship, shifted the economy of the nation towards homeownership as an essential form to invest family savings. The same real estate developers and mortgage institutions that made their fortune at the time perpetuated their power positions after Franco died. Hence, the historical opening into democracy of the country in 1978 has been referred to, not as a democratic *transition*, but as democratic *transaction* (Anguita 2012).

Since the discovery of iodine and bromine in seawater in the 18th century, and their beneficial properties for the human body, the coast as a contested site has been turning accumulation of wealth into a built object: the second home. Global capital has been frantically taking the form of residential property for over two centuries (Paris 2011: 9). Whether in the shape of coastal bungalows on the shores of the Atlantic or in the guise of healing, hotel or golf resorts in the Mediterranean, the construction of specialized environments for leisure has not only urbanized the coasts of many industrialized and underdeveloped countries, but it has also created new conceptions of time, inhabitation, and nature. The need to possess a retreat space as a form of profitable investment has been a need created by governing classes since Franco's economic strategy to *develop* the country up until today. According to the European Central Bank, 36.2% of Spanish citizens own a second home; only surpassed by Greeks (51.6%) and Cypriots (37.9%) (Díaz Guijarro 2014). This constitutes a considerable difference if compared with second home ownership rates in other European countries like the Netherlands (6.1%), Austria (13.4%) or Germany (17.8%). The imminent dissolution of a democratically elected council on 04/04/06 exposed how housing and real estate had become the epicenter for politics and one of the main causes for the recent financial, architectural and political crisis in Spain.

The real estate boom on the Spanish Mediterranean shores, and the crisis that followed, can be analyzed on the basis of the failure in the making of the shoreline of the entire country. From the very first law regulating the ecology of the Spanish coast in the 19th century, tax exemptions and real estate speculation were already operating together. After trying to combat typhus and leprosy on the coast for several years, the 1918 Cambó Law in particular introduced a highly speculative territorial approach in Spanish jurisdiction: the act of draining coastal wetlands granted tax exemptions and landownership over any reclaimed territory from the sea (Ceballos-Moreno 2001). In the name of hygiene, the *improvement* of land created fortunes in land value and invented ownership. Following the same philosophy 70 years later, the 1988 Spanish Law of the Coast, and its subsequent reforms, have not protected nature, as initially promised. Instead they largely instrumentalized scientific reports to invent a shoreline by generating and boosting profit margins. According to the Law of the Coast and its Roman Law roots, 'the shore of the sea extends to the highest tide in history' (Ley 22/1988). However, this has led to an endless number of ambiguous situations that fail to situate that highest point, due to the blurry definition of landscape margins and real estate profit margins. Every twist of the shoreline explains not where tides have been active, but rather where politics fail to make an ethical decision. According to the ambiguous demarcation of the shoreline, some buildings are included in the maritime public domain and torn down because they invade the coastal commons; others remain on building land and are granted the right to stay; and others are entitled to emerge out of rural or wild land.

Legitimized by the 1988 Law of the Coast, real estate has acquired physical properties and has become movable across the terrain.

Over a period of more than 50 years of urbanizing fever, Spanish city planning schemes and municipal master plans became a truly powerful instrument to redistribute surplus value (Betancor & García-Bellido 2001: 99). The power to reclassify space, to turn nature into building land, touches on the core of the subject. Since the Law of the Coast was passed in 1988, the final version of the Spanish shoreline has not yet been demarcated in its entirety, as evictions and eminent domain have trapped the littoral in Court. The shoreline is not even just a line. It is two lines with different forces affecting them, separated by a very variable easement of protection: the end of the sea and the end of building land. The actual drawing of the shoreline and its buffer zone, which varies from 6 to 500 meters in width, exposes how the geometry of the two lines materializes the illegitimate, contradictory or unethical planning agreements behind them (Fig. 1).

Factories of Truth: Salinity and Nonhuman Agents

The 1988 Spanish Law of the Coast and its subsequent reforms have instrumentalized scientific reports justifying the demarcation of the shoreline through *factishes*. Following Bruno Latour and Isabelle Stengers' concept, the *factish* is a form of hybrid knowledge between the factual and the fetish (Latour 1991; Stengers 2010). Microscopic grains of sea salt have been used in court to prove, or dismantle, the material history of the millenary geology of the beach. In the case of Las Teresitas Beach, Tenerife, salt was literally taken to court, in order to prove where the highest tide in history would define the end of building land. The image of the soil samples, with their content or non-content of sea salt and fossil sea creatures, was intended to prove whether the sample site belonged to the land or the sea, as stated in the DL-210-TF report, produced by public company Tragsatec in 2008 (Fig. 2). However, it carefully concluded that even if the appearance of fossils and marine shells in the area of the beach would prove that the particular spot belongs to the sea, their presence is not natural, as they have not come to the surface due to natural tidal movements, but the samples ended up in that spot due to excavation of terrain to build the adjacent road. Hence, the role of the soil samples in proving the presence of sea salt was immediately undermined by the possibility of human-



Figure 1: Images from the Ministry of Agriculture, Food, and Environment online platform to visualise the Demarcation of the Shoreline. In pink, the end of building land; in green, the end of the sea; in yellow, demarcation still under litigation. The buffer zone in between both lines is the ambiguous zone that operates as an easement of protection. On the left image, the disparate definition of the coast between two boroughs is exposed by the mismatch between lines. On the right image, the lines are twisted to adapt to a new development. <http://sig.magrama.es/dpmt/> Accessed February 2016.

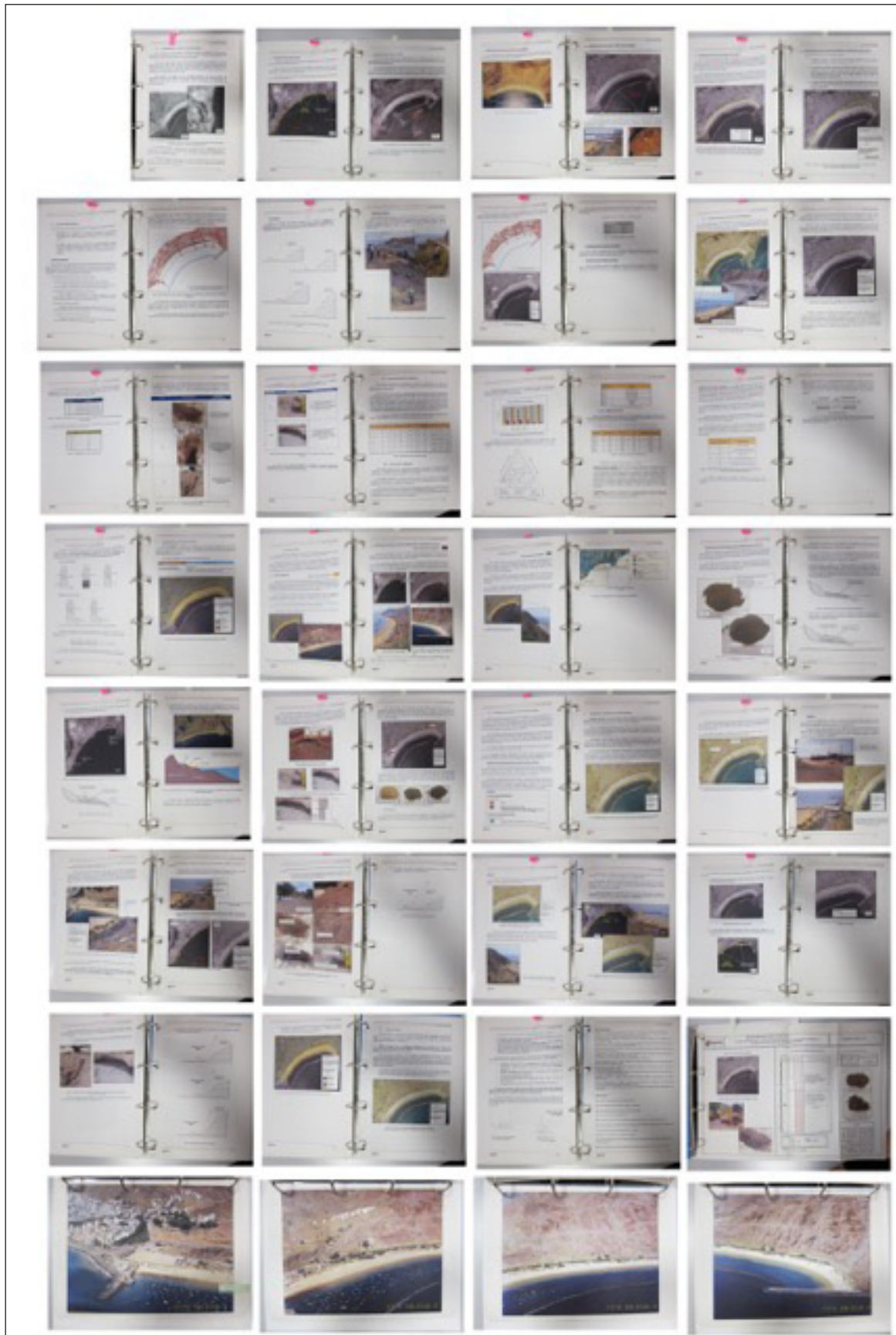


Figure 2: DL-210-TF Salinity Report to demarcate the coastal commons along Las Teresitas Beach, Santa Cruz de Tenerife. TRAGSATEC, 2008. (*Estudio Técnico para la Justificación del DPM-T en la Playa de Las Teresitas, DL-210-TF, T.M. Santa Cruz de Tenerife*).

led movements of the terrain on this artificial beach. Objectivity in this scientific report kept facts open for the final subjective interpretation of the judge.

The same ambiguity that allows speculative forces to gain control of the spatial condition of the coast has also led civil disobedience to use ambiguity as a subversive tactic in order to resist the violence of urban planning. The recent construction process of a new port in Granadilla, not far from Las Teresitas Beach in Tenerife, is a paradigmatic case of ambiguity used as resistance.

Bill Clinton was invited to visit Tenerife in July 2005 to push the real estate plans for the new port. He went as far as to proclaim in a public speech that this new harbor would actually be crucial in solving poverty-related problems in Africa (Sagastume 2005). Nonetheless, critical and activist voices were raised about the potential it had of becoming a base for the AFRICOM (United States Africa Command) as an instrument to operate under the fallacy of humanitarian aid, security and stability for the African continent. The real interests of AFRICOM would actually be not to protect civilian population, but rather to protect and ensure American investments on the West African coast, while continuing the profitable business of war by using the Spanish Canary Islands as their operations-base. Civil protests followed and a pacifist narrative emerged amongst local population to stop the development of the infrastructure.

Like in Marbella, local authorities closed deals to increase profit margins out of the conversion of a natural part of the coast into infrastructure. On the one hand, the local government was asking for European subsidies to build a new port, as the old one in the capital Santa Cruz had outgrown its capacity and could not be expanded. On the other hand, they were simultaneously asking for European subsidies to actually expand the old port (Aguilera Klink 2006). The fact that the regional government was using two contradictory narratives at the same time in order to obtain double funding for opposite reasons exposes a subjective fabrication about a lack of resources, right from the beginning of the planning of the port.

In order to ensure the successful construction of Granadilla port, local politicians/real estate developers anticipated environmentalist opposition before physically launching the project (**Fig. 3**). In 2009, right before the announcement of the necessary dredging works on the seabed for the €380 million construction of the new mega port, a species of *Posidonia* seaweed was taken out of the regional catalogue of endangered species. In order to avoid going against environmental requirements, *on paper* the seaweed was suddenly no longer under environmental threat. However, following the same gambling tactic, a group of environmentalists managed to respond to that move by spotting an endangered endemic beetle in the area, that was still part of the same catalogue of endangered species (Observatorio Ambiental Granadilla 2015). The construction works were stopped for some time while awaiting the Court decision in the conflict about natural species preventing the advance of the built environment. The final decision dictated that in order to guarantee the construction of the port in accordance with environmental regulations to protect the landscape of the area, local authorities would need to carefully and respectfully displace 17 specimens of the endangered beetle far away from the coast up to the highlands, so that they would not be annihilated during the construction process (Viúdez 2013).

On Vacation: Arbitrary Coastal Demolitions and Eminent Domain

The Law of the Coast initially aimed to protect the ecological character of the coastal landscape, by giving preference to the natural over the built environment. However, rather than effectively demolishing large-scale holiday resorts by the water, the Law has been mainly implemented to leave the most vulnerable dwellers of the coast without protection. Local fishermen and impoverished communities in Tenerife, for example inhabitants of precarious houses in El Cho Vito or El Sauzal, have been dismantled because they were too close to the shore. Lacking legal or financial support to resist, they have been the poster children used by Spanish authorities to prove to the EU how they are bringing back the coast to its *natural* state. Meanwhile owners of large hotel complexes by the water, who had other assets to negotiate with, managed to secure their permanence. For instance, the owner of Isla de Lobos secured the right to stay on the shore by selling an entire island off the coast of Lanzarote to the government to be opened as a public nature reserve. In exchange, his Lanzarote resort could remain far enough from the shoreline for another 50 years.

Marbella was not an isolated case. The entire Spanish coast has been flooded with corruption cases where city mayors have invented the coastline as part of their neo-feudal municipalities. Similarly, US insurers, by pushing the coastal margins back and forth, up and down, generated a prosperous economy of nature-driven profit for those in power. The territorial organization of the country becomes one of the reasons for the ambiguity embedded in the use of land margins as profit margins, for two main reasons:



Figure 3: Construction of the new port in Granadilla, Tenerife, 2011. Credits: Daniel Fernández Pascual.

- a) The political distribution of municipalities with autonomous power to decide over the shoreline and the organization of its landscape. This model aimed to invert the role of a Francoist central power and distribute it more homogeneously across the country after he died. However, the model lacked the necessary autonomous mechanisms of political and territorial control, allowing each mayor to rule as if in a form of neo-feudalism. The power to reclassify space became one of the main sources of municipal income.
- b) In terms of regional planning, the size of municipalities does not correspond to the population density. There is a tremendous imbalance between both, that affects election laws, and the results of local and national politics. Even if there are comprehensive masterplans for vast regions, space can still be ruled from a limited municipal perspective, that ignores these population flows and their influence on ecology at an inter-municipal level. Trans-municipal nature parks could become one of the few instruments for urban planning to slow down violent forms of interest-driven speculative urban development.

To conclude, this paper aims to investigate how property rights and wrongs are constructed in the 21st century in Spain, and how the production of scientific reports generates different subjectivities around what the public interest is and who determines the value of spatial constructs. While for Machiavelli the main task of a sovereign was to demarcate, fix, enlarge and protect the borders of his territory, Foucault argues that once Modernity has made those borders stable, the main preoccupation is how to ensure circulation of capital across them (Foucault 2004). However, instead of regarding borders as circulation of capital, I would rather propose to read capital as a constant circulation of borderlines. Being immersed in a process of neoliberal speculation, the demarcation of value in real estate is neither absolute nor objective; it is in constant flux as described in the cases of post-Katrina redefinition of the coast following insurance interests or in the case of the housing bubble in Spain. The value of buildings relies in the classification – and constant reclassification – of the shifting boundaries of the site where they exist, either for risk or environmental concerns. It is the movement of those lines that confers new economic properties to real estate, making it redundant, ineligible

for insurance policy, or inadequate for the environmental balance of the area. Contrary to the historic definition of real estate as immovable property, buildings can be easily displaced on paper to the other side of an imaginary line. They can be made to automatically belong, or not belong, to a designated area according to the variable economic interests of the powers in place.

Competing Interests

The author has no competing interests to declare.

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Other resources

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