The complex nexus between informality and the law: Reconsidering unauthorised settlements in light of the concept of nomotropism

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A B S T R A C T

This article discusses the relations between unauthorised settlements and regulation in the Global South. It starts from the concept of "nomotropism", by which is meant "acting in light of rules" (acting in light of rules does not necessarily entail acting "in conformity with rules"). Application of this concept fore-grounds the underlying relationship among rules, informality and transgression. The aim of the inquiry is to provide new bases for reframing the problem of low-income unauthorised settlements and redefin-ing practices of land-use regulation in the Global South.

A R T I C L E I N F O

Article history:
Received 4 April 2013
Received in revised form 11 November 2013
Available online 8 December 2013

Keywords:
Unauthorised settlements
Informality
Illegality
Nomotropism
Global South
Urban planning

"Immersed in contingent, path-dependent circumstance, the agent both affects and is affected by, the formal and informal institutions which define his society" (Roth, 2004).

"We need a different way of looking at 'law' and what it exactly entails with respect to the informal city" (van Gelder, 2013).

1. Introduction[1]

1.1. The problem of unauthorised settlements

The question of unauthorised settlements has been attracting increased attention in the field of urban studies and planning. The issue has become critical, given that a huge proportion of the urban population today lives in unauthorised settlement condi-tions. This situation prevails mainly in the southern hemisphere, although it is not absent from the more developed countries (Gaff-ikin and Perry, 2013).

Public policies – and in particular land-use and housing policies – have proved unable to tackle the question effectively, as testified by the simple fact that the problem is still unsolved. In some countries the size and number of unauthorised settlements – particularly low-income unauthorised ones – is actually on the rise. Furthermore, in many cases, building and land-use regulations themselves are among the causes of the spread of low-income unauthorised settlements.

In a number of cities large levels of illegality in land-use and building development are a direct effect of a batch of improper and unsatisfactory planning and zoning rules, and not of intrinsi-cally criminal-minded individuals (Watson, 2009a). In other words, taking refugee in unauthorised settlements is not necessarily a malicious choice, but an honest response to real problems (Kamete, 2013). The trouble is that the possibility to access legal housing is profoundly influenced by the costs of conforming to official rules and standards. If these (economic and social) costs are too heavy for individuals, they seek different, alternative routes (Payne, 2002a). Non-compliance is therefore a survival strategy that gives access to assets that would otherwise remain outside reach (Led-uka, 2004). Moreover, it is the public authority itself that defines, marks, the formal and the informal spheres by designating some land-use and developments as illegal, while according legal status to other equally unauthorised settlements (Roy, 2009a).

In this article we shall argue that, in order to address the question properly, it is of crucial importance to reconsider the relationship between *rules* and *transgression*. As van Gelder (2013) recently observed, doctrinal legal scholarship is unable effectively to

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1 This article is the result of joint research undertaken by the two authors. The final written version of sections 1 and 3 can be attributed to Francesco Chiodelli, and that of sections 2 and 4 to Stefano Moroni. We thank the following for having read an early draft of this paper and for providing their comments: Giuseppe Lorini, Paolo Di Lucia, Edoardo Fittipaldi, Lorenzo Passerini. We also thank Nicola Ansell and three anonymous referees for their critical comments and helpful suggestions.

consider the issue of unauthorised settlements because it perceives it only as deviation from – and violation of – rules content. And he continues: The non-compliance of the unauthorised settlement is to be differentiated from the defiant behaviour of, for instance, the gang. The gang acts in narrow selfishness and certainly does not seek any form of official legitimacy. By contrast, the unauthor-ised settlement "does not oppose the existing (political) system it-self nor has it the intention of overthrowing it"; rather, "it seeks acceptance by, and entry into, it through illegal means" (van Gelder, 2013: 511). A crucial point here is that the idea of rule violation too often suggests malicious damage, deliberate sabotage, wilful disobedience; the reality is in many cases very different – more complex and less oppositional (Iszatt-White, 2007: 451).

In order to deal properly with these phenomena, we shall refer to some fundamental works by Conte (2000, 2011) focused on what he has termed *nomotropism*. Our purpose is not to introduce totally new ideas, but to show how certain concepts fruitfully intersect with the relevant research and discussion on the issue of unauthorised settlements.

1.2. Two clarifications

Before starting our argument, it is important to clarify two particular points.

First, the various adjectives used to denote the type of settlement phenomenon dealt with here range from *illegal*, *irregular*, and *informal*, to *unauthorised*. Whilst none of these is entirely adequate, some are more unsatisfactory than others. "Illegal" (or "extralegal") fails because it means outside the law (when in fact, as we intend to show, certain settlements are often built in light of the law). "Irregular" is unsuitable because it can mean "haphazard" or "without rules" (when, in some cases, certain settlements do have certain regularities and/or are created with some rules: van Gelder, 2013). "Informal" is preferable, but once again the term is not quite suitable because it can mean lacking form or casual (when in fact certain settlements are neither of these: Dovey and King, 2011). Although "unauthorised" also has its shortcomings, it is perhaps the most suitable term, also because it is the one least "worn-out" by improper usage and the one least value-laden. Indeed, a feature shared by most of the kinds of settlement considered here is their lack of public authorisation to be what they are (no permit to occupy a given plot of land, to build on it, to build in a certain way, to divide up either land or housing, etc.).

Second, in many cases the problem is treated in terms of a clear-cut dichotomy (e.g., illegal vs. legal, informal vs. formal). Some authors, however, have drawn attention to the limitations of reading the problem as a strict dichotomy, pointing out that the threshold between legal and illegal, formal and informal, etc., is often elastic and mobile. They are parts of a single interconnected system. In other words, formality and informality are a kind of "meshwork"; a sort of "entanglement" between different spheres, originated by the continuous flow of urban practices (McFarlane, 2012, p. 101; see also Leaf, 1994; Payne, 2002b; Roy, 2005, 2009b; Porter, 2011; Varley, 2013). It has been noted that certain official rules on land-use seem actually to foster the spread of unauthorised settlements; that certain public officials are implicated in the production and management of unauthorised settlements; that official and non-official systems of urban spatial production can coexist alongside each other (Azuela de la Cueva, 1987; Leaf, 1994; van Horen, 2000; Marx, 2009). That said, there is a relationship between rule and violation even more complex than the one usually indicated. It is not simply that certain rules currently applied in unauthorised settlements are akin to the official regulations, or that certain institutions and public officials play a role in unauthorised settlements. The link is deeper-lying, and concerns the fact that in many cases the law – *even when violated* – has a certain cause-and-effect relation to the actions of the transgressor. As Benton (1994: 225) observes, many, if not most, participants in the informal sector see themselves as acting within the same legal world of the individuals that operate in the formal sphere: "they are influenced as much or more by state law as they are by norms within the informal sector" (see also van Gelder, 2013).

2. The concept of nomotropism

2.1. Nomotropism: acting in light of rules

We consider the concept of *nomotropism* introduced by Conte (2000, 2011) to be crucial for the study of unauthorised settlements. Although the concept was not initially developed in relation to unauthorised settlements as such, we contend that it can play a vital role in our understanding of what unauthorised settlements are, and how they evolve in relation to the law. The term "nomotropism" is formed by combining the two Greek terms *nomos* (law) and *tropos* (turn, direction) in similar manner to the formation of terms denoting a certain "sensibility", "sensitiveness", "orientation", to a given phenomenon, such as *helio-tropism*, *photo-tropism*, etc.

Conte (2011) defines *nomotropism* as acting in light of rules (i.e. on the basis of rules, in view of rules, with reference to rules). Acting *in light of rules* does not necessarily entail acting *in conformity* with rules (i.e., acting in compliance with rules). Indeed, acting in conformity with rules merely denotes a limiting case of nomotropism.

To make the concept clearer, let us consider a classic example of nomotropism. In the United States during the war in Vietnam, many conscientious objectors burned their draft-cards in public demonstrations. In this case, their act involved neither "fulfilment" nor "non-fulfilment" of the rule to do their military service. And yet, these demonstrators were acting in light of the rule obliging them to do military service. The conscientious objector who burned his draft-card was refusing to comply with the obligation to do military service in Vietnam, but he nonetheless acted in light of that rule (Conte, 2011).[2]

It is worth noting that "acting in light of rules" – nomotropism – is different from "a-nomic action", by which we mean behaviour that neither adheres to nor takes consideration of any rules whatsoever.

2.2. Types of effectiveness: Y-effectiveness and X-effectiveness

One of the notable consequences of the concept of *nomotropism* is that the effectiveness of a rule cannot be reduced to effectiveness as conformity (i.e., compliance, adherence). The effectiveness of a rule generally means that a rule has a causal effect on the action taken. The interesting point here is that there are in fact diverse ways in which a rule may causally influence an action (Di Lucia, 2002). Two of them are of interest to us here: what we shall call *Y-effectiveness* and *X-effectiveness*. In the case of *Y-effectiveness*, the rule causally affects an action inasmuch as the action corre-sponds to what is prescribed by the rule. In the case of *X-effective-ness*, the rule causally affects an action even when that action does not correspond to what is prescribed by the rule: in other words the action "takes account" of the rule while not adhering to its prescriptions.

Basically, Y-effectiveness occurs when a given action is *in conformity with rules*. X-effectiveness occurs when an action is performed (not necessarily in conformity with rules, but at least) *in*

[2] For other examples of nomotropism, see Di Lucia (2002) and Lorini (2012).

light of rules. In conclusion: the traditional conception of juridical efficacy considers Y-effectiveness as the sole existing form of effectiveness (and hence as the paradigmatic form of effectiveness); a broader concept, however, which takes proper account of nomotropism, logically also takes X-effectiveness into account.

2.3. Human beings and rules

Contrary to what is frequently claimed (Böröcz, 2000), the inclination to adapt to rules is more natural to human beings than "unruled behaviour". As far as we know, there is no period in human history in which individuals have not ordered their behaviour in light of rules of some kind.

Rules exist prior to action (Rawls, 1955). They are ubiquitous (Hodgson, 1997). We are creatures who are predisposed – and receptive – to being introduced into a world of rules (Nozick, 2001: 270). Human beings are amenable to learning rules as they are amenable to learning a first language. The capacity to orient our behaviour on the basis of rules is in large part innate. We can consider this as a sort of specialised capacity, a "normative module" (Nozick, 2001: 270). We acquire certain rule-governed patterns not solely or mainly because of carrots and sticks, but because "we are not by nature unruly creatures. We are, in fact, ruly ones" (Nozick, 2001: 270).

The same idea is put forward by Hayek (1982, vol. I: 11) when he writes: "Man is as much a rule-following animal as a purpose-seeking one". Note the strong difference between Hayek's view and the traditional idea of *Homo oeconomicus* as a rational maximiser of its personal utility function (Vanberg, 1993; Langlois, 1998; McCann, 2002; Roth, 2004; Koppl, 2006; Infantino, 2010). Indeed, orthodox neoclassical economics interprets the *Homo oeconomicus* as a rational agent maximising according to a situational, case-by-case logic. This view fails to take account of a crucial element of action and social reality, namely the role of habits, norms, and rules (Vanberg, 1993). The neoclassical decision environment is "frictionless" (Roth, 2004).

In conclusion, and in light of the concept of nomotropism, it might be more accurate to say that humans are "animals that take rules into consideration", that is, "animals that act on the basis of rules". In brief, humans are *nomotropic animals*. The definition of humans as nomotropic animals is more accurate than the notion of humans as rule-followers: on the one hand, the nomotropic perspective does not assume that actors always comply with (adhere to) rules; on the other, the nomotropic perspective makes it possible to account for two complementary traits of our behaviour, its rule-based nature and its responsiveness to incentives.

3. The descriptive and explanatory relevance of the concept of nomotropism

3.1. Preliminary specifications

Let us consider how the idea of nomotropism can be applied in order to understand certain aspects of unauthorised settlements. Here we will restrict the discussion to unauthorised settlements with poor-quality housing and inadequate infrastructures: that is, unauthorised settlements inhabited by poor people (it goes without saying that there likewise exist *also* unauthorised settlements inhabited by wealthy members of the population – for example, in India: Roy, 2009b).

Furthermore, in the analysis that follows, the phenomenon of nomotropism will not be considered in relation to rules as a whole, but with specific regard to official legal rules (i.e., the law). We acknowledge the existence and importance of what is generally called *legal pluralism* and the need to take it into account besides the traditional, and amply analysed, form of *interest pluralism* (Lindblom, 1965; Lowi, 1979). As Benjamin (2008) observes, while research on polycentrism has clearly evidenced the importance of economic and political pluralism – the interaction among many different interest groups with different aims and resources – it has given little attention to legal pluralism – the interaction of many regulative orders based on different sources of authority and legitimacy.

As is well-known, the term *legal pluralism* – or *juridical pluralism* – is actually used to indicate that, besides the formal laws of the state, there are other types of rule: customary rules, community rules, religious rules, economic rules, etc. In other words, in every social arena there is usually a multiplicity of coexisting regulatory systems.[3]

Even if we recognise the importance of legal pluralism, here we shall focus principally on law *stricto sensu*.[4] We shall adopt the term "law" to denote only public institutionalised and enforced regulations. Denoting all forms of ordering that are not state law with the term "law" – as sometimes happens – confuses the discussion (Merry, 1988). To accept that law is just one type of regulatory ordering does not in fact mean either that it lacks features that distinguish it from other regulatory systems (Tamanaha, 2008) or that it is no longer a crucial form of ordering. In this regard, it might be more appropriate to speak, not so much of *legal pluralism*, as of *nor-mative pluralism* or *regulatory pluralism* (Tamanaha, 2008).

To resume the more general discussion, it is interesting to note that Razzaz (1994: 7) once observed that "the 'legality' of a settlement has been reduced to compliance with, or deviance from, the letter of the law". Our central concern is to show that this approach is too reductive. In fact, a substantial proportion of low-income unauthorised settlements are not *outside the law*, nor are they out of the law as such (i.e., they are *a-nomic*). Rather, they have been created *in light of the law* (i.e., they are *nomotropic*), even though they are not always in conformity with the law.

We shall first propose a distinction between types of violation or transgression of the law (a-nomic violation vs. nomotropic violation). We shall then outline the reasons why part of the building of unauthorised settlements is of a nomotropic type. Finally, we shall provide three examples of this particular type. Note that unauthorised settlements often do comply with at least some laws regulating construction; but nevertheless – by definition – they flout at least one of them (e.g., a property statute, a land-use ordinance, or building regulation).

3.2. Forms of rule violation: a-nomic and nomotropic

There are two ways in which a given regulation may be infringed: the first is the *a-nomic* type, the second the *nomotropic* one. An a-nomic type of breach occurs when the action is neither in conformity with the law nor in light of the law. For instance, a violation can be a-nomic because the offenders are unaware of the law they are breaking (Conte, 2011). In this case, the law itself clearly has no causal influence on their action. A nomotropic violation occurs when the offence, although not in conformity with the law, is nevertheless committed in light of the law. In this case, the law does have some causal influence on the act committed.

[3] The first systematic formulation of this idea is in Romano (1918); very interesting critical analyses of legal pluralism are Merry (1988), Tamanaha (2000, 2008), Melissaris (2004), de Sousa Santos (2006), Barzilai (2008), Nobles and Schiff (2012); with specific reference to the issue of this article, see, for instance, Benton (1994), Razzaz (1994), Rakodi and Leduka (2004), Nkurunziza (2008).

[4] A broader application of the concept of nomotropism to the problem of unauthorised settlements must likewise take account of acting in light of rules that are not state-imposed. And this may shed light on the fact that even acting in light of non-state rules cannot always be formulated as the simple binary idea of conformity/non-conformity.

3.3. Nomotropic transgression and security of tenure

In the case of unauthorised settlements, a substantial amount of violations are committed in light of the law, and not a-nomically. The reason for this is often tied to the issue of security of tenure, meaning the degree of security against forced eviction from a property – for instance owing to a local government clearance or demolition scheme. It is common knowledge that security of tenure is of crucial importance for poor people living in unauthorised settlements. The fact is that many unauthorised settlements are not temporary settlements at all, and most of the people who build their houses in unauthorised settlements do not see them as provisional, but rather as stable. From this standpoint, unauthorised settlements differ little from authorised ones: even in unauthorised settlements the great majority of people build a house in the hope that they will remain there for a long period of time; that it will provide a roof over their heads in old age; that their children will inherit the house; and that they will be able to sell it if they decide to move elsewhere. In this sense, the property embodies a sizeable amount of the family's resources (Gilbert, 1999). Furthermore, access to secure shelter is often a preliminary condition for access to many other crucial advantages, such as financial credit, public services and other social–economic opportunities (Payne, 2002b, p. 3).

A great many of those who build their homes in an unauthorised settlement would be happy to do so legally. The illegal aspect of the settlement is often due to necessity, not to deliberate criminal behaviour or a cultural feature intrinsic to the poor. As Bayat (2000, p. 549) observes: "This is so not because these people are essentially non- or anti-modern, but because the conditions of their existence compel them to seek an informal mode of life. For modernity is a costly affair." In short: citizens have to operate in an unauthorised sphere to secure land and housing, due to the elitist nature of planning rules and building standards (Watson, 2009a, p. 176). In truth, poor people often build illegally because, for economic reasons, they are excluded from the formal housing market, and doing so is their only means of possessing a home in the city.[5]

When they build a home without authorisation, poor people are usually aware of the risks that they run, particularly those of eviction or demolition. For this reason we may safely say that the poor adopt strategies that pursue two goals at once: minimise the risk of eviction, and maximise the chances of public recognition. The large majority of low-income individuals seek some kind of official recognition of their rights to the land or house they occupy. For poor people forms of tenure that legitimise them as citizens and defend them from forced evictions is sufficient to encourage them to invest time and resources in improving their dwellings and taking care of the neighbourhood (Payne, 2002c, p. 301).

We accordingly argue that, in the majority of cases, the act of building in unauthorised settlements is more *nomotropic* than *anomic*. That said, we now provide some specific examples.

3.4. Three examples of nomotropic transgression

Before outlining the three examples of nomotropic acts – nomotropic transgressions – one more point requires clarification. Acts of this kind may relate to regulations of various types. Firstly, substan-tive regulations concerning the property, the use of the land, or the buildings upon it. Secondly, sanctioning regulations concerning the violation of previous substantive regulations. In regard to our topic here, this second category of rules comprises two main types: am-nesty rules (regulations affecting the legalisation or ratification of an unauthorised settlement); and penalties (such as those regarding the clearance or demolition of an unauthorised settlement).

The first of our examples concerns individuals who have decided to build their home in a so-called "semi-informal settlement" (Soliman, 1996, 2004), which is what a great many unauthorised settlements effectively are. In our perspective, the term "semi-unauthorised (or semi-authorised) settlements" is probably more appropriate: they are settlements not developed through official procedures, and according to all public rules; but they are nevertheless built on land for which the owner has legal tenure and a formal occupation permit.[6] This happens despite the fact that building in a "semi-informal (semi-unauthorised) settlement" is more costly than doing so in a "squatted settlement" – owing to land costs. With the term "squatted settlements" we mean unauthorised settlements on public land without title, or unauthorised possession of unoccupied premises. The point is that "semi-informal (semi-unauthorised) settlements" ensure greater tenure security than do squatted ones. In this case, the transgression is nomotropic in light of amnesty and penalties rules. In fact, evictions are less likely to take place on land possessed legally (because there is no violation of property laws, only the misuse of land); and it is more likely that processes of legalisation can begin on land possessed lawfully (for an example, see Pamuk, 1996 and Balamir, 2002). Furthermore, in the case of certain penalties, people may lose their homes – which may be demolished – but not the land on which they stand.

The second example concerns those who gradually bring their home into compliance with the regulations on building and land use. In many cases, poor people build illegally because they are unable immediately to comply with all the land and building regulations. One solution is to conform in stages, over time. In this way, the owners can gradually increase their security of tenure, and aspire to initiating the legalisation process. In this case, they act nomotropically in light of rules relative to building standards, for example – which they violate at first, but with the intent of going legal in stages. They thus act nomotropically in light of rules of future legalisation.

The third example concerns those who build overnight or in a matter of days (Rosa, 2012). This is for instance the case of many *gecekondular* in Turkey. The term refers to unauthorised settlements: *gecekondu* literally meaning "built in one night" (Balamir, 2002; Erman, 1997, 2001; Baharoglu and Leitmann, 1998). In some cases, the penalties for illicit building depend on whether the building has been completed or is still under construction. In the former case, the legal process for demolition is more complicated,[7] and for this reason some people try to complete the building (or part of it) overnight (or in a few days). By working overnight – and hence concealing their actions – such persons act in light of substantive land-use rules that they knowingly violate. Those who complete their building in a short space of time act in light of rules of possible demolition.

4. The strategic and normative relevance of the concept of nomotropism

As is well-known, urban policies and land-use regulations in the Global South are generally inadequate for dealing with the question of low-income unauthorised settlements. Accordingly, it

[5] "In 1987, formal sector housing units in Istanbul, for instance, ranged from 50 to 500 mi. T.L. (US$11,364 to US$113,636) while a majority of the *gecekondu* dwellings were sold at prices below 6 mi. T.L. (US$1,364) the same year" (Pamuk, 1996, pp. 106–107).

[6] At present, precise data on the diffusion of this typology are lacking. According to Soliman (2004) in Greater Cairo around 50% of unauthorised building is in this category.

[7] See for example Ir Amim (2009) on the difference between *administrative* demolition orders (regarding unfinished buildings or completed less than 30 days earlier) and *judiciary* demolition orders (regarding buildings completed over 30 days earlier, or already inhabited) in Jerusalem. For detailed examination of this issue, see Chiodelli (2012), Marom (2006), Margalit (2006) and Schaeffer (2011).

seems that two steps are indispensable for establishing more effective ways to deal with low-income unauthorised settlements: the first – suggested by certain insightful authors with whom we agree – pays closer attention to the contextual nature of the problems; the second, which we propose here, aims to highlight a more general aspect of the problem under discussion.

4.1. A first step: recognising the peculiarity of Global South contexts

Rules and procedures governing land-use and building in countries of the Global South tend to emulate models applied in Western Europe and USA (Kironde, 1992; Okpala, 1987; Payne, 2002a; Watson, 2002, 2009a, 2009b; McAuslan, 2003; Kamete, 2013). A large part of building standards, planning rules, and bureaucratic procedures operating in the Global South have been inherited – or imported – from other countries, where the institutional, socio-economic, and even environmental and climatic conditions are quite different. "For example, building regulations in the southern African kingdom of Lesotho are based on those of Sweden, and those of the highlands of Papua New Guinea on Australian [. . .] regulations derived from coastal conditions" (Payne, 2002a, p. 249).

For this reason they are frequently ill-suited to the problems afflicting cities in these other countries, the upshot being that public measures often aggravate the situation: certain rules, procedures and standards relative to land-use and building practices diminish the legal supply of low-cost housing, obstruct poor people trying to access formal home-ownership (rules, procedures and standards are complicated and unclear), and increase the costs of building a house legally. This may happen for various reasons, the four most notable of which are the following. Limits are set on legally developable land, so that the price of that land is pushed up. High taxes are applied to legally developable land. Building standards cannot be fulfilled by the poor – such as a minimum amount of building area per lot. The bureaucratic measures are slow and complicated – such procedures are costly in terms of time, and they encourage bribery, and so forth.[8]

In short, as Payne (2002a, p. 249) writes, improper rules raise the cost of access to the legal housing ladder and impede long-term improvements in housing and environmental living conditions; in particular, "they inhibit social cohesion and economic activity, waste land, discourage private sector participation in housing markets, encourage corruption, and even accelerate the growth of the unauthorised settlements they were intended to prevent". The same problem has been aptly underscored by Malpezzi and Sa-Aadu (1996: 148) with specific reference to Africa; actually, many African countries have adopted approaches in the fields of building standards, land-use planning, and infrastructure provi-sions based on rules of former colonial regimes. For instance, in some African countries the use of indigenous design traditions and indigenous building materials are not accepted. This signifi-cantly raises the cost of buildings (compare with Boudreaux, 2008; Mooya and Cloete, 2007; Payne, 2002a, 2005; Yahya et al., 2001). These are clear cases of *perverse effects* (Boudon, 1977; Sherden, 2011; Moroni, 2012) of public regulation.

Various authors have stressed that, in order to tackle the problem of low-income unauthorised settlements – in particular to prevent the emergence of new low-income unauthorised settlements – it is vital radically to reform those countries' entire planning systems, administrative procedures, and building regulations. The goal is to formulate rules more suited to the characteristics of urban expansion in the cities of the southern hemisphere, so as to reduce the costs of getting onto the above-cited legal housing ladder, and to enhance the construction industry's capacity to build legal low-cost housing.[9]

4.2. A second step: towards regulation and planning that take nomotropism into account

In Sections 2 and 3 above we suggested that rules may have a causal effect on acts even when these acts violate the rules to which they refer. Also in the case of low-income unauthorised settlements, the poor tend to act in light of certain laws (e.g. certain land-use and building regulations) even as they knowingly violate them. As pointed out, this fact is of particular importance from the conceptual standpoint, because it underscores the complex relationship between rules and transgression and specifically between land-use/building regulations and unauthorised settlements.

But this can also have implications for practices of land-use regulation and planning in the Global South. More research is needed on this subject. However, it may be useful to put forward suggestions in regard to further directions of research on the concept of nomotropism. As outlined above, one can speak of the efficacy of the rules in question – *X-effectiveness* – even in instances of the nomotropic violation of those rules. For this reason, it would be interesting to explore the idea of devising new land-use and building regulations, not only in the hope that they will be complied with, but also in consideration of their possible nomotropic non-fulfilment. In this way the efficacy of such regulations would be considered in a sense broader than is generally exercised today. We may define pragmatic (or praxeotropic[10]) planning as a kind of planning in which land-use and building rules take nomotropism into account.

It therefore seems that further research should focus not only on how to formulate regulations more appropriate to urban situations in the southern hemisphere – particularly in the poorer developing countries – but also on how to formulate regulations whose very conception envisages the possibility of their violation, as it were. The question is basically whether it is possible to introduce a regulation that takes direct account of the phenomenon of nomotropism – that is, regulation not based merely on the binary premise of adherence vs. non-adherence. Since nomotropic behaviour is liable to go in directions quite contrary to the intentions of the legislator,[11] or in a direction that is not entirely at odds (i.e., congruent, or at least compatible) with them – as we have seen this happens in the case of much illegal building – how can we compose rules that hamper the former outcome and foster the latter? Answering this question is certainly a complex undertaking, which requires further research; nevertheless, we shall try tentatively to focus on some general but crucial points here.

The task is to determine the features of a system of regulations that takes the issue of nomotropism seriously. First of all, the idea of nomotropism suggests that the so called "knave-strategy" is not the best one. As is well-known the term come from a famous sentence by Hume (1742/1809) in which he observes that, in designing institutions, every man should be presumed in advance to be a knave. The knave-strategy in institutional design is therefore a kind of "deviant-centred strategy" (Pettit, 1996). The idea of nomotropism shows that this is not the right starting point; it is

[8] For examples in Tanzania, see Kironde (2006). Regarding the costs involved in starting a formal-sector business (of all types, including residential real estate), see for instance Boudreaux (2008) and De Soto (2000). On these issues, see also Benjamin (2004).

[9] Some authors have put forward some interesting ideas on how to achieve this end. On building regulations, see Yahya et al. (2001); on the regulatory framework, see Dowall (2003), Kironde (2006), Payne and Majale (2004), Payne (2002a, 2005); for a proposal in a planning perspective, see Angel (2008).

[10] The term "praxeotropism" was introduced by Fittipaldi (2002).

[11] As happens for instance when a thief masks his identity (Weber, 1922a, 1922b). When he steals, the thief knowingly breaks the law, but hides his face in light of the legal penalties for his act (Conte, 2000, 2011; Di Lucia, 2002).

better to imagine a middle path that lies somewhere between the best case, in which everyone is a saint, and the worst case, where everyone is a knave (He, 2003). The point is not merely that "institutions for knaves" crowd out civic virtues (Frey, 1997; Engelen, 2007),[12] and that treating citizens only as knaves can work as a self-fulfilling prophesy, but, more in general, that the relationships between actions and rule-violation are more complex than usually supposed (as made evident by the idea of nomotropism). Institutional design or reform has therefore to exhibit sensitivity to motivational complexity (Goodin, 1996).

Moreover, taking account of nomotropism would require paying greater heed to the *system* of rules rather than *individual* rules, to the *strategic* aspects rather than the *tactical* aspects of regulation, to the *processes* rather than the *end states*. Let us try to elaborate further. (Part of what follows simply confirms – from a different angle – what the most convincing research on the subject underscores; some other aspects derive more directly from the approach proposed here).

In the first place, it is important to take into consideration that each public rule is part of a more general legal system. Each rule is not relevant in itself, but pertinent in terms of its contribution to the system as a whole. The rules comprised in this system do not exist in simple linear relationships, but participate in a complex bundle of interactions. And they are part of a wider social context. Well-designed rules are those that work alongside other traits of the social environment in which they are introduced, including other mechanisms in play therein; we must therefore look for a sort of "goodness of fit" between the introduced rules and the lar-ger context in which they are set (Goodin, 1996). A well-designed system of rules is therefore one that is both *internally consistent* and *externally coherent* with the rest of the social environment in which it is introduced (Goodin, 1996). Actually, institutions must not only be known to exist, but must also "make sense" to the ac-tors involved (Offee, 1996); they rely on the meaning accorded to them, a meaning that cannot be created by an administrative fiat (Moroni, 2010).

In the second place, it is important to accept the idea that a legal system has a prominent *meta-aim*: to favour the peaceful coexistence of a plurality of individuals with totally different, and continuously changing, preferences and desires, and distinct, unfixed resources. This is its fundamental *raison d'être*, and this issue is more relevant than reaching any specific, particular objective (Moroni, 2011). All of this points to an out-and-out rejection of a strictly "instrumental" notion of the law. The instrumental notion of law became widely accepted in the twentieth century – it is not by chance that at the same time rational-comprehensive planning was also accorded growing importance – and is still taken for granted today. In an instrumental perspective, law is viewed mainly as a tool for achieving any kind of desired ends; it can be shaped in any way necessary to reach the objectives. In other words, law is "an empty vessel" to be filled as desired, and to be manipulated and utilised in achieving any specific objective (Tamanaha, 2006: 1); an "empty box" without any inherent principle of integrity or binding content in itself (Tamanaha, 2006: 7).[13] On the contrary, law must be interpreted not as an instrument for achieving a given specific outcome, but rather as an abstract and stable meta-framework for the pacific coexistence of many different individuals with plural irreducible aims. As Macedo (1994: 154) observes, rules do not lead to the best outcomes in specific cases. They serve other values. Abstract and general rules foster, in particular, the virtues of reliance and predictability. By reducing variance in individual situations, they allow individuals and groups to plan their lives. In short, the sub-optimal "resolutive" nature of rules is not so much the problem as the solution (Schauer, 1991). Rules can (and must) guarantee *soft-predictability*, and certainly not *hard-predictability*. They have to assure an appropriate degree of predictability of the behaviour of the other individuals, not something like detail-predictability, full-predictability (Moroni, 2010).

In the third place, rules that are able to offer a general "orientation" for behaviour are more relevant than rules introduced to achieve specific end-states, such as particular urban configurations or urban arrangements. In this perspective, rules must be abstract and general, prevalently negative and stable. *Abstract and general rules* grant that the actions of individuals are coordinated only as regards their "typical features" (i.e., their repeatable, time-independent, and situation-independent aspects), not as regards their "specific features" (i.e., their unrepeatable, time-dependent and situation-dependent aspects) (Moroni, 2007). The rule-framework should be open, so as to allow individuals to respond to new circumstances as suggested by their particular knowledge of circumstances of time and place. In other words, if the law is to serve individual lives and aims, it must be receptive and open with respect to content: the latter will vary according to the individuals' actions and aims and their contingent evaluation of particular circumstances. Observe that the more open the rule-framework is, the less vulnerable it will be to disloyalty. *Negative rules* are rules that prohibit individuals from interfering with the protected do-main of other individuals. They serve to prevent certain severe conflicts and predefined tangible and direct harms. Positive rules (i.e., rules that impose some positive duty or action) must be kept to a minimum. In the case of (the few) positive rules, progressive and partial compliance has to be taken expressly in consideration. Positive rules must impose only minimum standards. They should only be used to define a baseline and not as a barrier to prevent variation and experimentation. In order to work as a crucial form of behaviour orientation, rules must moreover be durable and reliable. *Stable rules* are fundamental if individuals are to be oriented by law not only in their short-term decisions and actions, but also in their long-term ones. It is difficult to know rules that constantly change; if legal rules are continually subject to change, the information they provide becomes irrelevant and unusable. Moreover, stability improves reliability, with the consequence of facilitating human interaction. Observe that the only rules that can remain stable are those that deal with general aspects of building and land-use, and do not attempt to control the details. (In other words, owing to our propensity to apply overly detailed and specific regulations, we have usually avoided or failed to grant stability in the field of land-use and building rules.) In the end, it is necessary drastically to streamline bureaucracy.

All the previous points go toward recovering "respectability" for law – something we have lost in many cases and situations, due to an hyper-rationalistic and totally instrumental notion of the law itself. This is obviously not enough to have total compliance in certain cases, but, at least, it can help in having nomotropic violations not completely at odds with law – that is, violations congruent or compatible with it.

It is important at this juncture to express our belief that no kind of land-use planning or building regulation can obviously be in itself *the solution*.[14] The point is simply to develop a different kind of

[12] On this issue, see also Goodin (2000).

[13] This notion of law was clearly influenced strongly by Enlightenment thinkers' illusions regarding the power of human reason: "The Enlightenment confidence that humans can shape and improve the conditions of their existence encouraged the instrumental view of law" (Tamanaha, 2006: 23). "Enlightenment *philosophes* believed that, just as the natural order could be understood and beneficially exploited, so too could the social order be mastered" (Tamanaha, 2006: 20).

[14] Also because the unauthorised housing sector and the informal job sector are, in southern-hemisphere urban low-income settlements, frequently mixed (Kudva, 2009). In other words, also the job sector has its problems and needs more adequate and specific measures.

land-use planning and building regulation – in awareness of the complexity of the relationships between rules and action – that can be part, and only part, of new ways to deal with the problem of low-income unauthorised settlements.

5. Conclusions: taking nomotropism seriously

As we have argued (Sections 1 and 2), the idea of nomotropism shows that the relationship between law and transgression is more complex than usually interpreted. This kind of awareness is helpful both in descriptive and explanatory terms (the view we assumed in Section 3) and in strategic and normative terms (on which we focused in Section 4). Our discussion of these topics with specific reference to low-income unauthorised settlements was in some respects tentative and generic, but we hope the concept of nomotropism can mark out a stimulating direction for further research and exploration.

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