



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



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ARTICLE INFO

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

ABSTRACT

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 foregrounds 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 redefining practices of land-use regulation in the Global South.

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“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. Introduction¹

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 conditions. This situation prevails mainly in the southern hemisphere, although it is not absent from the more developed countries (Gaffikin and Perry, 2013).

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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.

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 intrinsically criminal-minded individuals (Watson, 2009a). In other words, taking refuge 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 (Leduka, 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

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 unauthorised settlement “does not oppose the existing (political) system itself 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”, “sensitivity”, “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 corresponds to what is prescribed by the rule. In the case of *X-effectiveness*, 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).

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