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Lessons from an Old Millennium: Law and Regulation in the Ancient City

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We address the relationship between law and regulation through a discussion of the regulation of urban life in the ancient world. We advance the assertion that, as in the ancient world, we should understand law's role in modern societies as part of a larger regulatory canvas.

Our starting point for thinking about law is Foucault's (1991) work on government. Foucault describes a new rationality of government characteristic of the liberal democracies of the West, which had its beginnings in the sixteenth-century reformulation of 'the art of government'. The role of law became very different after the great age of sovereignty. In the premodern age, the operation of power was simple and singular, focusing on the figure of the sovereign: power was, in a sense, identical with the law (Foucault 1977). The classical jurists' texts, which worried about the problem of government under sovereignty, operated in terms of an essentially circular logic: that is to say, the aim of sovereignty - obedience to the laws - was achieved instrumentally through the laws. The aim and the instrument of rule were one and the same. However, throughout the seventeenth century, law became merely one instrument in a range of tactics making up the art of government. By the eighteenth century, for example, the Physiocrats argued that the aims of government could not be achieved through law (Foucault 1991: 95-6). A variety of (previously infra-legal)

tactics became part of the 'multiform tactics' which included law. By 'multiform tactics', Foucault refers to the organisation and disposition of foodstuffs, wealth, and so forth. By contrast, the operation of sovereignty was characterised by a simple imposition (as opposed to disposition) of law (as opposed to 'multiform tactics') on men (as opposed to men, goods, and all the entities contained within the state).

Foucault's work suggests a focus on 'mechanisms of regulation' as characteristic of modern governmental activities. We include law in this category and point to a line of Foucaultian research built around the idea of law as a regulatory mechanism (for example, Hunt and Wickham 1994), especially since some scholars have suggested that Foucault underestimated the role of law as regulation (Hunt 1992; Saunders 1994).

WHAT IS A REGULATORY MECHANISM?

We suggest a broad definition: a regulatory mechanism is any aspect of social organisation that serves to manage human lives in a particular direction. Regulatory mechanisms, then, are the instruments of government. It is important to realise that these regulatory mechanisms are not necessarily the result of any deliberate or premeditated attempt to dominate. Frequently, the invention of techniques of government is a rather contingent business; no single ethos of government is at work. The construction of governmental techniques is often fragile, local and temporary. While we limit ourselves here to a discussion of human life, it would also be possible to think in a similar vein about the government of non-human resources. In fact, a characteristic theme of the 'art of government' literature is that it dealt with the 'right disposition of things', not merely the management of men (Foucault 1991: 93). Animal preservation campaigns or environmental initiatives are clear modern examples of how we already must think about government as a 'hybrid' problem of the human and the non-human (Latour 1993); one can also generate more prosaic examples of government as the right disposition of things, such as the management of dust and dirt in household cleaning routines. However, our interest in this paper is limited to techniques of urban regulation, including the use of the law, on human actors.

REGULATING THE ANCIENT CITY

Ancient cities were regulated in more and less obvious ways. We focus first on the obvious ways - cities as sites of particular laws and cities as sites of particular administrative mechanisms. This serves as the basis for

our discussion of the less obvious ways - those aspects of ancient cities that were in themselves regulatory mechanisms.

Another preliminary point remains to be made. There is no easy way to define a city. This was as much a problem for the ancients as it is for us today. There is doubt as to whether the Greeks and Romans had a definition of the city at all. The Greek word *polis* only roughly translates as 'city-state', being employed in antiquity to mean 'town' in the narrow sense and 'city-state' in the political sense. As Finley puts it, so "self-evident did the urban underpinning of civilisation seem to the ancients that they scarcely engaged in a serious analysis of the city. They did not even attempt a formal definition". There were rough definitions, such as Aristotle's claim in *Politics* that "the siting and planning of a town... involves four considerations: health, defence, suitability for political activity, and beauty", but Finley argues this was as far as an agreed notion of *polis* went (Finley 1982: 3-4). Jones writes of a definite "collective rather than corporate" definition of the city, and suggests that the Greeks were uncertain about the definition of a city, knowing that the identification of "the city with the aggregate of citizens... was never complete" (Jones 1956: 154-5).

With this broad framework acting as a working definition, we can deem the Graeco-Roman world as an urban world. These cities were small by modern standards - probably only six exceeded 50,000 inhabitants, with Rome and possibly Carthage reaching half a million. Pompeii, which had 20,000 inhabitants at the time of its destruction in A.D.79, was more the norm (Finley 1982: 3-4). However, there were plenty of them - Barrow speaks of thousands of cities developing during the Roman Empire (Barrow 1949: 94). Ancient Rome itself was an impressive city, covering 3,323 acres within the Aurelian wall in A.D.274 and at least 4,940 acres of built-up area beyond it (Mumford 1961: 273-4).

Aristotle expressed concern about the wisdom of a uniform set of laws imposed on all cities (Jones 1956: 46). Nonetheless the Greeks used laws reasonably regularly as devices for regulating cities, particularly in regard to finance. City Treasurers were legally defined officers, "personally liable for non-payment of any interest which they should have paid out of the city's revenues when they were in office." The "city had at its disposal a summary process for enforcing its own claims against a citizen. It was open to anyone to register for confiscation all the property of a defaulting state debtor, thus affording the latter an opportunity of denying liability" (Jones 1956: 156).

In using laws to regulate urban finance, the Athenians established a legal order that was involved in regulating other aspects of city life. They

created six types of magistrate: one “charged with the care of the market place, and responsible for the supervision of contracts and the maintenance of good order”; a second concerned with “public and private property in the city centre, the maintenance and care of derelict buildings and roads and similar matters, as well as superintendence of the boundaries, all with the object of preventing disputes”; a third with similar duties outside the city; a fourth with “receiving and holding public revenues and dispensing moneys” - the aforementioned Treasurers; a fifth with “the registration of private contracts and court decisions” and indictments; and a sixth with “the execution of sentences on offenders, with the recovery of debts and the custody of prisoners” (Gladden 1972: 88).

The Romans had few qualms about uniform city-regulation laws. Abbot and Johnson argue the *lex Iulia municipalis* “marks the first attempt at uniformity in civic government” (Abbott and Johnson 1926: 180-1). This law was limited in scope, but by the end of the third century A.D., “a policy of uniform legislation for the whole empire developed more rapidly” (Abbott and Johnson 1926: 193).

The process of developing uniform civic laws for different cities was never total, or heavy-handed. The Romans tried to let their laws slowly modify local laws, even to the point of waiting for different municipalities to request different Romanisations of their laws. The rights of individual cities were defined by the *lex provinciae*. Local Roman governors made sure different cities were aware of these rights, but used Roman legal forms in their edicts, making the principles of Roman law familiar (Abbott and Johnson 1926: 180-3).

The Romans also employed a system of local magistrates. There were two chief magistrates in most cities who operated collegially in overseeing public activity and organising games and festivals. Likewise, a local senate, known as the *curia*, was composed of up to an hundred ex-magistrates (Barrow 1949: 95).

Another device for regulation was taxation. For the Athenians, for example, there were two methods for gathering money for public purposes. The *liturgies* were a regular commitment by the rich to a programme of public spending. These *liturgies*, independent of immediate need or crisis, resembled modern insurantal technologies. Their proper fulfilment was evidence of one’s fitness to be a citizen, and in the cut and thrust of political debate, the way in which *liturgies* had been completed or defaulted on was used as evidence of (lack of) fitness to govern or of administrative authority (Finley 1983: 36-7). A second form of taxation was the *eisphora*, used in times of emergency and directed toward specific short-term projects.

Additionally, the wealthy were subjected to a property tax, levied on one fifth of the citizen's capital. Citizens were divided into twenty *symmories*; responsibility for collecting tax was placed in the hands of the richest citizens in each *symmory* (Barrow 1949: 87). The Romans were more wary of direct universal taxation and the *munus* which rich citizens were obliged to pay was like the *eisphora* - an emergency tax levied at moments of crisis. As Coffield (1970: 3) argues, "The Romans always regarded direct taxation of their citizens as humiliating and undignified".

The Romans developed a professional urban bureaucracy, sometimes completely separate from the military, sometimes synonymous with it (Abbott and Johnson 1926: 189-90). "While the administrative system devised by Augustus was retained in broad outline, Claudius brought in reforms to strengthen and rationalise the Civil Service". In particular, Claudius established "four great bureaux": "for laws and edicts", "for finance", "for records and archives", "and lastly for judicial matters" (Dudley 1975: 191-2). Hadrian was very interested in the civil service and reorganised it considerably. "To him, also, is probably to be ascribed the codification of the provincial edict. By this act the administration of justice by the governor was placed on a uniform basis" (Abbott and Johnson 1926: 189-90).

Cities also developed as regulatory mechanisms via their provision of a reserve army and their role in producing and supervising currencies. Mumford argues that cities "became, so to say, a permanently mobilised standing army, held in reserve" and in so doing, particularly in times of war, cities "fostered practices of regimentation, militarisation, compulsive conformity" (Mumford 1961: 57-8). Jacobs suggests the invention and supervision of currencies was a crucial part of cities' operation as regulatory mechanisms: early cities had their own currency - as they were their own regulation mechanisms - and for a time they continued to do so even when conquered by more powerful neighbours. But as the connection between currency and regulation of urban populations became clearer, through various knowledge developments about economies, particularly inflation, the powerful cities began supervising the currencies of their provincial cities; for example, Rome at the time of Diocletian decreed "rigidly standardised currency values... throughout its realm" (Jacobs 1986: 156-7). One of the techniques of domination became the movement of values from centre to periphery: the centre was able to maintain a hold on values because it was only through the centre that 'values' of 'goods' made any sense. A centralised currency allowed for comparison between objects but only insofar as the centre (Rome) could supervise this comparison.

The Romans were aware of the potential of cities as direct devices of regulation. Abbott and Johnson tell us that, "For the most part, people living under the tribal form of government were encouraged to settle in municipalities, since the Roman senate preferred to deal with a more stable form of government than was usually found amongst the primitive mountain tribes of Italy" (Abbott and Johnson 1926: 178-9). This policy of urbanisation for ease of regulation was also used by the Romans in their western provinces. Dudley describes how individuals in these provinces were "brought into contact with the general cultural life of the Roman world" and became loyal to Rome in the process, undertaking funding tasks like the upkeep of the poor, the organisation of banquets, the provision of baths, a water supply and schools, the setting up of statues, and the repair of public buildings in the provinces on behalf of the Romans (Dudley 1975:195-6). Romanisation was urbanisation.

The Romans used citizenship - the development of civic pride, the provision of services and historical monuments - as part of the use of cities as mechanisms of regulation. Citizenship meant involvement in the varying forms of self-government employed in Roman cities (Barrow 1949: 94-5). The system of citizenship provided the key personnel for the administration of government and provided, through local elections, a means of legitimating local governments. In governing the provinces the Romans used citizenship as a reward for favoured communities and as a device for reinforcing the spread of Roman ways and Roman law (Abbott and Johnson 1926: 179). Citizens of Roman cities "displayed an intense pride in public welfare, and endowed their native town with splendid monuments, buildings, and gifts for special purposes, such as libraries and schools. Offices and honours were eagerly sought, and lavish contributions were made in attaining them" (Abbott and Johnson 1926: 197). The provision of services involved in this process, which included the provision of roads, temples, theatres, public baths and aqueducts, as well as schools and libraries, led to even greater loyalty to Rome (Barrow 1949: 95) - a virtuous circle of citizenship, civic pride and provision of services was clearly in operation.

The Athenian system was similar in that taking part in the life of the city was an outward demonstration of fitness to be a citizen and to take further part in civic matters. Ethical authority to rule was demonstrated by the fulfilment of civic duties. If one performed these duties well, honour was achieved, and the harnessing of this love of honour (*philotimia*) drove the whole system (Sinclair 1988).

ANCIENT GOVERNMENTALITIES

We have examined some evidence from the ancient world concerned with the regulation of cities by laws, magistrates, taxation and bureaucracy and with the ways in which cities served as their own regulatory mechanisms. In concluding, we offer some further examples of the urban knowledge/urban regulation nexus, and highlight some of the mentalities of urban government.

The early Mediterranean Greek civilisations provide some early such examples. Mumford discusses the development of a written alphabet in Ionia around the seventh century B.C., the use of geometry in Lydia between 630 and 624 B.C. in building “straight streets, crossing at right angles”, the use of geometry in sixth century B.C. Greek colonies in Italy, Naples and Paestum in planning “chequerboard” cities featuring “streets of uniform width and city blocks of fairly uniform dimensions”, and a similar use of this “Milesian plan” in Thurium in 443 B.C. to divide the city “by four longitudinal and three traverse arteries into ten neighbourhood units or super blocks, dedicated to the component tribes” (Mumford 1961: 223-5). He also discusses the way in which “copper metallurgy, abstract mathematics, exact astronomical observation, the calendar, writing and other modes of intelligible discourse in permanent form, all came into existence at roughly the same time, around 3000 B.C.” (Mumford 1961: 45). More directly, Mumford argues that between the sixth and fourth centuries B.C. “the Greek cities found themselves in the throes of two severe conflicts: first, an attempt to define the limits of law and justice... second, not unrelated to this, an effort to free the intellect itself through logic, mathematics, and rational morality” (Mumford 1961: 208).

In a similar vein, Finley quotes Xenophon who praises cities in terms of the development of very specialised knowledges of food preparation and other crafts like shoe making and sewing (Finley 1982: 186); Barrow (1949: 134-5) discusses Roman developments in surveying knowledges (which allowed for and were part of rules about the height of buildings, “regulations excluding heavy traffic during specified hours”, the centralisation of public buildings, the congregation of shops, the congregation of trades of a similar character, and the provision of public gathering places); and Dudley (1975: 197) discusses the way the Romans allowed and encouraged regional architectural ideas, especially in Gaul, in dealing with the populations of the regions they settled.

We have used Foucault to draw attention to a crucial distinction between law and regulation. While Foucault underestimated the importance of law

as a modern regulatory technique, nonetheless his approach is very fruitful in that it allows us to highlight a whole series of regulatory mechanisms that are non- or infra-legal. Our discussion of urban regulation in antiquity suggests that there were a whole series of non- and infra-legal regulatory mechanisms that kept urban life going. Foucault's work suggests that the study of the role of law in any non-sovereign society must attend to 'regulation' rather than simply to 'law'.

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