

The legal norms used in the urbanization and construction of the Portuguese towns (twelfth – nineteenth centuries)

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This paper presents part of the author's ongoing PhD research, highlighting the approach used and focusing on one aspect already examined. The PhD research is inserted in the scientific field of Theory and History of Architecture and Urbanism; and the central theme is the urbanization and construction of the towns built by the Portuguese, between the beginning of the nationality and the mid-nineteenth century, with the particular emphasis on the mechanisms used for the formal and spatial configurations of two physical elements of the urban system: the street and the plot.

It starts from the premise that traditional theoretical orientations of the first urban form studies (Lavedan 1925 1936; Poete 1929) are ineffective to understand all the existing urban form. The first studies organized the objects into categories and classifications and matched the formal regularities and anomalies observed in the town plans with the levels of intentionality of the town planning. That is: it was established a clear relation between the historical period and a certain way of urban design, which corresponding to a particular configuration – the formal regularity became an indicator for deliberate and rational actions, while the formal irregularity testified spontaneity and randomness. These theoretical orientations are ineffective, since most of towns does not fit into either category or adapts to all, but also because recent studies have found town planning actions into areas hitherto regarded as spontaneous (Pawlowski 1996; Petruccioli 1997; Rossa 2001; Watteaux 2003).

Recognizing the urban spaces and its form as a complex and emergent system (De Landa 2000, Johnson 2001), the ongoing investigation does not follow the traditional theoretical approaches, which typically analyzes the urban form production as governed by “master planners” (top-down approach), but is grounded in the approach that urbanization has been established by many individuals in a large period of time, with simple interaction rules and with the ability to organize and maintain adapted to changes, responding effectively to new needs of their environment (bottom-up approach).

For this, one must consider not only the urban form, but also the actors, the behaviours, the rules and, above all, the relations, the mechanisms and the processes between those vectors. It is

considered, therefore, that spatial configuration of the ancient urban form was the result of different control levels (the owners; the users; the builders; the town officials, which regulated and oversaw the constructive actions); several rules that allowed producing, preventing or replicating behaviours; and also different administrative and judicial procedures.

This approach also enables to demonstrate the irrelevancy of traditional theoretical distinction between planned and unplanned towns, since all urban forms were the result of intentional multiple possibilities.

In the presentation, it will be examine one aspect alluded to. I will focus on the legal norms used in the urbanization and construction of the ancient Portuguese towns. These norms were established by the community and were based on social values that guided individual and community behaviour in relation to the built environment. These norms were intended to achieve a balance between fairness, rights and duties; while, in the same time, prevent and punish potentially damages, gaining, in this way, a legal sense.

The enforcement of these legal norms was under the responsibility of a municipal officer, the *almotacé*; which was also in charged by the market and sanitary supervision. These three attributions constituted the jurisdiction of *almotaçaria* rights (Pereira 2001).

The earliest written references to the rules for the building activity appeared in several medieval local customary laws, dating from the late thirteenth century. But, the oldest and most complete source is the *almotaçaria* law for the city of Lisbon in 1444 (pub. Rodrigues 1974). Many items of this legal document (especially those related to the building activity) were later adopted as a general law for the whole kingdom in 1521, the *Ordenações Manuelinas* (pub. Costa 1984). This law remained in use many much longer, being replaced by the Civil Code, in 1867.

These rules focused on what individuals could or could not do in their own property. However, the freedom to act was constrained by pre-existing conditions of neighbouring buildings in order to protect potential damages on others property or in the common public spaces. The legal norms dealt with the opening of windows and doors, the rain and waste-water runoff, the use of party walls, the maintenance of the public streets by keeping them safe from obstructions.

Although the main focus of those legal norms was the building activity regulation, some of them had also a particular impact on the urban form because they determined spatial relationships between buildings. For instance, the construction (reconstruction, additions or modifications) of some structures had to be departed or deviated from the pre-existing ones.

In the presentation, I will show how the knowledge of those legal norms may contribute to a better understanding of the formation and transformation of urban form in ancient towns built by the Portuguese, and, in this sense, open new research perspectives.

Key words: Portugal, ancient towns, urbanization, legal norms, urban form.

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