DEBATES

I. THE ROLE OF LAW IN THE LEGAL STATUS AND POWERS OF CITIES

DROIT DE LA VILLE. AN INTRODUCTION

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1. The way the book was made owes much to what it came from: a lecture given for some years in a Master on Urban Studies, whose nearly all attendants are not lawyers.

When I first gave this course, I thought that the only way of permitting that kind of audience a smooth enough access to the corresponding rather technical legal issues was to adopt a concrete approach. This implied to leave aside the usual conceptual divides upon which we are used to build our analyses and which are mainly formal: public law/private law, local government law/substantive administrative law, planning law/neighbouring special fields like the law on public assets or the one on public contracts.

To be honest, this duty to adapt to a particular audience was also an opportunity. I belong to scholars who think that modern law - public law at least - finds itself in a period of profound transformation, due to some contemporary evolutions, such as globalization, the growing pluralistic character of our public apparatuses and the more and more complex distribution of roles between public and private entities. And I believe that, because of these evolutions, many of our concepts have become less capable to grasp the legal reality.

If this is true, we have to find new classifications. And, to this end, I think the best possible approach consists of starting from concrete realities, whose significance is not –or is the least- open to discussion.

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The City belongs to these realities. While I am not sure I know for certain what "planning law" is, I know what a city is: I have visited many, I live in one, which I can see around me when I am not traveling.

2. Usually, in the French doctrine - and, I believe, in many others -, the various pieces that constitute the legal functioning of cities are apprehended in a fragmented way, they are left to various categories of law - law on property, law on public contracts, law on local government, law on local public services, and so on -, although one piece has tended to become dominant: planning law, or land use law.

And yet, it proves quite fruitful to assemble all these pieces and bridge the gap between them by considering the ways they respectively contribute to the overall functioning of cities.

It must be stressed that this can be made without having all the bits brought together under the flag of planning law. It is true that, in some doctrines at least, planning law has shown an "imperialistic" stance and tried to appear as the only possible synthesis of "the law of cities". But it was a failure, only leading to excessive complexity.

The law of cities can be simply apprehended as the law applicable to the various essential dimensions of cities functioning: public and private spaces, infrastructure, land occupation, local economic development, local public services, local government, and so on. And it is possible to go through these various issues without too much wondering whether you are in the field of constitutional law, administrative law, planning law or whatever: you will even possibly come across private law issues, and still you will not have lost your way!

3. The interesting is that this synthetic and concrete approach helps discern, within the overall topic of cities legal functioning, a range of cross-cutting functional logics and some common principles.

Among the functional logics it makes appear, I would first mention the trend towards a constant contribution of private actors to the pursuit of general interest aims. The private sector plays a growing role in the production of local public goods, especially in the social and cultural fields, while local democracy

makes itself ever more participative and thus more reciprocal, consisting more and more in a permanent dialogue between citizens and local powers, facilitated by the NTIC.

Another prominent feature of cities legal functioning is the importance acquired by issues concerning public spaces. Urban growth generates a tension on public spaces, which increasingly longed for by economic, cultural, political competing users. Planning law, the law on public assets and the one on public order must work together in order to regulate this competition.

What a transversal approach of the law of cities also show is that a wide range of difficult issues it contains stem from the fact that, in general, local government structures do not fit with the real dimensions of contemporary urban entities. To a large extent, these structures were designed in periods when our societies were essentially rural and, even if they have been transformed in the modern area, they never or nearly never were adapted to the effective shape of contemporary urbanization. This insufficient institutional match raises issues which are quite apparent in the field of local governance as well as in the one of infrastructure management and provision of local public services.

4. The "concrete and synthetic" approach of the law of cities also denotes that there are some principles which could constitute an important part of its contemporary layout. At least, four groups of these principles tend to emerge.

Firstly, there are principles which seem to govern the law on public spaces. Fundamentally, our legal systems have admitted a general principle of free use, but this essential rule must nowadays compose with other ones, concerning a certain degree of (ideological, religious) neutrality in the occupation of public spaces and concerning the economic development of them.

Secondly, there are principles related to the production and the organization of the services provided by cities. Here, law finds itself in tension between a logics of competition and an old tradition of solidarity - in Europe at least, the first hospitals were set up by local governments -, between the need for public intervention in order to make sure that the essential services are provided and a distribution of functions which leaves a wider and wider room for private actors action.

Thirdly, there are principles which are in connection with the institutional complexity of local governance. The fact that local institutions are in general ill adapted to the real size of urban issues, combined with the fact that laws on local government organization tend to be very much unstable - our countries tend to reform their local government quite frequently -, imposes more and more some kind of "multilevel governance" and of network functioning, in which governing constantly requires the cooperation of several centers of administrative decision and action.

5. The fourth type of principles which emerge are the ones which can be connected to the common idea of a "right to the city".

This concept has two origins. The first one comes from the observation that, among services provided by cities, some can be considered as essential, in the sense of essential means of human beings: housing, mobility, security, the basic domestic facilities - water, power, gas -. The second one derives from the realization that, because a large majority of us live in towns - 80 % in Europe - , our fundamental rights must be to some extent related to the urban reality.

The outcome is a concept of "right to the city" - promoted in particular by UN Habitat -, on the basis of which it is possible to upgrade to the status of fundamental rights the right to the basic urban amenities: thus, possibly, a right to housing, a right to mobility, a right to security, a right to access to water distribution, and so on.

6. Finally, the "law of cities" approach places us on the way of an important historical phenomenon, already highlighted by many studies in sociology and political science: the political renaissance of cities.

The idea which can these studies plead is that, in the current era of deconstruction and reassembling of public action structures, one may detect symptoms of a reemergence of cities in the position of major levels of government.

In the international ambit, these symptoms are, in particular: a growing number of city-states (Dubaï, Singapore …), a development of various networks of cities, a more and more

marked interest shown by international institutions for urban affairs. In domestic systems, they concentrate mainly in the frequent signs, here and there, of a new recognition, both political and economic, of metropolises.

We, lawyers, must realize that this political and economic reemergence of cities has its implications in law. Cities have become 'central markets' in the business of satisfying collective needs. A growing number of legal abilities participating in the conduct of public affairs are situated at their level. The intensifying - generally speaking - tendency of our public apparatuses to accommodate a higher degree of pluralism, combined with the growing interconnection of public issues, lead them to constitute more and more partial legal orders.

These converging evolutions must at least convince us that the "law of cities" is one of the groups of realities on which we should concentrate our research and our reflection if we want to keep up with the transformations which affect public law in the current era.