Grzegorz Blicharz, Franciszek Longchamps de Bérier, Álex Corona Encinas

Modernizing the City: Legal Mentality and Multiple Scale of Actions in Historical Perspective

Grzegorz Blicharz

PhD, MPhil, Assistant Professor at the Chair of Roman Law at the Faculty of Law and Administration of the Jagiellonian University in Kraków; Colaborador honorífico at the Department of Roman Law at the UNED (Madrid).

✉ grzegorz.blicharz@uj.edu.pl

https://orcid.org/0000-0001-8221-8983

Franciszek Longchamps de Bérier

LLM Georgetown University, Professor of Law at the Jagiellonian University in Kraków.

✉ f.lb@uj.edu.pl

https://orcid.org/0000-0002-1485-0976

Álex Corona Encinas

PhD, Lecturer in Roman law at the University of Valladolid (Spain)

✉ alex.corona@uva.es

https://orcid.org/0000-0002-3413-7414

By merging three different historical examples, this article shows that legal mentality influences the management of similar public goods, the composition of institutional change in the urban sphere and finally the character of legal regulations best fitted in a given circumstances for arriving at desired outcome. The authors proved that the inclinations for ex ante *and* ex post *models are dependent on the concept of public administration and most particularly of administrative law. In a way, in the mixed public administration presented in the Roman law example, where both centralized and polycentric governance were applied, much depends on the narrative and values which accompany the institutional change in urban settings.*

Key words: complex commons, legal mentality, governance, Roman law, institutional change

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1. Introduction

Modernization and regulation are two issues that currently feed the debate on the concept of smart city. In this article, we intend to analyze both issues on the basis of historical examples of 19th century London and Paris. After that, we will immerse them into the discussion on public administration and administrative law by reference to the framework of ancient Rome. The two modernizing cities addressed themselves very different problems, implying different visions of modernity. The different nature of the problem in the two cases is closely related to the legal means used to face each situation. The big question in this context is: why did England and France perceived different problems when they looked at their cities?

In Paris—*Ex Post* Adaptation model—the state, relying on a one-man-management model, occupies territory without looking at the costs. It introduces reforms from above, which are blocked over time due to legal conflicts and economic problems, but technological change is effectively introduced and ex post verification cannot erase that step, although it mitigates costs and the management model. In London—*Ex Ante* Adaptation model—technological change is supposed to be introduced from below. As a result of imposed standards, private owners become obliged to introduce certain solutions under the control of a public official, who has wide discretion, which serves to reduce the possible burdens and costs of the modernization process. Both cities were interested in indivisibilities that transcended the scale of an individual building project. But London was not trying to reshape the streetscape as in Paris, being interested in indivisible attributes on a smaller scale having to do with health and safety. So the two cities adopted very different legal approaches: 1) in London, detailed building regulation of private parties with *ex ante* modifications by granting exceptions and 2) in Paris, expropriation that allowed for the reshaping of the streetscape, for both aesthetic and efficiency reasons, with *ex post* mitigations for adverse effects at a micro level.

Both models appeared in London and Paris at the time when a new branch of law—administrative law—was born, both in the legal systems of continental Europe and in the Anglo-Saxon systems. Ways of understanding public administration and administrative law influence the models and modes of governance adopted. The distinction between public administration and administrative law[1] leads to the recognition of the existence of the latter only in the 19th century. It is pointed out that modern administrative law is not related to the legal tradition of ancient Rome, and the possible influences of Roman law are, at best, "second-hand." Therefore, it seems only fair to ask ourselves if the history of administrative law started only 200 years ago. It happened to the administration to be active and effective before the French created its structures by legal regulations and the modern civil law concepts were invented in the 19th century Germany on the basis of Roman law[2]. The language of theories of governance and administration is not often applied to organizations of ancient times, but in ancient Rome we can indeed find some the roots of the strong legal mentality of European legal tradition, which turned out to influence the 19th century management of modernization processes in Paris and London.

1.1. The Dataset

The analysis is structured to uncover certain schemes of governance by description of situation and legal regulation, and the problem which is to be resolved. In regards to the description of legal regulation we are focused on: *The Metropolitan (London) Building Act of 1844*; *Décret du 26 mars 1852 relatif aux rues de Paris*, and several imperial constitutions from the times of emperor Justinian I (Novels) which regulated the local institution of *defensor civitatis*. Our analysis focuses primarily on legal texts, which are interpreted taking into account social, economic and political context. We do not limit ourselves to the analysis of the provisions of legal acts, but also reach out to adjudication of rights, i.e. the effects of regulatory regime, and on

1 Franciszek Longchamps (1912–1969), "W sprawie pojęcia administracji państwowej i pojęcia prawa administracyjnego" [Remarks on terms 'state administration' and 'administrative law'], *Zeszyty Naukowe Uniwersytetu Wrocławskiego*, seria A, No. 10 (1957): 19–21.

2 Tomasz Giaro, "Diritto Romano attuale. Mappe mentali e strumenti concettuali," in *Le radici comuni del diritto europeo. Un cambiamento di prospettiva*, eds. Pier Giuseppe Monateri, Tomasz Giaro, Alessandro Somma (Roma: Carocci editore 2005), 149.

competing values protected by law and legal institutions that influenced the law enforcement.

Legal mentality differs due to different balance of values promoted by each legal order. In this sense, we agree that the nature of public good is not the only factor that influences the mode of governance. Different approaches to governance may be taken depending on the legal mentality and the way we define the issues to achieve the desired public good, which sometimes consists of a series of simple and complex public goods to ensure the delivery of a mixed public good. Why different, but still effective, ways of governance of similar mixed public goods were chosen is embodied in other factors as well, like politics, economics and the social context. However, we would like to stress one specific factor—less commonly referred to—i.e. legal mentality, which makes that for a given managing body different ways of regulation are considered as optimal. Recent literature refers to this phenomenon as to path dependence. Both courts decisions regarding administrative law, and generally legal constructs and legal doctrine in civil law and common law rest on legal tradition and historical experience of particular legal order which are followed for different reasons.[3] Even though at the same time London and Paris were looking at each other carefully and comparing their legal regulations, they still chose to pave their own way to implement technological changes. London was immersed more in its common law history and feudal attitude toward property gradually evolving in the times of the clash between the idea of freedom of contract and social responsibility. Paris followed Roman law constructs reshaped by the revolutionary legislative intervention into the legal order in the form of the Civil Code of 1804. Very similarly, the emperor Justinian the Great, in the 6th century AD, while looking back at the old good times of Roman empire and willing to restore ancient law (an example of path dependence in his times), made the decision to reform city management according to his own mind and project.

Both in London and in Paris during the 19th century, city management bodies were endeavoring to modernize city, but they followed very different approaches to provide this mixed public good. Firstly, there was an imposed and different sensitivity to the idea of modernization, both in terms of values and goals, and, thus, different issues were chosen to be resolved, i.e. different simple and complex public goods were at stake. Secondly, provision of such envisaged public good was set to be achieved on different scale of actions, which was the consequence both of different sensitivities and issues, and as we claim, different legal mentality. We are finishing our analysis by expanding on the notion of legal mentality, and its importance for polycentric governance of mixed public goods. The multiple scales of action in both urban cases takes us directly to the ancient Roman imperial case. This point is also connected with the city management being a part of the structure of a mega-organization.

Why did England and France perceived different problems when they looked at their cities?

2. London: Ex Ante *Adaptation Scheme at Microscale Level*

The Metropolitan Building Act was not the first piece of legislation which regulated buildings in London, but the first one since previous regulation of 1774. The act of 1844 was then in many ways pioneering. Most importantly it introduced many solutions proposed in the Normanby Bill of 1841 which was the first, but unsuccessful try to establish a nationwide legislation

3 Monika Stachowiak-Kudła, Janusz Kudła, "Path dependence in administrative adjudication: the role played by legal tradition," *Constitutional Political Economy* vol. 33 (2022): 301–25; Yun-chien Chang, Henry E. Smith, "An Economic Analysis of Civil versus Common Law Property," *Notre Dame Law Review* vol. 88 (2012): 9.

regarding building regulations. Soon after enacting Metropolitan Building Act of 1844 it was followed by the whole body of building regulations in the second part of the 19th century, and building regulations covering the field regulated but this Act were gradually being extended at large. In London grand scale politics was not so much at stake in regards to modernization of city, but the fear against the smallpox epidemic encouraged to replace already outdated building regulation of 1774 with the regulation which reflected the idea of modern city both in terms of infrastructure and sanitary conditions. The epidemic of 1837–40, perhaps, also thanks to the technological improvement sanctioned by the act of 1844, especially in terms of securing proper ventilation of the city and sufficient distance between houses, turned out to be the last "smallpox in its old colours".[4] This context influenced how modernization was understood in London, and thus which issues were prioritized, what approaches were taken to ensure the modernization of city and how effects of governmental intervention were accommodated.

2.1. What does modernization mean?

The question, then, lies in determining what was regarded as "smart" solutions (using today's terminology) for London at that time. Reading *The Metropolitan Building Act* uncovers the meaning which the legislator attached to the concept of modernization. The modernization of London was to be driven through the regulation of construction and the use of buildings in the metropolis and its neighborhood. Reference to "construction" and "use" of buildings signifies that the modernization was to be achieved through a technological change both in terms of the design of the city's architecture, and the use of architecture. From the commons standpoint, it influenced various scales of issues uncovering a perplexity of private and public interests in everyday urban life. The regulation interfered with both outer (design) and inner (use) side of city life. Just like roads, and sidewalks, buildings are an important constituting element of the public space, especially in the case of their frontages.[5] However, unlike roads and sidewalks, buildings are private, so the use of them does not constitute an immediate element of public life. Yet, often buildings are used not only by their owners, for they will also allow the public or a specific individual to use them. Moreover, even solely private use of buildings may at some point influence the public space of the city, and thus, it turns out to be within the realm of public regulation or putting it differently: it flips within the boundaries of the urban commons. That is the point where "the rubber meets the road". There is no way to overcome the clash of what is public and what is private without establishing a certain compromise with private owners. It may be achieved only by presenting a clear framework of goods that are to be met through the regulation of design and use. The regulation sets out a complex structure of goods. However, the main goal of technological change that is referred to in the Preamble, is the Health of Inhabitants, which at one point is coined as the Health and Comfort of Inhabitants. Regulation operated at different scales of action in order to deliver a complicated public good.

First of all, it redefined the physical boundaries of urban commons in order to provide a complex public good to all inhabitants of metropolis. Regulation covered new buildings that extended nearly in continuous lines or streets far beyond the city limits. Thus, on the one hand, escaping previous buildings regulations, but, on the other hand, *de facto* extending the structure of the city. The act provided a flexible procedure for readjustment of current regulation coverage for future cases and possible extensions of buildings outside new limits.

Secondly, and most importantly the act introduced specific provisions related to simple public goods whose delivery was headed towards the improvement of the health and comfort of the inhabitants. That goal was to be done by:

4 Anne Hardy, "Smallpox in London: factors in the decline of the disease in the nineteenth century," *Medical history* 27 (1983): 112.

5 Just recall the example of speculative building developed by John Wood, the Elder in the city of Bath, at the Queen Square, where he leased the land and designed only the frontages of buildings and sub-let the land to others who were to build walls and cover buildings with roofs, as they wished, by the frontages had to be made according to the Wood's project.

- facilitating and promoting the improvement of drainage of the houses.
- securing a sufficient width of street, lanes, and alleys in order to bring about proper ventilation and to lower the risk of accident by fire due.
- discouraging and prohibiting the use of buildings or parts of buildings unfit for dwellings to lower the risk of spreading the disease.
- regulating the construction of buildings where explosive materials are used and buildings used for habitation or for trade which are within the safe distance from such places.
- adopting expedients for carrying deleterious and noisome works and businesses or allowing such activities at safer distance from buildings used for habitation.

In most of the initiatives listed above, the protection of the health of the inhabitants is specifically mentioned and in some of them the main aim is clearly implied. Only in regards to the last issue ("deleterious works") a reference to both health and comfort of inhabitants was used. In fact, by the mix of simple public goods which serve to provide a complex public good we obtain a panorama of how modernization was understood and how it was to be accomplished.

Modernization was to be fulfilled through cooperation between state apparatus and private owners. It is confirmed by the language of the act in which the legislator used a variety of means: from facilitating, promoting, and discouraging, to prohibiting, regulating, securing and adopting expedients.

Thirdly, the act changed the rules for the control and supervision of the compliance with technical standards of buildings and the use of such buildings. Among the officials applying the already existing legal acts, various practices were developed, which differed in city districts, but also started to lead to the rise of costs and delays in construction of buildings (sec. 1). Legislator acted then on the level of monitoring rules and clarifying law enforcement mechanisms. For these reasons, the lawmaker decided to make the application of statutory standards more flexible.

Legislator introduced technological change justifying it with very broad set of values and specific goals that should made interference with private property more understandable. Without doubt, it influenced the effectiveness of enacted provisions, and that is why we are calling it *ex ante* adaptation scheme: it tries to accommodate profits and burdens so as to diminish the possibility of legal disputes and economical losses both on side of private owners and the state. It continues in line with the Anglo-Saxon understanding of administrative law, which treats state–individual relation according to the consensual model. Therefore, we are looking at the act, which is a reaction to the previous management of urban space and to a most rapidly developing city, which faces all new technological problems in building business.[6] Thus, it introduces new solutions aimed at coordinating the technological improvement of the city.

Is it really that modern administrative law is not related to the legal tradition of ancient Rome?

2.2. How to effectively employ legal regulation to modernize the city?

It is interesting to observe that the English legislator indicated three values to which the application of the act should be subordinated: practicality, preservation of the purpose of the act and reduction of economic costs of applying the law, in order to foster economic development, which uncovers yet another aspect of *ex ante* adaptation.

First of all, a new office has been established—the Office of Surveyor—with the authority to appoint offi-

6 Roger H. Harper, *The Evolution of the English Building Regulations 1840–1914*, vol. I, (a thesis for the degree of doctor of philosophy at the University of Sheffield) 1978, 67.

cials and supervise the application of the law (sec. 1). Most importantly, the new office has been given the power to relax the rigid rules, if strict compliance with the law is impractical or opposes the purpose of the act or unnecessarily burdens the building business and its future.

Secondly, a derogation from strict compliance with the statutory norms has been made possible by further provisions of the act in the event that such compliance would involve great loss or inconvenience for the party. Where the reconstruction of old buildings was concerned, it was allowed to comply with the new law "as near as may be practicable," provided that the external walls and party-walls were of sufficient thickness and height (sec. 12).

Thirdly, the legal regulation was enriched with annexes, while the content of the regulations contained only references to schedules with detailed technical *Particulars, Rules and Directions*. For example, the enclosed Schedule C indicated the division of buildings into classes and rates for buildings in a given class (First Class—Dwelling-House Class; Second Class—Warehouse Class; Third Class—Public Building Class). Subsequently attached schedules D, E, F, G, H, I, K contained detailed technical data concerning dimensions and materials of external walls, party-walls, number and height of stories, rooms, timbers, drainage, projections, etc. The Act had 118 sections and 12 Schedules attached which in the printed version prepared by David Gibbons in 1844 covered 160 pages.[7]

Fourthly, several duties on the builder to submit a notice to the Surveyor at his Office at different stages of the building process were introduced (sec. 13–16). The builder, understood broadly –master builder, any person employed to complete any work, the owner of the building or other person who ordered such work to be done– was obliged, e.g. to submit a notice two days before "any building shall begin to be built" or "any opening shall be made in any party-wall" etc. (sec. 13). Such notice should be submitted on a specified form annexed to the Act. It is important to mention that the Act allowed officials to supervise and to check that the statutory criteria are met at every building site at any moment and to order to amend the irregularities (sec. 13–14). There was another duty imposed both on the builder and the architect to submit another notice when the building or its renovation or any other work was completed (sec. 15). There was also an appropriate form provided for by the Act. If the building met all the statutory requirements, it received an official certificate and could be used.

Fifthly, violation of the statutory rules gave rise to legal liability. If the building was used before the certificate was obtained or if the building was not reported on the relevant form within 14 days of completion, then a 200 pounds fine could be charged for each day of such use. There were also other fines specified for different cases, e.g. 20 shillings, 20 pounds, 200 pounds. It is also worth noting that if building process was considered a nuisance, the demolition of the work or even a prison sentence for the builder could be ordered (sec. 18).

2.3. Context

In London new regulation of building law was prepared meticulously. In fact, it was the first so important and direct interference with the sphere of private property and the rights of urban owners. Thus, it came about under the pressure of the public with huge interest on trade magazines. *Ex Ante* adaptation model although very generous and consensual was not immediately effective in terms of technological change. From the very beginning, the act of 1844 was constantly accommodated and, at the same time, immediately amended and adjusted. In fact, works on new legislation started already when the act of 1844 was yet to be enforced. It has been ultimately repealed by new Metropolitan Building Act of 1855. Before that, it was amended by several bills and especially surrounded by nationwide legislation, which was aimed at extending sanitary requirements in other towns and cities through: Towns Improvement Act of 1847, which targeted especially building cellars and street widths, and Public Health Act of 1848, which dealt with drainage, sewerage, water supply, paving and cleansing.[8]

7 *Metropolitan Building Act of 1844, 7th & 8th. Vict. Cap. 84 with notes and an index by David Gibbons* (London: John Weale 1844).

8 Anne Rebecca Neeves, *A Pattern of Local Government Growth: Sheffield and its Building Regulations 1840–1914* (PhD thesis at the University of Leicester, 1991), 123–125.

It was not easy to meet the standards envisaged in the legal act. It contained new solutions, but huge pressure from building business and private owners blocked their implementation, and soon they were removed or changed by new acts. On the one hand, the interference with private property was considered too harsh and, thus, it raised objections and public criticism. One of them dealt with strict provisions that prohibited back-to-back houses in London.[9] On the other hand, the act *prima facie* contained many exceptions, which should made for a flexible application, i.e. provided *ex ante* adaptation. In fact, there were no cases or legal disputes regarding these provisions reported, even though control over design and use was considered as a significant one.

In fact, there were previous regulations in other cities, but the idea of unification of urban regulations was abandoned. In the second part of 19th century regulation of urban structure was still governed by by-laws rather than national legislation which only produced certain model by-laws which could have been followed by cities. Moreover, some cities defended their style of buildings despite state pressure whose prominent example is Leeds.[10] Finally, the most optimal construction standards for sanitary and emergency purposes were enforced through by-laws prepared by Local Government Board. The Local Government Act of 1858 allowed towns and cities to shape their requirements freely while implementing especially Metropolitan Building Act of 1855 and Towns Improvement Act of 1847. In 1877, the Local Government Board successfully based its legal claim on its own model by-laws. Many other local authorities followed this example and by 1882 over 1500 of them had their own by-laws. However, local standards could not be implemented without cooperation with commercial and private agents. *Ex Ante* Adaptation model proved its consensual character and found its way towards gradual implementation of technological change first in London, and then nationwide. The court system was used to protect and enforce local building regulations (by-laws), which further delineated the balance of power between centralists and protectors of the autonomy of towns.

3. Paris: Ex Post *Adaptation Scheme at Largescale Level*

The analysis of the example of Paris shows how property law is important for making a city smarter. The structure of ownership proved essential for the development of the city. The law established in 1852 allowed Georges Haussmann to expropriate entire blocks, and remade layout and infrastructure of the city. Unlike in Metropolitan Building Act of 1844, detailed rules and standards "as regards the height of houses, attics and dormer windows" were to be introduced by "a subsequent decree, issued in the form of public administration regulations" (art. 7), and not by annexed schedules to the main act. It applied a top-down model with expropriation mandate as a symbol of public action rather than a collective action.

3.1. What does modernization mean?

Unlike Metropolitan Building Act of 1844, the *Décret du 26 mars 1852 relatif aux rues de Paris* was very short: it contained only 9 articles. There were two main goals in the *Décret*: to remake the city infrastructure and to ensure that buildings of Paris were safe. The regulation refers "to the interests of public sustainability, the health and beautification of the city."[11] Article 4 secured that builders must "comply with the instructions given to them, in the interests of public safety and health." In the regulation directed primarily to the streets of Paris certain provisions, which immediately placed burden on private owners of buildings, were included. The *Décret* was enacted in order to provide complex goods: public safety and health, and in an important deviation from the London act, it expressly mentioned the beautification of the city. However, unlike in the London act there was no detailed justification that could explain the strong interference within the realm of private property.

9 Joanne Harrison, "The Origin, Development and Decline of Back-to-Back Houses in Leeds, 1787–1937," *Industrial Archaeology Review* 39/2 (2017): 106.

10 Ibidem, 107.

11 Jean Déjamme, *Application aux villes du décret du 26 mars 1852 sur les rues de Paris* (Paris 1887), 3.

3.2. How to effectively employ legal regulation to modernize the city?

The most crucial provision was contained in the art. 2 and referred to the beautification of the city infrastructure by the use of expropriation law. Furthermore, it allowed the so-called extended expropriation: "It may likewise include in the expropriation, buildings outside the alignment, when their acquisition is necessary for the suppression of old public highways deemed useless." This last provision turned out to be a decisive factor in introducing technological change in Paris. The crux of the matter was the definition of alignment, and the interpretation when it is necessary to acquire buildings outside the alignment. Territorial-spatial factor was present in London regulation as well—extension of territorial limits along the lines and streets beyond the city limits—however it was centered both on the design and the use. In the case of Paris, due to the beautification of city, the design appeared to be the most prominent complex good to be achieved, and the city management was equipped with the most powerful tool to impose technological change into the city.

The application of expropriation mandate produced, however, harsh social and economic consequences for both the city and its inhabitants. Georges Haussmann tried to employ risky bargaining on rocketing prices of private lands in order to keep the project economically viable. In this context, the Haussmann's reforms were challenged in courts numerous times by private owners. The *Conceil d'Etat* declared the illegality of certain expropriations in 1856. Two years later, on December 27 the same Council ordered to return to private individuals the property not used directly for reshaping or making of the new streets. Thus, it confirmed their rights to the lots expropriated under art. 2, which were outside the new alignment, and confirmed the upgraded value of their property.[12] In 1860, the Court of Cassation allowed the private owners to seek compensation for illegal expropriations from the city and to base their claims on the upgraded value of the real estates.[13] Nevertheless, the Haussmann's improvements caused a total change of the city structure and infrastructure and had to be considered an enormous architectural success. The goal of beautification of the city was reached. The standard regulation set up for Paris was possible to be applied by other cities—art. 9: "The provisions of this decree may be applied to all cities that so request by means of special decrees issued in the form of public administration regulations," and, in fact, many cities in France requested and obtained the application of the decree.[14] Haussmann's Paris became a model city also for other European and Western capitals. Yet, the development of city and the expropriation law created enormous debts for the city, and perturbances on the real estate market in France.

3.3. Context

Politics were at stake in Paris: the return of Napoleonic order and the idea to promote France as a leading empire. In the case of modernizing Paris, the private interest eventually prevailed. However, for many years the state interest was well enforced by one person backed by political power of Napoleon III. Together with the change of politics and the lack of political influences, Hausmann project and effectiveness of the legal regulation were curtailed and private interests prevailed. It happened through *ex post* mitigation by the courts.

Private interest was endangered at large by grand scale vision and wholesale approach: the state control over urban planning was enlarged by broadening the definition of alignments which were exposed to expropriation and by blocking any modifications introduced by private owners to buildings within the reach of new urban architectural project. Again, private owners clashed with the state interest. Here the French legislator did not act with delicacy, with the idea of *ex ante* accommodation. All problems were confronted or resolved afterwards. Grand political vision was at

12 Antoine Paccoud, "Paris, Haussmann and property owners (1853 – 1860): researching temporally distant events," in *Distance and cities: where do we stand? Writing cities: working papers (2)*, eds. Günter Gassner (London School of Economics and Political Science, 2012), 7; Michelline Nilsen, *Railways and the Western European Capitals: Studies of Implantation in London, Paris, Berlin, and Brussels* (Springer 2008), 203.

13 M. Nilsen, *Railways and the Western European Capitals…*

14 J. Déjamme, *Application aux villes…*, 8–10.

the bottom of legislation, which was more focused on delivering beautification than healthy conditions. Even securing the width of Paris boulevards was not merely to provide better air circulation than in London, but to effectively curtail possible street demonstrations by the maneuvers of army. The project anyway was completed with success even though at the end the model of governance was broken with disastrous economical effects for the city. The public good was delivered: Paris became and still is the symbol of urban planning.

4. London and Paris Compared

Modernization projects of London and Paris in the 19th century were employed in a special situation in Europe and in the United Kingdom. On the level of politics, we need to take into account phenomena like the Revolutions of 1848, the rise of communism, and nation states. In terms of economics, the industrial revolution and the rise of free commerce and entrepreneurship. In terms of law, the rise of idea of subjective rights based predominantly on the concept of private property and ownership, constitutional protection and individual freedoms together with the freedom of contract, and, at the same time, the counter cry for social protection and state control of mighty owners. On the level of health conditions, in the first part of the 19th century there was a smallpox epidemic, which gave rise to the idea of modernizing housing and sanitary conditions in overpopulated cities of London and Paris. This last factor together with tensions between private owners and the state, and political issues in the background, influenced modernization projects of London and Paris.

Legal mentality makes that for a given managing body different ways of regulation are considered as optimal.

In modern architectural thought we discover similar problems. State control and state watch over the city are contrasted with the vision of urban architecture that builds on the perspective of citizens, inhabitants. Top-down planning today depends on business models, on grand vision which is not attached to the inner life of districts, streets, pubs; which does not take into account peculiar social life which makes city vivid, attractive and even offers social control better than the state one.[15] The top-down model even today often uses expropriation or, as it is called in the United States, "eminent domain". Ultimately, such projects can prove costly and not deliver the desired results. In Paris, the strong regulation only with *ex post* mitigation was introduced, however, not only to allow city management to act arbitrarily. In fact, it could have been a tool to overcome ineffectiveness of previous regulations, and the strong position of private owners who profited and were enriched on public city planning. Eventually, the idea to curtail such phenomenon failed both due to political and legal grounds. On the other hand, private owners were appealing to the existing legal protection of ownership title to land which was challenged by broad interpretation of the *Décret*.

In both examples—of London and Paris—there was interference of the state with the private sphere, but also reshaping public elements of streets. It is where starts the problem of delivering technological change in terms of both the design and the use. At this stage, the legislator may take two approaches: *ex ante*, or *ex post*. It may lead to similar results. However, which way is chosen depends not only on the nature of public good, but also on different conditions, different ways of solving problems, different problem identification, and also different legal mentality, which depends on values promoted, politics entailed, and sensitivity to social concerns. In London, the design and use of rules was coordinated by the new office with wide discretion, by gradual uniformization of design and use of infrastructure through a variety of sanctions

15 Jane Jacobs, *The Death and Life of Great American Cities* (New York 2016), 11–12; 337; 420.

and controls which was based more on collective action of owners, building business and public officials. A top-down model was used in Paris, where one person—an architect—had the discretion of *ex lege* expropriations. This model of changing the design and use of rules and infrastructure caused numerous litigations in courts.

5. Legal Mentality: Values behind Governing and the Roman Law Pedigree

The examples of 19th century London and Paris were not chosen arbitrarily. In fact, the idea of administrative law as a distinct concept from public administration arose in the 19th century in France. The interest in administration starts during the Enlightenment with French bureaucracy of the 18th century. The phenomenon of administrative law constituted an important element for the legal mentality of the French legislator and the managing bodies. The top-down approach proved that the unequal relationship between the state and individuals and the developed system of administrative courts turned out to be an effective tool in *ex post* mitigation of public administration. In civil law system, and particularly in France, the concept of administrative law signifies a special relation, which is grounded in public law principles deviating from the private law paradigms. One of its important aspects is alternative court system with *Conceil d'Etat* as the Court of Appeals and the Court of Cassation. On the other hand, *ex ante* adaption scheme of English legislator still presented the idea of administrative activity, which is flexible enough to continuously accommodate the effects of its decisions. The idea of administrative law slightly differently understood evolved in common law systems where it was similar to private law relationships. That is why *ex ante* adaptation scheme was more plausible. It ended up with numerous acts and decentralized regulations and extended period in which certain minimal rules regarding urban planning were introduced at large scale. Somewhere in the middle ground between these two models, we find the experience of Roman law which lies at the bottom of legal mentality both of common law and civil law.

The present study, drawing on the tradition of building analytical frameworks for the study of the commons[16] seeks to marry the experience of European legal history with governance issues. In this regard, we consider mining history as source of good data on relevant problems. Inspired by other historical studies on the commons and especially on the historical commons[17] we are looking at certain examples of the commons from the legal perspective and even more particular in the light of the ancient and modern law. In fact, many modern legal concepts like property rights, joint-ownership, or rules of access and use of goods common to all mankind are grounded in Roman law, and modern law developed along the lines drawn already by the ancient tradition.[18] Needless to point that the 19th century turn from the absolute theory of unlimited ownership title to more social, correlative or communitarian view of exercising our own rights can find its origins in Roman law as well. The modernization rush of the 19th century cities: London in 1844, and Paris in 1852 follows two different paths of implementing legislative change which have their origins in the Roman law of governing a megaorganization which not only served as basis of a wholesale theory of ownership as a dominion with strong *ex post* legal protection (*rei vindicatio* claim), but also employed certain limitations to private property because of public interest especially in the urban context, so crucial for the imperial management which required collective action of citizens and public officials being an example of *ex ante* adaptation.

16 Ronald Oakerson, "Analyzing the Commons: A Framework," in *Making the Commons Work: Theory, Practice, and Policy*, eds. Daniel W. Bromley et. al. (San Francisco 1992), 41–59; Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action* (New York 1990); Michael D. McGinnis, and Elinor Ostrom, "Social-ecological system framework: initial changes and continuing challenges," *Ecology and Society* vol. 19, No. 2, (2014): 30.

17 Tine De Moor, *The dilemma of the commoners: Understanding the use of common-pool resources in long-term perspective* (Cambridge University Press 2015).

18 G. Blicharz, *Commons – dobra wspólnie użytkowane. Prawnoporównawcze aspekty korzystania z zasobów wodnych* (*Commons – Jointly-used Goods: Comparative Aspects of the Use of Water Resources*), (Bielsko-Biała: Wydawnictwo Od.Nowa, 2017), 167–168.

Roman law is the legacy of legal thought. It allows us to illustrate how law reflects values and what those values might be from the legal point of view. The perspective offered by Roman law warns against a naïve faith in progress and the linear development of History. In taking such a position, it seems instructive to look at the evolution of Roman law as an example of legal discourse and a strong factor influencing legal mentality.

> **Rome is us—you and me, but fully you and fully me, so I with you. The State conceived as being a community of citizens was never separate from the citizens.**

For the sake of clarity, it is worth reminding that the Roman Empire adopted two forms: the principate and the dominate. It might have seemed at the first glance that the dominate should be the natural object of researches on governing the Empire and urban spaces. The dominate had well-developed bureaucracy—an official apparatus that was supposed to control the permanent economic and social crisis. However, the principate and its focus on decentralization is more interesting for anyone interested in smart governing of an extensive empire. In the era of the principate, the tiny central imperial office and provincial governors cared only about some of the most important issues: peace, defense of borders, maintenance of order and observance of the law, collection of taxes, and higher degrees of what we now call the system of justice—a truly public *utilitas*. The rest remained in hands of the cities, hence where they did not exist like in Gaul conquered by Julius Ceasar, Romans had to found them in order to rule efficiently over large areas of new territories. Urban elites identified themselves with the Capital. The paths of career were open to provincial Roman citizens who started in order to make them feel closer to the central power of the City.

A comparative approach to the matter of urbanism and public management of goods seems like a convenient element to consider. At this respect, the managerial activity in Ancient Rome could be public or private. It is worth to note that *utilitas* was the crucial criterion for distinguishing private law from public law. The jurist Ulpian wrote: "Public law is that which respects the establishment of the Roman commonwealth, private that which respects individuals' interests (*utilitas*), some matters being of public and others of private interest. Public law covers religious affairs, the priesthood, and offices of state."[19] Romans would certainly agree that the reason the office of *praetor* existed and that his duties were performed was the common good—*utilitas*—either of the individual citizens or the State made up of them. Indeed, every aspect of social life achieves its full potential through reference to the common good: even when it is a category that is not explicitly recognized, and even when the thought that all men are equal is only beginning to gain wider recognition. And that is what can be observed based on the example of Rome and Roman legal experience. The clash between public and private interest is particularly visible in the urban community where public sphere is created on the intersection of private interests. We will analyze it on examples of two officials—*praetor* acting at the beginning of the principate and *defensor civitatis* as restored in the late Roman Empire of Justinian.

6. Praetor *and* Defensor Civitatis*: Two Examples of Roman Administrative Praxis*

The concept of the State was understood differently in Rome than we understand it now; although,

19 D. 1,1,1,2 Ulpian, *Institutes*, book 1.

in fact, it was more favorable for what we understand today as the common good. The State was conceived as being a community of citizens, and was therefore referred to as a public thing – res publica. It was not separate from the citizens; it did not exist in isolation from them. Idealistically, in Kantian fashion, we would call it a community of free individuals in its pure form.[20] In Martin Buber's wording, the idea could be expressed as follows: Rome is us – you and me, but fully you and fully me, so I with you. Let us add that—despite references to humanitas[21]—there was no room in Rome for mercy, the way it is understood in Christianity. Moreover, the claim that the ancients mastered the seven deadly sins to perfection appears to be thoroughly justified.[22] Finally, the entire public legal order in Rome, in which the praetor held a special place, was different too. The person and the office were perceived in conjunction with one another, which is emphasized when it comes to clarifying the ambiguity of the word ius. The magistrate and place where he performed his official function merged to the extent that the two were simply called—the law. This should come as no surprise, since in our times the court tends to be identified with justice, and the militia (now the police) with power. Since the early days of the Republic, the body entrusted with the function nowadays known as the judiciary was the praetor.[23] Seated on his chair, i.e. sella curulis, the praetor was not only a statuesque embodiment of the law in action, law which was close to the citizens of the Republic. In the earlier statements made in the above-cited text by Paulus it is clear that the Romans had no doubt that the process of enforcing the law not by an ordinary citizen, but by an official appointed for one year and endowed with said authority, was law par excellance. Created by officials, and therefore called ius honorarium—from honor, meaning "office"—it was law, like natural or civil law, although not in the same way. Besides specific references to goodness and justice, the term ius is also used as a category that does not express any judgment: what matters is who administers the law, who exercises jurisdiction, and not whether it is in compliance with the existing legal order. It is only the outcome of official acts that is judged, like any law: from the point of view of goodness and justice. Through the activities of the magistratus—the praetor—the law is brought up to date for citizens, which is why a passage from a textbook by the jurist Aelius Marcianus, who said: "praetorian law is the living voice of civil law", should be appreciated for its accuracy and aptness.[24] A citizen was elected to hold the office of praetor and to administer and enforce the law in accordance with his knowledge and experience. Through his official acts as a magistrate, he had to ensure that goodness and justice prevailed in specific circumstances of everyday life. It seems reasonable to perceive in the performance of his official duties the institutional expression of concern for what is meant today by the idiomatic expression "the common good".

The pragmatic aspects of the praetor's work can be seen in the remedies he employed, now referred to as praetorian non-procedural measures. The protection he offered was provided more by his power than by jurisdiction (*magis imperii quam iurisdictionis*): he restored to an original state (*in integrum restitutio*), ordered the presentation of someone or something, prohibited or ordered specific behaviour (*interdicta*), authorized entry into possession of someone's property (*missio in possessionem*), demanded obligations to be assumed orally in the form of stipulations (*cautiones*). The praetor exercised jurisdiction through the legis actiones or the formulary system of procedure, refusing to refer the case to a private judge (*denegatio actionis*), granting claims made by parties against a suit (*exceptiones*), editing the texts of developed litigious formulas, or instructions for judges. To extend that

20 Zbigniew Stawrowski, *Dobro wspólne a filozofia polityki* [*Common good and filosophy of politics*], in *Dobro wspólne. Teoria i praktyka* [*Common good. Theory and praxis*], eds. Walter Arndt, Franciszek Longchamps de Bérier, Krzysztof Szczucki (Warszawa 2013), 22.

21 Henryk Kupiszewski, *Prawo rzymskie a współczesność* [*Roman law and the contemporary world*], eds. Tomasz Giaro, Franciszek Longchamps de Bérier (Warszawa 2013), 239–66.

22 Franciszek Longchamps de Bérier, *L'abuso del diritto nell'esperienza del diritto privato romano* (Torino 2013), 201.

23 Ignazio Buti, *Il 'praetor' e le formalità introduttive del processo formulare* (Camerino 1984), 42–3.

24 D. 1,1,8 Marcian, *Institutes*, book 1. Cf. e.g. B. Frese, *Viva vox iuris civilis*, in ZSS 43 (1922): 466–84.

protection, he introduced fictions into the formulas, switched subjects, employed analogy, constructed new solutions by creating ad hoc complaints based on facts. We are quite familiar with the arsenal of measures employed by the magistratus, and it is on their basis that we endeavor gain an idea about his day to day work. The question is to what extent can we succeed.

The praetors were neither lawyers, nor professional magistrates specialized in efficient governance or administration. Neither of these shortcomings was necessarily a drawback, if the attainment of the common good[25] as necessitated by the needs and expectations of a particular generation of Roman citizens is considered to be of crucial importance. The praetors were mature men, held in high esteem by society as is confirmed by their election. They usually held their office for the first time ever, and, therefore, had no more experience than what could be gained from mere observation. Observation, however, or even understanding is one thing, and the ability to act efficiently is quite another. Thus, praetors often consulted advisors, among them jurists. Furthermore, they contributed their own experience in looking for practical and rational solutions. From their experience of everyday life, they were aware of established or acceptable courses of action, as well as being aware of social expectations. This had to suffice to prudently and creatively manage a high-ranking office, and to perform their duties—with a little good will and involvement—in the best interests of society. The office was held for a short term, and the praetor was not expected to implement any long-term policies. The office was, to some extent, embodied in decrees, which until the very end were adopted on an ancillary basis. "In the common model of legal development, the decrees, issued occasionally, were more a record of changes that have already occurred than an innovation, and more a case study than a general rule".[26] Praetors corrected existing regulations and created new ones when practicing their administration. They made the edict into an extensive collection which not only provided for a comparatively broad protection of private rights, but which also specified when the praetor could be counted on for assistance. The political system, the manner in which the praetor was appointed, and the powers he was granted gave him considerable autonomy. Thus, the intention was to have him act at

We are interested in solutions adopted in similar social situations or when dealing with problems of a similar nature—even if they result from various sources and inspirations and when historical continuity cannot be proved.

25 The concept of the common good does not seem to be an invention of modern times, even though it was not authoritatively and convincingly taken up until recently by the Second Vatican Council. It is thus rightly associated with the social teachings of the Church, which has been invoked, to a greater or lesser extent, by nearly all political parties over the past twenty years, including post-Communist ones, in their political programmes. It is therefore not surprising that the category of the common good has become the subject of a constitutional consensus; indeed, it can found at the very beginning (in Article 1) of the Constitution of the Republic of Poland of 1997: "The Republic of Poland shall be the common good of all its citizens".

26 Wojciech Dajczak, Tomasz Giaro, Franciszek Longchamps de Bérier, *Prawo rzymskie. U podstaw prawa prywatnego* [*Roman Law. At the Foundations of Private Law*] (Warszawa 2009), 44.

his own discretion. The most important thing was that he should decide about the most appropriate solution at a particular time. The praetor's work represented par excellance the actualization of the common good under specific conditions and for particular persons. It can therefore safely be said that the "balance between traditionalism and conservatism on the one hand, and innovation on the other"[27] in Roman law was to a large extent the result of the praetors' promotion of the common good.

In 1995, various articles were published in the "Journal of Institutional and Theoretical Economics," which demonstrate another courageous opening of a new research perspective. A professor of history from Zurich wrote about the Roman Empire as an ancient megaorganization[28]. Professor of civil and Roman law—then from Saarbrücken, and now from Munich—submitted a paper entitled "Roman law and Rome as a megaorganization."[29] In 2001, professor from Salerno in Italy wrote an article with a clearly programmatic character: "For Roman administrative law,"[30] reminding that in the last 30 years a lot of work of Roman law specialists has been devoted to the history and the public law of Rome. A number of topics that were covered by Roman law specialists related to the Roman administration: provincial administrative systems, internal organization of particular cities, the activity of municipal officials, tax collection and systems of public "concessions" to organizations of tax collectors, prerogatives of imperial officials. These books and papers, however, were not advertised as elements of reconstructing "Roman administrative law," nor even as a legal history of Roman administration[31].

It is quite fortunate to recognize the existence of administration in Rome, and even in earlier countries and domains than the Roman Empire. Why, then, arbitrarily cutting off all the pre- Enlightenment history of administration? Is not it simply a blind shortening to keep lectures in the history of administration more compact? It is true that continuity of administrative institutions can easily be demonstrated only starting from the time of the Enlightenment—from regulations enforced by absolute monarchies of Europe. Today, however, a history researcher does not need to feel constrained to show the continuity. She is not enslaved by questions about the reception of legal institutions. We are more interested in solutions adopted in similar social situations or when dealing with problems of a similar nature—even if they result from various sources and inspirations and when historical continuity cannot be proved. The phenomenon of megaorganization is brought by the Roman Empire led by emperors from Augustus to Theodosius, i.e. from 27 BC till AD 395. One efficient administration for centuries over one and a half million square miles, and 40 to 60 millions of inhabitants. It is, therefore, not without reason that researchers are fascinated how it was possible to manage a gigantic state at a time when a journey to Rome from Trier, the capital of Constantine the Great, took a month of traveling.

In a way, the figure of the *defensor civitatis* during the reign of Justinian I (527–565 AD) is situated in the middle between top-down and bottom up management of late Roman Empire. A local city official whose mode of election has evolved, but has always been linked to balancing the interference of the state and local authorities. In fact, the office aimed to protect the population from the abuses of the state apparatus but also of the nobility, which had a great importance in the cities. Therefore, the *defensor civitatis* represents a particular example of administrative control – not in the form of administrative law and a separate judiciary system – but a public

27 Wiesław Litewski, *Podstawowe wartości prawa rzymskiego* [*Basic values of Roman law*] (Kraków 2001), 18.

28 Franz Georg Maier, "Megaorganisation in Antiquity: The Roman Empire," *Journal of Institutional and Theoretical Economics* 151/4 (1995): 705–13.

29 Alfons Bürge, "Roman Law and Rome as a Megaorganisation," *Journal of Institutional and Theoretical Economics* 151/4 (1995): 725–33. Cf. also Jochen Martin, "The Roman Empire: Domination and Integration," *Journal of Institutional and Theoretical Economics* 151/4 (1995): 714–24, Sumantra Ghoshal, Peter Moran, Luis Almeida-Costa, "The Essence of the Megacorporation: Shared Context, not Structural Hierarchy," *Journal of Institutional and Theoretical Economics* 151/4 (1995): 748–59.

30 Francesco Lucrezi, "*Per un diritto amministrativo romano*," in *Atti dell'Accademia Romanistica Costantiniana. XIII convegno internazionale in memoria di Andre Chastagnol* (Napoli 2001), 783–84.

31 Ibidem, 778–779.

official, standing, as it were, on the sidelines, which has the competence to look at the hands of the authorities. This shows how different channels the Roman empire was administered through. Neither did it operate with monopoly power only nor did it leave everything to the decision of local governments. Multiple forms of governance were used, which in effect were supposed to guarantee desirable outcomes of management. Here we have many useful factors in order to establish a comparison with the *utilité publique* known today from the French theory of administration.[32]

example of an urban controlling office, which evolved through centuries up to the times of Justinian I, who decided to revitalize it in order to provide a better management at multiple scale of actions. For the sake of a systematic and more comprehensive approach, it is possible to summarize the functions carried out by the *defensor* in four categories: protection and defense of the lower orders of society, judicial and legal attributions, auxiliary administrative functions and maintenance of public order and morals. Even though since 4th century the *defensor* had a looser connection with

The evolution of *defensor civitatis* in the times of Justinian shows the importance of legal mentality in providing a change into the city management.

The institution of the *defensor civitatis* played a key role in the development of the municipal government and the urban life during Late Antiquity. It sits exactly on the borderline between public *utilitas* and private interests of urban community, and uncovers the interplay between top-down and polycentric management resembling *ex ante* adaptation model. What is more, it proves as well that there is no straight-forward progress and the linear development of urban management. The observed tendency towards a theoretical decentralization of the local administration during the reign of Justinian (527–565 AD), in the interest of a higher efficiency and a better provision of public services and management of the commons has to be placed in a context where the pre-existing political-administrative urban regime had shown signs of exhaustion with the decline of the classical magistracies and the municipal councils. In practice, it is safe to assume that a certain degree of decentralization masked the search of a closer connection with the imperial power.

Although it does not deal with building regulations strictly speaking, the *defensor civitatis* is a perfect

the local elites, and that since 5th century was elected by people of the city—*honorati et plebs*—it is important to bear in mind that the appointment had to be approved by the emperor. Taking that argument even further, it has been suggested that an increased control of the local government by the imperial administration substantiated an increasing divergence between the theoretical responsibilities of the local bodies and their actual level of power.

A clear endorsement of the restoring intention of the institution by Justinian, with an obvious use of the classicist ideology and the institutions and terminology of the Roman past, is located in the preface of Novel 15.[33] The imperial willingness to pursue a rapprochement of the *defensor* in accordance with its original setup is clear and Justinian stresses the need to maintain the equivalence of the term with the original meaning of the *defensor* as a protector of the local citizens.[34] The theory of the positioning of the

32 Jan Zimmermann, *Prawo administracyjne* [*Administrative law*] (Warszawa: Wolters Kluwer 2008), 33.

33 Nov. 15 *praef.*

34 Nov. 15 *praef.* Interestingly, the same spirit could be perceived in previous imperial constitutions, which were also incorporated to the Code of Justinian, such as C. 1,55,5, enacted during the reign of Valentinian II.

defensor as one of the key figures in the local administration and the urban life of the period is supported by the special protection granted to the institution in the legislation passed by Justinian. In this respect, it is prescribed that any contravention of his proceedings by any other public officer should be notified to the corresponding provincial governor, so that the subsequent punishment was issued.

At the same time, the reshaping of the office as a boosting element of the urban life and public spaces is clear. The expansion of its functions would also aim to complement the provision of several fundamental services held by other institutions for the proper functioning of the local administration, mainly regarding the resolution and provision of justice and taxation management and the order in public spaces. That trend fits in with the context of a reformist approach perceptible in the legislation of the time on the local administration but, simultaneously, reflects a historicist and *continuist* perspective with reference to the original concept of the *defensor* in terms of acting both as a guardian of the rights of the citizens and a supervisor of the public local institutions, which were directly entitled to the management of the common local resources. To this extent, it is remarkable that the emperor did not choose to articulate a brand-new office, for he elected to make use of a pre-existing figure as a starting point. The combination of all these factors, allows to affirm that the *defensor* was in fact one of the most relevant local figures during the period, with a series of prerogatives and attributions, as well as with a significant and deeper development in the legal sources, especially in comparison with other offices (such as the *pater civitatis* or the *curator civitatis*).

Quite interestingly, in the Justinian's Code —C. 1,55,5—the compilers incorporate a precept which should be associated with the growing concern about the excesses and abuses of the civil service in the cities. Correspondingly, it may be assumed that, despite of the laudable original goals, the *defensor* was neither foreign to some of the flaws which significantly affected the public service of the time. Hence, the institute seems to have displayed a lower degree of effectiveness in comparison with other spheres (especially, the bishops) in defending the rights and interests of the citizens. This is quite possibly a result of the lack of a stronger bond with the imperial power, as John B. Bury notes,[35] in addition to the abovementioned increase of the functions since the 4th century.

Even though there is still a certain lack of determination regarding certain aspects connected to the categorization of the office (most notably, whether it was considered as a local magistrate) or to the nature of the appointment for the position[36], the existing resources show that the reshaping of the institution during the age of Justinian was a useful tool in trying to alleviate some of the administrative dysfunctions of the cities, seeking a higher efficiency on the public services and structures (such as administration of justice, tax collection or order in public spaces). Those factors are part of a broader common local dimension and of the will to strengthen the ties with the imperial power. In that context, Justinian attempted to implement an innovative series of administrative reforms towards the consolidation of a strongly centralized model but, most of all, a far-reaching political, social and religious program which affected the cities and urbanism directly. Some authors like Haldon understand that the essential feature resulting from the reforms of the local administration in the early Byzantine age is the disruption of the "character of autonomous or semi-autonomous units" of the cities,[37] one of the traits par excellence of the Roman *civitas*.

The evolution of *defensor civitatis* in the times of Justinian acts beyond the dominate-principate dichotomy and shows the importance of legal mentality in providing a change into the city management. A remarkable number of studies have considered Justinian as both a source of innovation and a strong defender of classicism and it does seem plausible to believe that

35 John Bagnell Bury, *History of the Later Roman Empire*, vol. 2 (New York: Dover Publications 2016), 336.

36 More on problems faced by the office, such as the improper intervention by the provincial governors in the access to the position and the development in the *Novellae* 15 in A. Corona Encinas, "Sobre la reforma en el cargo de defensor civitatis en época justinianea. Aproximación exegética a Nov. Iust. 15", *Revista General de Derecho Romano*, 34 (2020): 1–17.

37 John Haldon, "The idea of the town in the Byzantine Empire," in *The idea and ideal of the town between late Antiquity and the early Middle Ages*, ed. Gian Pietro Brogiolo, Bryan Ward-Perkins (Leiden: Brill 1999), 10.

the emperor was certainly aware of "the instrumental value of portraying change as a development within, or a recovery of, traditional values."[38] It should also be highlighted that some of the assignments of the institution are closely linked to the political and religious ideology of the emperor. Although it could hardly be considered as groundbreaking, the competencies related to the religious and moral spheres represent an evident example of the strong religious influence during the reign of Justinian and are also a sign of the advances on the process of Christianization of public spaces, which would set the early Byzantine city in an intermediate point between the classical Roman *civitas* and the Middle Ages city.

6. Conclusions

By merging three different historical examples, this paper shows that legal mentality influences the management of similar public goods, the composition of institutional change in the urban sphere and finally the character of legal regulations best fitted in the given circumstances for arriving at a desired outcome. We showed that the inclinations for *ex ante* and *ex post* models are dependent on the concept of public administration and most particularly of administrative law. In a way, in the mixed public administration showed in the Roman law example, where both centralized and polycentric governance are applied, much depends on the narrative and values that accompany the institutional change in urban settings.

In London, Paris and ancient Rome the governing bodies were interested in indivisibilities that transcended the scale of an individual building project or an individual city official. So the two modernizing cities of the 19th century addressed themselves to very different problems, implying different visions of modernity. The different nature of the problem in the two cases is closely related to the legal means used to address each problem: detailed building regulation or expropriation that allowed for the reshaping of the streetscape. England and France look at their cities and see different problems because their legal mentality biased each of them toward different approaches to problem-solving. We suspect that the differing mentalities inclined them both to see different problems and to use different approaches to problem–solving. According to our analysis, much depends on the concept of administrative law that evolved at this time and differences between consensual model applied in Anglo-Saxon world, and top–down model in French bureaucracy. Justinian decided to overcome managerial problems of the Empire with the reform of tiny city official of *defensor civitatis*. There is no way the Roman Empire could have succeeded by acting only at a single grand scale. So even Justinian found it necessary to introduce elements of polycentricity into its pattern of governance, which was highly dependent on strong and influential legal mentality, and the interplay between *ex post* and *ex ante* adaptation schemes.

> Much depends on the concept of administrative law.

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