

New Rights and the Space of Practices: Italian Contributions to a Theory of the Urban Commons

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Introduction

Italian scholarship has been giving a substantial contribution to the theoretical production on commons, introducing original themes and perspectives and providing input that in recent years has influenced the debate beyond national borders. Foreign authors such as Saki Bailey and Michael Hardt have spotlighted problems that originally emerged in the Italian context, either through case study research or through theoretical investigation. Together with the slow but constant diffusion of an 'Italian theory' connected to the *operaiamo* of the 1970s, Italian and other international scholars have shared many of the relevant assumptions drawn from contemporary Italian reflections on commons, thus contributing to the process of making the Italian debate increasingly relevant internationally.¹

This paper tackles and expounds two themes that have emerged in the Italian debate on the commons and which are relevant to the advancement and critical appraisal of this concept in the disciplines of planning and urbanism: the legal aspects relating to the commons, and the problems facing practices that enable the reproduction of the commons. The legal perspective mostly deals with the problem of legitimising the commons as institutions that confront and challenge the public and private spheres in the task of managing resources. With regard to practices, the focus is on the interconnection between space and those actions that enable either the collective, social reproduction

of a resource, or the actual management of that resource in a commons institution.

The Italian legal perspective, as this paper will show, originated and thrived as a debate within juridical scholarship, where the scope and the objectives of research have been continuously refreshed and extended in response to the changes in society from the 1970s onwards. This approach attempted to address the unfitness of abstractly stated positive rights, and to revitalise the debate around the source of rights in the Italian civil law-based legal system, still maintaining – in most cases – a reformist attitude rather than a revolutionary one. Contextual factors, including political ones, have proven to be a great obstacle in the translation of these discourses into comprehensive legal reforms aimed at giving a legal source to new rights of commoning. Recent developments have nevertheless pushed the legal perspective on the commons to engage directly with activism, and to tackle *urban* commons in the process. It is maintained here that this situation, while making theoretical problems more difficult and contradictions more strident, has been forcing the research to look at practices as the key element for both the reproduction and the managing of resources held in common. Looking at the practices that animate the reproduction and management of commons from the standpoint of urbanism and planning means directly linking them in the analysis to the space in which they take place, thus providing the research with a possibly fertile heuristic contribution.

As this paper focuses on the context in which a number of theoretical approaches are put forward (Italy), and since many aspects of the above-mentioned themes arise from very specific Italian contextual factors, some justification seems necessary in order to understand how contextually produced knowledge can lead to a certain degree of relevant generalisation.

Three reasons for justifying contextual knowledge are proposed here, however the list is provisional and might be extended:

1. Knowledge produced in a specific context has seen an increased legitimisation as a means to achieve general theoretical advancements, given that the validity of local circumstances as a test bench for general *theoretical* problems is becoming accepted. This observation is a necessary specification for planning where repeatability of approaches and 'experiments' is not part of the discipline.² Argumentations defending this view (for specific heuristic purposes) are given by Flyvbjerg,³ and are also based on a renewed formalisation of case study research in the social sciences, for instance by Yin.⁴ Despite the fact that Italian case studies remain marginal to the proposed argumentations, some of them, in the form of references to specific situations, will be invoked to illustrate the points made.

2. A second, complementary reason is the evidence-based tendency to question the universal validity of a *general* and predictive theory in social sciences, as planning is considered to be here, and the consequent validation of isolated theoretical 'patches', so to speak, that gathered together compose multifaceted general theories.⁵ These patches may eventually correspond to contextually specific situations. The idea of 'Realrationalität' applied again by Flyvbjerg to an analysis of the power structures concealed in the apparently transparent and accountable planning decision-making

process in Alborg, Denmark,⁶ revealed an entire new set of underlying elements when it was adapted by Yiftachel to analyse Israeli contexts.⁷

3. A third reason for linking speculative constructions to contextual situations lies in the necessity to avoid self-demonstrative theories that pretend objectivity and exhaustiveness, especially when tackling the analysis of complex, ongoing processes from a disciplinary perspective. This preoccupation has explicit precedents in critical Marxist theory, and especially in the criticisms made about the sterility of any disciplinary or technical knowledge production that builds on its own corpus of literature or its own discourse or rationales, disregarding internal contradictions and complexities.⁸ In this regard, Lefebvre introduced a different modulation of the same idea, in which he explicitly referred to planning. In *Right to the City* he insisted that planning – a discipline concerned 'with the material conditions of the future' – either implicitly or explicitly put forward a 'project of the future' that contains a specific perspective on reality, in a process that he calls 'transduction'⁹ – an idea that has many links to the methods he had previously devised in connection with dialectical materialism.¹⁰ The heuristic validity of such a research attitude seems to hold, in that the material, contextual conditions of the present are comprehensively assumed and stated as part of the investigation problem, and the results are not ideologically contained in the formulation of the research questions, as Lefebvre himself clarifies.

The Italian juridical research

In order to understand how legal aspects were identified in Italian scholarship as elements central to the analysis of commons, and how they became so important in shaping the local approach to research, various contextual peculiarities must be considered as part of the explanation. For the sake of simplicity, and in order to keep the focus on the disciplinary field of planning and urbanism, those peculiarities that relate to spatial issues and influence planning

or planning-related issues are prioritised.

A specific Italian characteristic is the rather recent regularisation of the customary land-use rights for private agricultural lands that were established in 1927 under the Fascist regime. This was carried out by setting up a commission whose objective was to abolish customary land-use and regularise public land-use by creating a clearer set of rules. The procedure also entailed the compensation of local communities, either with land concessions or through monetary refunds. This process was framed within the slow national harmonisation of laws that began after Italian unification (declared in 1861), and it aimed to erase the contradictions and ambiguous relationships that existed between customary rights and the bundle of rights connected to private land. It was also carried out with the objective of modernising agricultural production. A clear-cut line was thus drawn that limited customary rights to publicly owned land. This was quite accurately mirrored in the importance given to property during the process of recognising building rights in many of the central aspects of the general planning law of 1942, another law from wartime Fascism, later modified but never thoroughly reformed.

It should be noted that the specific structure of the Italian legal system also played a role in the research on commons. The system, based on civil law (which has two parallels in the Anglo-American context: the legal systems of Louisiana and Scotland), establishes rules that can only be interpreted by the judicial system, where custom plays a very minor role, if any. In fact, as noted by Elinor Ostrom, there is a substantial contradiction between the existence of customary land-use rights and legal systems based on statutory rights such as the civil law system.¹¹ This contradiction often forced complex interactions to occur between customary rights of land-use and appropriation, and property statuses confined to remote areas in countries where the civil law system is in place, such

as rural regions or mountain valleys, an observation that finds several confirmations in Italian Alpine communities, for instance.

The problems posed by the conflicted relationship between statutory rights and customary rights were known to Italian juridical scholarship, and they indeed inspired much of the research on commons both in historical and legal terms. One of the most remarkable of these experiences was the journal *Quaderni Fiorentini per la Storia del Pensiero Giuridico Moderno* [*Florentine Journal for the History of Modern Juridical Thought*], first issued in 1972. From the outset, in the introduction to the first issue written by Paolo Grossi, the journal proposed that one of its main objectives was to bridge the abstractness and universality of ‘positive’ right (that is, expressed in abstract principles) with the concrete material conditions that were its source in contextualised historical situations (therefore connected to customs): a preoccupation that echoes the one expressed in the third point of the introduction to this text.¹² Along the same lines, Paolo Grossi (an author whose work has been seminal in the Italian debate on commons), in his book *Un Altro Modo di Possedere. L’Emersione di Forme Alternative di Proprieta’ alla Coscienza Giuridica Postunitaria* [*A Different Way of Possessing. The Rise of Alternative Forms of Property in Post-Unification Juridical Awareness*], frontally addressed some problems connected with the commons, in particular the juridical debate revolving around the theoretical contradictions and the practical problems of the legitimacy of the individual and collective ‘appropriation’ of land – a purposely ambivalent term that encompasses issues related both to property and usage in a historical perspective.¹³

The original Italian approach to the study of commons-related issues focused on the legitimacy of the source of rights of appropriation and their adequacy in responding to actual situations. The approach was quite diverse in its outcomes and

was characterised by both radical philosophical critical readings,¹⁴ and approaches that showed a closer adherence to concrete juridical problems, even addressing the possibility of comprehensive reforms.¹⁵ However, in almost all cases, the principles of constitutional theory, either interpreted in radical, insurgent and autonomic terms, or instead with a focus on recognisable legal aspects, have to some degree underlain most Italian reflections and speculations, sometimes even by opposing the idea of institution, but more often than not in close connection to problems regarding the legitimacy of the source of rights. This perspective, which, at the cost of some simplification, will be referred to as *constitutionalist* here, due to the emphasis put on the sources that constitute the origin of rights, can be considered as one of the distinctive features of Italian research on the commons.

Of course, as is the case with most international theoretical production on the commons, the Italian debate entertained a very ambiguous and dialectical relationship with the idea of public and, as noted by Marotta, developments of the debate since the 2000s have been marked by what he calls the 'original flaw' of being structured around the hastened privatisations of the 1990s, the economic crisis of the 2000s, and the consequent inability of the public administration to manage the commons as a resource.¹⁶ It is within this framework that in the Italian debate the commons can be considered as a third term, in addition to 'state' and 'market'. In fact, most of the production on the commons, especially the most influential on public opinion, has in a sense questioned the current idea of the state as an agent and regulator of the free market. It further aimed to restructure the state, giving it a new scope as the body guaranteeing the existence and functionality of commons institutions, managing resources for the general good through identifiable groups of citizens, either alone or in association with local institutional bodies. Implicitly, an idea of state as a hierarchical structure that holds together

a horizontal organisation of the commons was thus put forward.

Legal scholarship and changes in the law

While awareness of the threat that human activities pose to global commons was rising internationally along the lines indicated by the research that earned Ostrom her Nobel Prize for Economics, in 2007, the Italian Ministry of Justice established a commission for the reform of the civil code. This commission, headed by Stefano Rodotà, a respected constitutional jurist and one of the most well-known contributors to the *Quaderni*, was set up in order to prepare a draft for a comprehensive reform of the property categories envisaged by the national legal system, introducing the new category of *beni comuni*. The Commission proposed that *beni comuni* would be 'the things that have utility for the exertion of fundamental rights as well as for the free development of the individual'.¹⁷ This legal definition means that there are things deemed functional and necessary to the individual's fundamental rights (in a civil law system they are stated in the constitution), that these things can neither be sold nor marketed, nor should profit be made from them at the expense of the *free* development of individuals. Thus, *beni comuni* in the Italian context, often roughly translated as 'commons', actually refers to commons in the sense of commonly pooled resources that are considered fundamental and should be preserved from the logic of profit, although it does not necessarily exclude the possibility of their economic use and appropriation (for local communities, for instance). On the other hand, the commons as a possible institutional component is not specified in the draft of the law, which has since caused some confusion. As Marotta clarifies, the draft has, in fact, the limitation of listing as commons 'natural' assets that were in most cases already under some sort of public control, but were susceptible to either being privatised, or made available in concession for private profit. The underlying idea seems to be one of shaping a legal source of rights for the emergence

of new forms of organisation that will take care of the management of these resources, but still in the form of organisations (or institutions in the constitutional sense) that would do so on behalf of the public, yet whose institutional form would not be mandatory or set. In general terms, the draft proposal that was advanced by the ministry commission, further discussed by parliamentary commissions, and eventually brought to debate in the two legislative chambers, was aiming to make up for the missing legal source that could legitimise the setting up of new institutional arrangements involving a separation of usage and management (e.g. by groups of citizens) and property (namely of the state and its bodies), in a wide set of flexible arrangements for collective action in the management of common resources. One of the peculiarities that creates a dramatic difference is that in the proposed commons list, heritage (*beni culturali*) was included as a public asset that should be considered a category which, more than any other in the draft, would open up new scenarios for a direct legal link between the idea of commons and urban settings. However, while this draft was providing new instruments for handing the power over public assets to local communities and groups of citizens, it was leaving private property practically untouched.

When the reform was crushed by a change of government with a different political agenda (namely that of persevering with privatising public assets or conceding them for private profit), a new consensus, stimulated by the failed attempt to reform the civil code, not only rekindled theoretical research but also caused the idea of the commons to slowly emerge from enclosed intellectual circles and enter new realms and real-life situations of struggle and contestation where the term 'commons' came to assume a whole new and more flexible meaning. While the state's mechanisms of inertia and oppression were unrestrainedly demonstrated by the specious blockage of the reform, the theoretical reflection on the commons with its constitutionalist

background was used to structure hitherto informal discourses and local activism, which began to be organised along new lines.

In 2011, an event marked a turning point in Italian civil society's perception of the potential the commons held for opening new perspectives in collectively managing resources. As a result of a vast campaign conducted in order to gather 500,000 signatures, a bottom-up initiative called for a national, legally binding, abrogative referendum to stop approved norms that would entail the privatisation of water supplies and services. This coincided with a parallel campaign advocating a new ban on nuclear energy production and the cancellation of a bill tailored to exempt the then prime minister, Silvio Berlusconi, and his cabinet ministers from prosecution. The astonishing success in terms of turnout (more than 25 million people, or over 56% of voters, of which over 90% chose to stop the set of bills) was characterised by a massive campaign using unconventional means of communication, activism networks and word of mouth, with the slogan 'water as a commons' extensively recurring. Despite the fact that the referendum happened in the aftermath of the Fukushima disaster, which very likely dramatically influenced the result, the catchword 'commons' was the absolute protagonist of all campaigning, presenting a very complex interaction of social factors, and providing a basis for political organisation and mutual recognition among citizens cooperating to achieve a victory in the polls.¹⁸

Although initially largely ignored by all the major political parties and mainstream media, in the aftermath of the referendums, the use of the catchword 'commons' made a sudden exponential rise to become one of the most frequently heard words in slogans in all the centre-left political campaigns for the rest of 2013. During the parliamentary elections, the catchword 'commons' became popular even amongst the major parties that had hitherto flirted with privatisation and favoured a *Blairist* approach

as the key to Italian economic resurgence. As a discursive approach to the idea of commons was gathering strong popular consensus and effective strength in public discourse, the widespread and indiscriminate use of the term, and several misappropriations, began to make it less and less meaningful as a tool for investigating new types of national resource management.

Expanding the discourse on the commons in Italy: weaknesses and new potentialities

After the referendum success, euphoria swept across the nation: it seemed like a scholarly reflection on new possible legal arrangements had encountered the favour of public opinion and that change could happen through the means foreseen in the legal system itself. But as the following months, and then years, went by, and the term 'commons' began to be contended by mainstream and shallow electoral discourses, state bodies failed to approve new implementation norms to make the referendum abrogation effective. A generalised sense of anxiety started to grow. Ugo Mattei, a constitutional scholar who had produced rigorous works, such as the treaty *La Proprietà* [*The Property*] on the underlying philosophical and juridical problems of the definition of property in Italian civil law, wrote a manifesto that seemed to express this anxiety.¹⁹ His book, *Beni comuni: Un manifesto* [*Commons: A Manifesto*] contained a monolithic and exhaustive narrative on how commons should become a new comprehensive paradigm in the Italian context, aiming at the re-appropriation of the term into a singular teleological narration. According to Mattei, the commons (unclearly defined in a mix of historical, economic and legal references) would be destined to one day overcome the evils of the market and become the new paradigm for a new and better society, miraculously horizontally organised and free of hierarchies.²⁰

Mattei is mentioned here as the representative case of an attitude exemplified in numerous

publications issued between 2011 and today.²¹ The many writings, some also authored by non-scholars, were creating more confusion than clarity, mixing definitions of commons as resources and commons as institutions, and misleadingly identifying all sort of things as commons without accurate criteria (justice as commons, job places as commons, etc.).

This attitude, guilty of oversimplification and a partial annihilation of the complexity of the concept of commons that had emerged in the very recent Italian debate under the banner of political commitment, did not always help to advance the commons. However, the attitude is not entirely dismissed here for two reasons – the first, due to its good intentions. It was inspired by the desire to support and sustain a demand for new comprehensive narrations by civil society, and the will to promote a new theoretical engagement that would produce knowledge to back up collective demands, especially in opposition to the distortion the idea of commons had undergone for mere electoral reasons. Furthermore, the study on the setting up of commons institutions in Agua Blanca in Ecuador showed how unifying narrations were a key element in the mutual recognition and motivation for commoners to set up a new institution of this kind, a phenomenon that is very rare and consequently poorly studied.²²

The second reason is connected to the fact that, since the failed attempt to reform the Italian civil code, many social movements had been restructuring their discourses and struggles around the concept of commons. The procrastination by state organs in approving the implementation norms for the abrogation decided in the 2011 referendum led many scholars to directly engage with the movements in order to understand how their demands could fit into the emerging idea of commons in the Italian context, a process that also inevitably led to some dilution of the rigour of academic research. Stefano Rodotà and Ugo Mattei, as consultants for the Teatro Valle in Rome, which had been occupied

by its employees to stop the privatisation of its management and that of other theatres in Italy; and again, Ugo Mattei as an advisor to the local activists in Val Susa in the north west of Italy, who were protesting against the construction of an high speed train line, and others in different contexts, all chose to simplify the discourse around the commons in order to meet the activists halfway through the deployment of practices of occupation, protest and appropriation. They were applying theory to real life situations by advocating more direct control over state-run local resources. Once again, the underlying idea that animated scholarly involvement was to understand how groups of citizens could devise better ways of taking care of the commons on behalf of the state, whose only logic seemed to be the maximisation of (private) profit, economic efficiency and budget cuts. In other words, they were trying to understand how the application of legally-defined abstract rights to actual practices could offer new insights into revitalising the source of those rights, making them once again the true expression of a community of citizens; and how this could also produce immediate change and illustrative precedents in the process.

The concept of the commons in its discursive expansion, reaching out to civil society, as Mazzoni and Cicognani had demonstrated in their study of the activists campaigning for the referendums, had mostly been used as a means of mutual collective recognition and for organisational purposes and only partially discussed with the actual objective of constituting new 'institutions' with the characteristics of commons.²³

The alliance between research and social movements regarding the concept of the commons is a complete novelty in Italy and, having indicated the reasons why the simplifications it would entail might not be that problematic (at least in the short run), I suggest that it might actually open up new possibilities for rigorous research. After a phase

of expansion in the use of the word commons, it became necessary to narrow the focus and extract new, heuristically fruitful perspectives out of these experiences, along the lines advocated in the book *Contro i beni comuni. Una critica illuminista* [*Against the Commons: An Enlightenment Critique*] by the constitutional jurist E. Vitale – a provocative title which conceals a book that is much more benevolent towards the commons than one might expect.²⁴ In a nutshell, Vitale maintains that a new programme of research should seek a broad perspective, even something along the lines of a great narrative (à la Lyotard) involving society, but not at the expense of clarity and rigour.

There seems to be a contradiction in the apparent counter-position between engaged intellectuals who expand the discourse on the commons while diluting their theoretical structure, such as Mattei, and the rigour advocated by Vitale. How far the insurgent character of new experimental practices of appropriation and protest can be served by rigorous theoretical constructions is an open issue. Nevertheless, the thought of Lefebvre, who investigated similar problems in his *Right to the City*, comes to mind. When, as previously mentioned, Lefebvre discussed planning as a discipline concerned with the material conditions of the future, he was condemning technocracy but also advocating a legitimate 'science of the city' that could help to structure visions, demands, shared desires and objectives, and even shape 'mature planning projects'.²⁵ As Wyly recently put it in other words: a 'positive' approach can be radical.²⁶

But before proceeding to discuss some aspects of how this could be done, and, more precisely, what contribution urbanism and planning could make to this specific endeavour in Italy, I will offer some final considerations on the insurgent character concealed in a constitutionalist approach that pretends to achieve change through legal adjustments.

A robust constitution

Much of the discourse around the commons worldwide, especially in the Anglo-American context, have put forward the idea that an insurgent organisation confronting financial powers and banks should be horizontal, without hierarchy or structures of power, and that it should experiment with new forms of deliberative democracy and refuse the principle of majority decision-making. Even though this Zuccotti Park rhetoric is certainly fascinating and beautiful to contemplate, it does not seem to bother the financial powers at all. On the contrary, what does bother them are actual constitutional rights. This is exemplified in a paper published by the JP Morgan Bank Research Center in 2013, which frontally attacked Southern European constitutions for the strong set of absolute and positive rights stated in their charters, which the authors claimed posed an unreasonable obstacle to an otherwise reachable economic recovery by leaving more room for the free market.²⁷ According to the paper, the Southern European constitutions are the culprits because they impose rigid obstacles to privatisation and the full development of the free market, and to the liberalisation of the 'labour market'. Furthermore, these constitutions are inspired by socialist principles, something obviously unsettling for a bank, and probably horrifying for an American one.

The reasons that attract the harsh criticism of the JP Morgan researchers are similar to those that make me suggest that everyone interested in the commons should consider the principles of constitutionalism as something worthy of attention.

For instance, Article 43 of the Italian constitution declares explicitly that assets and services, even productive assets such as industrial plants, can be expropriated for a fair price and given to groups of citizens for them to manage autonomously if other arrangements fail to comply with the objectives of the common good, and if specific conditions are met.²⁸

For the many who view institutional structures as oppressive instruments of state power that need to be counteracted with insurgence and revolt, it might be useful to recall the insurgence that is already contained in some of these legal institutions, such as the anti-fascist resistance that inspired consistent parts of the Italian constitution, or, again, the anti-colonial sentiment that inspired the writing of the Indian constitution.²⁹ For these reasons, the social movements that are animating Italian struggles today often refer to the constitution as one of the main paths towards the affirmation and recognition of new rights.³⁰

These considerations may help to cast new light on concepts that are otherwise difficult to grasp without reference to constitutional theories. One such concept is 'multitude', proposed by Hardt and Negri as the conceptualisation of the body of people that constitute the source of rights, as opposed to the 'people'.³¹ By stating that 'we the multitude' decide our rights are such and such, Hardt and Negri were trying to reintroduce, in very abstract terms, difference and singularity in the group of people who are at the source of those rights. This approach is not a negation of the existence and even the necessity of fundamental principles, but a restatement of their legitimacy and endurance, challenging constitutional posits that date back to Hobbes.³² It echoes theorisations of the past, in which the project of an autonomous and insurgent democracy was backed up by reflections on its foundations and legitimacy as much as on the de-legitimisation of opposing systems.³³

Italian commons might tackle the problem of their legitimacy as a problem of constitutive rights.

The role of practices

The alliance between legal scholarly research and activism brought back into the spotlight real-life practices (of occupation, appropriation and protest) as a central element of analysis and a key element

for the advancement of the theory of commons. It is maintained here that a link can be drawn between two different categories: on the one side, customs as the original, underlying source of rights of traditional and medieval, mostly rural, commons institutions, and on the other side, 'practices' as a revised category used in order to find valid sources of rights in contemporary commons, which we might call *urban*.

The still vague definition of contemporary commons as urban does not necessarily arise from commons in an urban setting as we might commonly understand it. Rather, it arises from the characterisation of the productive and economic ties that in contemporary times link together the land and economic processes in an indistinct bundle that disregards and physically blurs the borders between cities, countryside, wilderness, etc.; a process described by Lefebvre as the underlying historical process of urbanisation implicit in capitalistic development and giving rise to a multifaceted entity that he calls the *urban*,³⁴ a term later used for analytical purposes by authors such as Merrifield.³⁵ This change in conditions, which is reaching its full scope today, calls for renewed categories in order to help us understand how commons can adapt and be restructured.

The idea of practices originated from a critical analysis of daily life, which, with a different declination, had a common root in critical Marxist theory.³⁶ It was later developed by Foucault,³⁷ Bourdieu³⁸ and De Certeau,³⁹ among others. The attempted partial definition given by De Certeau seems useful and appropriate for the purposes of this analysis for two reasons.⁴⁰ Firstly, it ties the role of practices to the shaping of discourse (and therefore to theoretical construction), which is appropriate given the input the Italian debate is currently receiving from practices. Secondly, it draws upon the definitions given by the other two aforementioned authors. It therefore encompasses Bourdieu's idea, which links

practices to the creation and preservation of an 'economy of a place'— an economic rationale that he presents as the opposite of the maximisation of profit, and aimed instead towards the social reproduction of resources — and Foucault's idea that links practices to individual resistance and to the affirmation of the difference.

Practices, according to De Certeau, have a fundamental characteristic that distinguishes them from customs, one that in the legal sense became attached to them in the pre-modern legal Italian tradition mentioned at the beginning of this essay. Customs were specific activities (famously, the grazing of cattle), exerted by some individuals over the land owned by somebody else, with the aim of appropriating parts of it. These activities were regulated by customary rights, a type of legal bind in the form of what nowadays (in modern terms) we might call a contract between specific individuals (sometimes not everyone in the community enjoyed them). Practices, on the other hand, are recognisable and repetitive activities (Foucault, underlining this aspect, refers to them as procedures) that are not necessarily specific to certain individuals, but are defined by the fact of their possible application by any individual, with the aim of appropriating and socially reproducing the *economy of a place*.

Italian activist groups aim to reassert the existence of practices that are able to socially reproduce the value of *urban* commons, whether in terms of their embodiment in a cultural heritage site: a theatre in the case of the *Teatro Valle Occupato* [*Occupied Valle Theatre*] in Rome; in a natural site: the Susa valley and the *NoTav* movement, or in the complex interaction of heritage and nature: the Venice lagoon movement, *No Grandi Navi – Laguna Bene Comune* [*No Big Ships – The Lagoon as a Commons*]. In order to preserve these places for future generations, they aim to remove them from the hands of the market or from their controversial administration by the state.

If we consider the city, or the *urban* in more appropriate Lefebvrian terms, as the place where social commons are appropriated and reproduced as Hardt and Negri propose, it becomes quite evident that it is the practices, or certain practices, that are responsible for reproducing a commons. As a clarifying anecdote, Harvey, in *Rebel Cities: From the Right to the City to the Urban Revolution*, describes how the vibrant street life of a popular neighbourhood in Baltimore became a product to be exploited as the 'character of the neighbourhood' on the real estate market, which led to gentrification and eventually to the disappearance of the street life (or to the depletion of that commons).⁴¹ Despite the suggested aspects contained in Harvey's story, it is hard to pin down and univocally define what is concretely meant here by 'practices'. Specific examples will help to illustrate some common characteristics that might help provide an initial outline of those practices that reproduce *urban* commons.

Before doing so, an introductory remark and two further specifications are necessary. As anticipated by Soja, many social movements are structuring themselves by building rather diversified identities and focusing their interests on matters of social injustice.⁴² Italian social movements advocating the commons are no exception: they put forward a commons agenda to promote social justice in ways that are deeply intertwined with spatial problems. Due to this characteristic, it is reasonable to tackle the definition of practices from a spatial perspective and in light of the disciplinary perspectives of urbanism and planning, rather than addressing them in sociological terms.

However, in order to understand how this can be done, a distinction needs to be made between urban commons as institutions and urban commons as resources, while still recognising the overlapping aspects that these two categories entail. The definition of commons as institutions that collectively manage a resource is greatly indebted to Ostrom's

identification of their most important aspects in her seminal work *Governing the Commons*.⁴³ Ostrom uses the label 'design principles' of the commons to enumerate the similarities that are found in working, self-managed institutions that successfully deal with the appropriation of natural resources that risk depletion. This idea of design principles has had considerable success and can be found in several studies about the commons,⁴⁴ which are efficaciously synthesised and listed by Agrawal.⁴⁵ However, on closer examination, as Harvey lucidly remarks, the very nature of the design principles of these commons institutions (limited number of appropriators, fixed borders, monitoring, etc.) identifies them as enclosures.⁴⁶ But this is not always a bad thing. On many occasions, these types of commons have produced significant positive results in urban contexts by protecting blocks, buildings and parcels of urban land from building speculators, and preventing the extraction of urban rent for private profit, despite their reliance on private property or appropriation through enclosure to achieve their objectives. Nevertheless, in the Italian context, they have added an extra design principle to their characterisation: the provision of spaces and services open to all.

This has been the case in many important Italian experiences related to the *centri sociali* (something similar to *squats* in a UK context), which in a way derive from the Case del Popolo (People's Houses), but are illegal and informal. The important novelty that is now emerging, with Teatro Valle as a significant example, is the constitution of transparent norms that allow any individual to enter and participate in the commons (or be expelled from it), according to a set of shared rules that are publicly accessible, collectively modifiable and to which one can appeal. This approach justifies and sets limits for the legitimacy of the enclosure operated by such a commons institution, even if an enclosure of this kind is probably serving the general interest better than the market, as in the case of the *Teatro Valle Occupato*.⁴⁷

If, on the other hand, we consider commons as resources, things are then brought to a more abstract level with a higher degree of complexity, yet provide interesting possibilities. The social movement *No Grandi Navi – Laguna Bene Comune* [*No Big Ships – The Lagoon as a Commons*] protesting in Venice against gigantic, new generation super cruise liners docking in the old city is a relevant example. The cruise industry markets Venice as a tourist destination because of its picturesque character and the high cultural value of its museums and architecture; however, this immense flow of tourism, especially the cruise ship traffic, is cheapening and destroying the city's character and fabric by promoting a fast and superficial form of tourism, accompanied by serious environmental consequences that the citizens of Venice must pay for.⁴⁸ There are several levels at which this issue should be addressed, such as limiting the number of ships on the lagoon, comprehensively redesigning the harbour infrastructure so as to limit interference between the different appropriators, or making the rather opaque management of the Port Authority (partially privatised in the 1990s) transparent and accountable. However, putting aside the classic and much-analysed problems of the commons, which might usefully be applied in a specific analysis of the Venice lagoon, a central problem for this paper to consider is how commons practices should be recognised. This could, for instance, be done by a direct transfer of tax revenues for purposes that are vital in reproducing the commons. In the case of Venice, this could include social housing in the old part of the city to retain a few of its original inhabitants; the provision of welfare services, and the renovation of public space; for instance, the creation of parks in the small abandoned industrial areas hidden among the labyrinth of canals. This approach, already known as 'green taxes', might be further advanced by establishing an institution, in association with the population, for the direct control and guidance of the source and use of these taxes, similar in spirit to the initial public budgeting carried

out in the 1990s in Porto Alegre, Brazil, yet avoiding the direct ties with one political party that was the case in that city.⁴⁹

From among existing planning instruments, some experimental practices are emerging that, although not legally binding in the Italian planning system, do provide a direction. New experiments with planning instruments that deal with natural resources, such as the *contratti di fiume* [river community contracts] try to establish new cooperation among municipalities that share a body of water. The immensely complex and innovative work on the River Simeto by Laura Saija and a team from the University of Catania has also shown how these planning instruments may be able to create a bridge between traditional techniques of resource management and the participation of local communities and citizens as possible appropriators of the resource, for example through mapping their practices of appropriation, using aspects such as the perceptions, desires and memories that link the inhabitants with the river.⁵⁰

Three cases have been considered here as representative of three possible commons that planning and urbanism can address in the Italian context in light of the idea of practices, and according to the categories that have emerged from scholarly legislative research: a cultural heritage site, a natural resource, and a mix of the previous two. For the sake of clarity and simplicity, the argumentation is limited to these three cases, but naturally the list could encompass more specific or more ambiguous situations, such as the reimplementation of new forms of traditional commons in rural areas, or resolving the legal grey area that surrounds many abandoned villages all across the country due to difficulties in establishing their zoning definition in univocal and legitimate terms. As a final remark, it should be noted that the Italian contributions to a theory of the commons outlined here have not dealt with the issue of customary uses of private

property, or the separation of building rights from ownership of land in consistent parts of planning law. This fact might be considered to be a defect by readers coming from different traditions and contexts; however, contemporary Italian theory on the commons must be framed within the specific and contingent urgency of stopping the privatisation of public assets. An extension of these reflections on private property might eventually spring from further legal research into the legitimacy of new applications of the aforementioned Article 43 of the Constitution. This might be something along the lines of the principle stated in Article 183 of the Brazilian Constitution, which concerns the social value of the ownership of urban land, in association with the study of occupation practices focused on the affirmation of citizens' fundamental rights and the achievement of the common good. At the moment, though, this is not the case.

Conclusions

Two approaches taken from Italian theoretical production on the commons have been presented here in order to provide foreign planning and urbanism scholarship, *mutatis mutandis*, with possibly fresh insights within their specific contexts, drawing on the idea that local contexts can give substantial indications on the way forward for the advancement of theory. These approaches belong to two categories:

1. An approach connected to law, outlined with reference to research conducted by legal scholars between the 1970s and today;
2. An approach connected to practices, introduced here with reference to the development of legal research linked to social movements.

This initial framework derives from a particular research intention: today, scholars dealing with the commons are faced with the difficult task of finding heuristically useful research perspectives from which

to make practical sense of the many sophisticated and comprehensive readings of the processes of 'late capitalism' and the deployment of a 'neo-liberal paradigm', etc. Unfortunately, when applied to the commons, these perspectives often lead to extreme oversimplifications or abstract constructions due to their separation from the context in which they found their *raison d'être*. Drawing on this intuition, legal theoretical production has been chosen for its capacity to provide precise descriptions and heuristically valid approaches that can elucidate current problems and standstills connected to privatisation, financial crisis and the triumph of a neo-liberal paradigm. Furthermore, it also provides theoretical backup for practices of change *while* getting one's hands dirty in the process.

In Italy, and probably in other countries as well, the legal system seems to hold some concrete possibilities for introducing changes relevant to the establishment of new commons. Wyly's observations on the ability of social movements to win legal battles in courts seem to point to the same idea,⁵¹ as does the importance of the legal case described at the start of Soja's *Seeking Spatial Justice*.⁵²

The second approach proposed here is related to *practices*, a term chosen with the aim of updating the idea of *customs* as the source of rights, particularly in contemporary commons. While this idea has yet to be defined in a complete manner, some examples provide hints on how it could underpin the recognition of a negotiating power for groups of citizens in some aspects of planning, such as allocating a share of tax revenues to be used for collective purposes, recognising rights to the direct management of heritage buildings or sites, or the right to have a voice in deciding the appropriation of natural resources. One of the main differences that should be noted is that practices might provide a basis for the recognition of rights, given their capacity for regenerating commons in an entirely different way from the one traditionally

associated with customs. In fact, while customs were connected to the appropriation of resources in ways that could be compared in many aspects to modern private contracts (validity in determined circumstances for specific individuals), practices have a more universal and general scope. In fact, practices can be activities carried out by individuals who reproduce and appropriate a social resource, yet are not necessarily formally organised.

Approaching the problem of commons, particularly urban commons, and presenting an initial outline of the idea of practices as an operative concept and the source of new rights is not exempt from difficulties and contradictions. Nevertheless, rather than looking into new forms of collective private property (as the traditional commons were, in a sense), it has the potentially generative role of providing research with a tool that is connected to a sort of collective right to counteract the externalities generated by privatisation.

Notes

1. Matteo Pasquinelli, 'L'ascesa in cattedra di un pensiero critico', *Il manifesto*, 4 April 2001, p. 11.
2. Horst W.J. Rittel and Melvin M. Webber, 'Dilemmas in a General Theory of Planning', *Policy Sciences*, 4 (1973), pp. 155-69.
3. Bent Flyvbjerg, 'Five Misunderstandings About Case-Study Research', *Qualitative Inquiry*, 12, 2 (2006), pp. 219-45.
4. Robert K. Yin, *Case Study Research, Design and Methods* (London: Sage, 1985).
5. Bent Flyvbjerg, Todd Landman and Sanford Schram, *Real Social Science: Applied Phronesis* (Cambridge: Cambridge University Press, 2012).
6. Bent Flyvbjerg, 'Bringing Power to Planning Research: One Researcher's Praxis Story', *Journal of Planning Education and Research*, 21, 4 (2002), pp. 353-66; Bent Flyvbjerg, *Rationality and Power: Democracy in Practice* (Chicago: University of Chicago Press, 1998).
7. Oren Yiftachel, 'Planning and Social Control: Exploring the Dark Side', *Journal of Planning Literature*, 12, 2 (1998), pp. 395-406.
8. Kostas Axelos, *Alienation, Praxis and Techné in the Thought of Karl Marx* (Austin: University of Texas Press, 1969).
9. Henri Lefebvre, *Le Droit à la ville*. Collection Société et Urbanisme (Paris: Anthropos, 1968).
10. Stuart Elden, *Understanding Henri Lefebvre* (London: Bloomsbury Publishing, 2004).
11. Elinor Ostrom, 'Design Principles of Robust Property-Rights Institutions: What Have we Learned?', *Property Rights and Land Policies* (Cambridge, MA: Lincoln Institute of Land Policies, 2008).
12. Paolo Grossi, 'Pagina introduttiva', *Quaderni Fiorentini per la Storia del Pensiero Giuridico Moderno*, 1 (1972), pp. 1-4.
13. Paolo Grossi, *Un altro modo di possedere. L'emersione di forme alternative di proprietà alla coscienza giuridica post-unitaria* (Milan: Giuffrè, 1977).
14. Michael Hardt and Antonio Negri, *Commonwealth* (Cambridge, MA: Belknap Press of Harvard University Press, 2009).
15. Stefano Rodotà, *Il terribile diritto. Studi sulla proprietà e i beni comuni* (Bologna: Il Mulino, 2013).
16. Sergio Marotta, 'La via italiana ai beni comuni', *Aedon*, 1 (2013), <<http://www.aedon.mulino.it/archivio/2013/1/marotta.htm#inizio>> [accessed 3 May 2014].
17. Ministero di Grazia e Giustizia, *Commissione Rodotà - per la modifica delle norme del codice civile in materia di beni pubblici (14 giugno 2007)* (Rome, 2007), <http://www.giustizia.it/giustizia/it/mg_1_12_1.wp?p_revisiousPage=mg_1_12&contentId=SPS47624> [accessed 22 June 2014].
18. Marco Bersani, *Come abbiamo vinto il referendum* (Rome: Edizioni Alegre, 2011).
19. Ugo Mattei, *Beni comuni. Un manifesto* (Bari: Laterza, 2011).
20. Ibid.
21. Laura Pennacchi, *Filosofia dei beni comuni. Crisi e primato della sfera pubblica* (Rome: Donzelli, 2012); Giovanna Ricoveri, *Beni comuni vs. merci* (Milan: Jaca Book, 2010); Guido Viale, *Virtù che cambiano*

- il mondo: partecipazione e conflitto per i beni comuni* (Milan: Feltrinelli, 2013).
22. Esteban Ruiz-Ballesteros and Miguel A. Gual, 'The Emergence of New Commons: Community and Multi-Level Governance in the Ecuadorian Coast', *Human Ecology*, 40 (2012), pp. 847-62.
 23. Davide Mazzoni and Elvira Cicognani, 'Water as a Commons: An Exploratory Study on the Motives for Collective Action Among Italian Water Movement Activists', *Journal of Community and Applied Social Psychology*, 23 (2013), pp. 314-30.
 24. Ermanno Vitale, *Contro i beni comuni. Una critica illuminista* (Bari: Laterza, 2013).
 25. Henri Lefebvre, *Writings on Cities*, ed. by Eleonore Kofman and Elizabeth Lebas (Massachusetts: Blackwell, 1996), pp. 153-5.
 26. Elvin Wyly, 'Positively Radical', *International Journal of Urban and Regional Research*, 3, 5 (2001), pp. 889-912.
 27. Malcolm Barr and David Mackie, 'The Euro area adjustment: about halfway there', *JP Morgan, Europe Economic Research* (2013).
 28. Constitution of the Italian Republic, 1947.
 29. Barbara D. Metcalf and Thomas R. Metcalf, *A Concise History of Modern India* (Cambridge: Cambridge University Press, 2006).
 30. <costituoneviamaeistra.it>, the online platform promoting this idea among citizens and social movements, or the association Libertà e Giustizia [Freedom and Justice], monitoring the adherence of new laws and political development to the rules set by the Constitution.
 31. Michael Hardt and Antonio Negri, *Commonwealth*, pp. 101-5.
 32. Saki Bailey and Ugo Mattei, 'Social Movements as Constituent Power: The Italian Struggle for the Commons', *Indiana Journal of Global Legal Studies*, 20 (2013), pp. 965-1013.
 33. Anton Pannekoek, 'Workers Council', *International Council Correspondence*, 2 (1936), pp. 20-7.
 34. Henri Lefebvre, *La Révolution Urbaine* (Paris: Gallimard, Collection Idées, 1970).
 35. Andy Merrifield, 'The Urban Question under Planetary Urbanization', *International Journal of Urban and Regional Research*, 37, 3 (2013), pp. 909-22.
 36. Henri Lefebvre, *Critique de la vie quotidienne* (Paris: Grasset, 1947); Ágnes Heller, *Sociologia della vita quotidiana* (Rome: Editori Riuniti, 1970).
 37. Michel Foucault, *Surveiller et punir* (Paris: Gallimard, 1975).
 38. Pierre Bourdieu, *Esquisse d'une theorie de la pratique* (Paris: Seuil, 2000).
 39. Michel de Certeau, *The Practice of Everyday Life*, trans. by Steven F. Rendall (Berkeley: University of California Press, [1988] 2011).
 40. *Ibid.*, p. 43.
 41. David Harvey, *Rebel Cities: From the Right to the City to the Urban Revolution* (London: Verso, 2012), p. 78.
 42. Edward W. Soja, *Seeking Spatial Justice* (Minneapolis: University of Minnesota Press, 2010).
 43. Elinor Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action*, (Cambridge: Cambridge University Press, 1990).
 44. For example Jean-Marie Baland and Jean-Philippe Platteau, 'Wealth Inequality and Efficiency in the Commons: Part I: The Unregulated Case', *Oxford Economic Papers*, 49 (1997), pp. 451-82.
 45. Arun Agrawal, 'Common Property Institutions and Sustainable Governance of Resources', *World Development*, 29 (2001), pp. 1649-72.
 46. Harvey, *Rebel Cities*, pp. 79.
 47. Fondazione Teatro Valle, Statuto Fondazione Teatro Valle Bene Comune (Rome, 2013), <<http://www.teatrovalleoccupato.it/wp-content/uploads/2013/10/STATUTO-FONDAZIONE-TEATRO-VALLE-BENE-COMUNE.pdf>> [accessed 03 January 2014].
 48. Giuseppe Tattara, 'È solo la punta dell'iceberg! Costi e ricavi del crocierismo a Venezia', *Economia e società regionale*, 3 (2013), pp. 136-66.
 49. Ademar José Becker, *A Cidade Reinventa a Democracia: as contribuições do Seminário Internacional sobre Democracia Participativa* (Porto Alegre: Prefeitura Municipal de Porto Alegre, 2000).
 50. Laura Saija, 'Proactive Conservancy in a Contested Milieu: From Social Mobilisation to Community-Led Resource Management in The Simeto Valley', *Journal*

of *Environmental Planning and Management*, 57, 1 (2014), pp. 27-49.

51. Elvin Wylly, 'Positively Radical', *International Journal of Urban and Regional Research*, 35 (2011), pp. 889-912.
52. Edward W. Soja, *Seeking Spatial Justice*; Tim Cresswell, *On the Move: Mobility in the Modern Western World* (New York: Routledge, 2006), pp. 167-74.

Biography

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