



# Legal Tools for Urban Regeneration

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## **Abstract**

The contemporary debate, in terms of urban redevelopment, has identified common goods as its reference model, outlining a way of intervention that provides the direct participation of citizens in forms of management based on self-government, direct democracy and the absence of imposed hierarchies. In these terms, private law, overcoming urban planning and public law, can help build a civic community in which innovation processes that are not directly attributable to the power of the administrator arise. In this sense, the paper intends to investigate three legal instruments that could facilitate the implementation of these processes: The Common Good Foundation, which basically consists in deducing in the private legal form of the open foundation not only a complex of passive assets, but also a collective activity and subjectivity. The trust, which can be useful for accelerating processes, making them more competitive in terms of efficiency, transparency, and targeted use of resources from where the public cedes powers to the private sector. The SPAB (Società per Azioni Buone), a newly born instrument in Favara (Agrigento), which aims to create a company open to everyone: every citizen can be a shareholder and therefore owner of a small piece of town. Bottom-up practices that aim to give voice to citizens' needs are the lifeblood to support and implement the various urban projects. The tools described in this paper want to stimulate this scenario of regeneration and therefore to implement a practice of redemption of public spaces by citizens.

## **Résumé**

En terme de développement urbain, le débat contemporain a permis d'identifier les biens communs comme modèle de référence, définissant une façon d'intervenir qui assure aux citoyens une possibilité de participer directement à différentes formes de gestion basées sur l'autogouvernement, la démocratie directe et l'absence de hiérarchies imposées. De cette manière, la loi privée, la subversion de la planification urbaine et la loi publique, peuvent aider à construire une communauté civique dans laquelle naissent des processus d'innovation qui ne sont pas directement le fait des pouvoirs administratifs. En ce sens, cet article a pour but d'explorer trois outils légaux qui pourraient faciliter la mise en place de tels processus : la Common Good Foundation, qui, dans les grandes lignes, permet de déduire de la forme légale privée

de la fondation ouverte, non seulement un complexe de biens passifs, mais également une activité collective et un sens de la subjectivité. Le Trust, qui peut être utile pour accélérer les processus, les rendre plus compétitifs en termes d'efficacité, de transparence et dans l'usage spécifique des ressources dès le moment où le secteur public cède ses pouvoirs au privé. La SPAB (Società per Azioni Buone), un instrument créé récemment à Favara (Agrigento), qui a pour but de créer une société ouverte à tous : chaque citoyen peut être actionnaire et détenir, de fait, un petit bout de la ville. Les pratiques par le bas qui permettent aux citoyens d'exprimer leurs besoins sont indispensables pour soutenir et mettre en place de nombreux projets urbains. Les outils que cet article décrit sont faits pour stimuler les scénarios de régénération et, de fait, mettre en place des pratiques de réutilisation par les citoyens des espaces publics.

**Keywords:** Community land trust, Law, Community, Public Space, Citizenship, Commons, Urban space, Italy, Private / public

**Mot-clés :** Biens communs, Espace Public, Espace urbain, Communauté, Italie, Community land trust, Droit, Citoyenneté, Privé / public

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## **New challenges for public space**

### **Public space as a common good in the post-pandemic era**

Never before has public space been recognised as a place where, not only the relational network of social relations is manifested, but where all the aspects that characterise urbanity occur: economy, transport, welfare, environment, etc.

The COVID-19 crisis foregrounded and challenged our collective needs for safe, active, and open public spaces in our everyday lives. During lockdown, many of us turned to our cities' outdoor environments to find fresh air, joy, reprieve, and nourishment. Everyone understands, now more than ever, that public space is essential.

The recent events have forced all administrators, entrepreneurs and citizens to reformulate the normal framework of business and life that gravitate around the city and, in particular, around the public space, highlighting themes and challenges. For instance, environmental, digital and economic issues, which have already been present for a long time in the contemporary debate, but had often been postponed.

This debate, in terms of urban redevelopment, has identified common goods as its reference model, outlining a way of intervention that allows the direct participation of citizens in forms of management based on self-government, direct democracy and the absence of imposed hierarchies.

This, however, brings to light some problems in the definition of the relationship between the active citizen and public institutions, precisely around

the responsibility of common goods. There is indeed a risk that the municipality will be sidelined in the management of common goods leaving the associations to themselves.

The strong will of the informal citizens' interventions cannot and should not be used as a pretext by the PA to avoid spending and investing in a certain common good.

The ethical purpose of architecture is to participate actively in the life of the community, influencing it in order to benefit it and not to be a simple background.

It attempts to give new solutions to known problems, identifying a model of intervention of public space, based on the elements of the permanence of architecture, which can allow citizens to have the correct perception of the spaces they live in. Together with the design methods, the town planning tools must be updated in order to allow communities to put into practice the interventions on the public spaces they desire.

If the knowledge of the planner is essential to the transformation of a place, the design must fit the expectations and needs of the populations affected by it.

Contemporary architecture often responds to temporary and multifunctional needs that tend to drain public spaces of their meaning, burying them under layers of symbols and information. In the present world there is an excessive use of architectures and symbols that have made it difficult for its inhabitants to understand the qualities of a place.

### **The growing number of committees, groups and associations that want to take care of the city**

The project for a contemporary city is now, in a shared way, mostly a project of comparison. Whether it is in relation to an existing heritage of value, to an industrial archaeology or to an anonymous residential district, the architectural project must necessarily deal with a fabric already developed, consolidated and that often has its own strong identity, whether it is a historic centre or a suburb.

However, if promoting a heritage vision of buildings and public spaces in cities historically relevant to the society and the economy of the country as

large poles attracting investment and patronage can be easy, how can the same qualities be attributed to secondary urban centres? Or even to urban areas not defined as “central”?

All Italian cities, some more than others, have something to tell, they have an unexpressed heritage that is waiting to be found. To discover it, we need to educate the public to listen through small interventions, also generated from below by the inhabitants themselves, that do not need big economic investments but that have the virtue of showing the future shape of the city, using itself as a huge study model.

A call for action for Italian heritage is nowadays crucial. However, we cannot ignore the polycentric fabric of medium-sized cities and small towns that do not belong to the large metropolitan areas (real attractors of capital), nor to the constellation of small villages. This fabric constitutes the urban armour of the country: cities and territories in the middle, plural geography, often composed of an attractive historical centre and anonymous and similar suburbs, inhabited by a very significant portion of the Italian population, in which to redefine spaces and roles of the urban project is needed.

In the light of the economic disaster resulting from the pandemic, public administrations therefore need a new solution which, with the involvement of all citizens, can be made to innovate, simplify and evolve in order to become faster and more efficient in achieving the objectives.

The temporary nature of today’s architecture sometimes makes the public spaces too dense or lacking in information: it is often impossible to perceive the typical elements that have always characterised the city within these spaces, creating depersonalised voids inside the city, even in the historical nuclei, where the identity of places has now been lost, and the absence of an architectural culture has resulted in the improper use of space. In addition, the plurality of changes in society and in the city has led to a slow and inexorable decline in public spaces, both physically and socially.

However, with the increasing number of committees, groups and associations concerned with its custody, public space has become the target of social actions that claim its value as a common good.

The aim of such actions is to make the places for the inhabitants. Consequently, the inhabitants themselves can, in return, take an interest in the characteristics of the physical space where they live and the one which sur-

rounds them. This way, they can satisfy their needs to remain simultaneously connected to both the digital and physical worlds.

## **Tools and policies for urban planning**

### **The current state of town planning**

In this perspective, the architectural project must avoid self-proclaiming and must rather be seen as an instrument that improves the quality of life of the citizens and voices the real needs of those who claim a sense of belonging.

Reasoning on the valorisation of an existing public patrimony means reasoning on the plurality of actors, policies and scales that intervene in the recognition of this common good. Recognition happens thanks to a continuous exchange between micro and macro scales, between the dimension of architectural detail and that of urban policy.

In other terms, private law, surpassing urban and public law, can help to build a civic community as a kind of ecosystem, in which innovation processes may incubate, but which are not directly attributable to the public authority or to the responsibility of the administrator. Outside of this ecosystem remains the responsibility and power of public administration. Innovation processes should arise within ecosystems that no longer fall directly under the power or responsibility of the public administrator.

Fundamentally, if urban planning is born from the relationship between private and public interests and it is a device through which mediations are built, with collaborative deals, it is possible to give space to the various energies that are invested in the city: energies that often concentrate in the public space and stimulate the responsibility of the inhabitants.

Traditional town planning, based on the concept of general town planning that applies to the implementation plans, has shown its limitations over time. It has been gradually replaced by articulated solutions but also fragmented by attempts to decentralise decisions and to involve citizens in decision-making processes, encouraging their participation and the possibility of intervening on common choices.

One of the negative aspects of this new trend, however, is the loss of the unitary vision of urban phenomena and the greater complexity of managing punctual rather than territorial solutions. Suffice it to say, the urban changes



which have taken place over the last thirty years have been almost entirely exceptions or variations to the town plan in cities that had them.

The most beaten road in the last fifteen years seems to be that oriented towards the so-called partnerships between public and private, object of investigation of this paper. They allow a concrete area of encounter and involvement between different actors: public decision-makers, economic operators, representatives of associations, committees of citizens. The goal is to return to a citizenship aware of the transformations that take place within their city and that recognises how the resources involved are used and distributed.

One of the major problems is the weakness or inability, aggravated by an excessive bureaucratisation, of many public administrations in their often conflicting relationships with the private sector. The objective crisis of the hierarchical model of planning, determined also by a new relationship between the different instruments and due to the emergence of the principle of horizontal subsidiarity between the different territorial stakeholders, is in reality only apparent, since from a regulatory point of view, there is a clear subordination between the various planning tools and the Regional Plan.

No one can deny that in the last decade our country has been at the centre of new major urban redevelopment projects that have, in many cases, changed the face of cities but also greatly complicated the use of land and spatial references. We must then rethink a way to recompose the framework of the balance of power to maximise the level of integration between needs, resources and future prospects.

For the implementation of interventions on public soil economies we need skills and time, which are often private. But are there any legal instruments that can be used for this purpose?

### **The issue of common goods**

As mentioned in the introduction, projects for public spaces and the attached urban theories are almost useless if they are not supported by a special regulation that goes beyond the law of urban planning and takes into account the presence, in the concerned public spaces, of communities that want and demand its regeneration.

The term “commons<sup>1</sup>” comes from the English legal term for common land, also known as “commons”, and has been popularised in the modern sense as a shared resource, by ecologist Garrett Hardin in an influential article called *The Tragedy of the Commons*<sup>2</sup> (1968): this is an economic theory that describes how people often use natural resources to their advantage without considering the good of a group or society as a whole. When a number of individuals consider just their health and wellness you will obtain negative results for all until the resource is exhausted. In the article, Hardin defines the weakness of a system governed by collective use and shared ownership that gives rise to the decay of commons.

From a legal point of view, the category is lumpy, and one wonders what really falls under the definition of common goods. It does not mean only to experiment with new forms of belonging, but to participate in the management of different assets also through new institutions or reinvented old mechanisms. However, the governance of the commons, and most importantly, their identification and classification, is a topic that is still open both legally and administratively.

Individual civil agreements between the autonomous communities and public administrations could create a new legal model. In Naples, for example, the

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<sup>1</sup>The first fundamental step for the definition of common goods in Italy is found in the work of the so-called Commission Rodotà established by decree of the Ministry of Justice in 2007. For the first time the Commission has included the category of common good in Italian legislation, stressing that: “Common goods are consumer goods which are not rivals but are exhaustible, and which, irrespective of their public or private affiliation, express a functional utility for the exercise of fundamental rights and the free development of persons, and of which, therefore, the law must in any case guarantee the collective fruition, direct and by all, also for future generations” (Camera dei deputati 2019). Although the Commission’s work represents a first attempt to recognise the role of citizens and the emancipation of the community within the political and legal sphere, the main problems are registered due to the inability of local governments to address the problem in solving new rules and policies.

<sup>2</sup>Published in the journal *Science*. The essay derived its title from the pamphlet by Lloyd, which he cites, on the over-grazing of common land. Hardin discussed problems that cannot be solved by technical means, as distinct from those with solutions that require “a change only in the techniques of the natural sciences, demanding little or nothing in the way of change in human values or ideas of morality” (1968). Hardin focused on human population growth, the use of the Earth’s natural resources, and the welfare state. Hardin argued that if individuals relied on themselves alone, and not on the relationship of society and man, then the number of children in each family would not be of public concern.

public participatory government of water resources for the common good included a controlling body also composed of users of the water service in the government of the company.

Then finally, from spring 2014, starting from Bologna and Ivrea, dozens of municipalities produced a “Regulation on cooperation between citizens and administration for the care and regeneration of urban commons”. Through them the administration becomes a facilitator (enabler) rather than a supplier of goods and services.

It is necessary to address the issue of the definition of relations between communities of self-government and management of common goods and public administrations. On the one hand, the principle of informality can be a solution to new administrative interventions. On the other hand, the PA cannot be discharged from the costs of managing urban commons. For this reason there is a risk of defining common goods as places where the administration is no longer able to carry out its role of caring for the territory; this way they could turn to citizens to carry out activities of urban decorum.

### **New urban tools: the citizenship participation and the conservancy model**

Participation practices that are activated within and limited to a precise time horizon according to a given objective are, on the one hand, an indispensable element of the process of building scenarios and expectations of a community established in a given city or territory, but, on the other hand, they run the risk of being interpreted as bureaucratic practices within which the relationship between stakeholders is weakened by alleged political priorities.

The activation of a constant debate, although tiring and seemingly inconclusive, allows to stimulate the widespread interest in urban issues and to render citizens conscious of the need to define their role within the city.

Through institutionalised forms of technical and cultural confrontation, there will be more opportunities to overcome the progressive disinterest and detachment of citizens not only from politics in general, but especially from the city and its public spaces, the urban spaces and perspectives that form the mental landscape or the geography of movements in urban contexts, and to try to remove the main causes of disaffection that can be increasingly observed in the city.

It is precisely the greater urban culture that allows the political decision-maker to have a broader perception of the needs, ambitions and expectations of the citizens and of the consequences of providing tools and responses to meet as many wishes as possible. The political debate benefits and will generate a virtuous circuit of reflection on new and aware forms of government of the city. The ultimate goal is identifiable in the co-design by citizens of local policies through the form of direct democracy.

While many places still stay close to the traditional model, a growing number of cities now utilise private donations to rebuild, refurbish, and even maintain some of their most iconic public spaces. Today's favoured revitalisation structure, in North America, is the *conservancy*<sup>3</sup>, and thanks to some high-profile successes, this new approach is emerging as a significant public space management model in the right circumstances.

Typically, conservancies are created to fund large capital projects such as repairing a building, monument, fountain, pathway system, major lawn, forest, or lake. Many evolve to oversee the actual construction and even to provide additional management and programming for the public spaces. One of the main uses of the conservancy model in America is for public parks, although, before the conservancies, in the 1970s emerged several park-support non-profit associations. The roots of the conservancy movement, therefore, can be traced to the founding of New York's Central Park Conservancy in 1980. As with most innovations, the conservancy emerged from a crisis: a nationwide recession in the 1970s, combined with several decades of depopulation and rising social expenditures, had left New York on the brink of insolvency and in the hands of a financial control board. The crisis severely damaged the parks department, already in decline from its glory days under "Power Broker" Robert Moses. Central Park, designed by Frederick Law Olmsted and Calvert Vaux, was the jewel of the system, home to the landmark Metropolitan Museum of Art and bordered by expensive apartments.

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<sup>3</sup>Conservancies are private, nonprofit park-benefit organisations that raise money independent of the city and spend it under a plan of action mutually agreed upon with the government. Most conservancies neither own nor hold easements on the parkland; the land remains the city's, and the city retains ultimate authority over everything that happens there. Conservancies generally have large boards and small staffs. Board size reflects the diversity of park constituencies as well as the need for broad financial reach. Staff generally focuses on outreach, fundraising, and contractor management, with only the largest conservancies hiring significant numbers of maintenance and program workers.

However, the park declined hastily and was shunned by many New Yorkers, as they considered it unkempt, unsettling, and unsafe.

By the late 1980s, the Central Park Conservancy's successes had inspired a similar effort in Brooklyn's Prospect Park, another Olmsted and Vaux gem that had come close to hitting rock bottom. Within two decades, the concept was adopted for more than a dozen parks in the Big Apple. More so than in any other city, New York has utilised conservancies as a standard for large or high-profile parks. The improvement of those parks has paralleled—and, some would say, helped spark—New York's resurgence. Because of New York's cultural and media prominence and the fact that Central Park receives tens of millions of visitors a year, news of the conservancy approach spread. Most leaders from other cities recognised that the scale of the Central Park Conservancy was not possible to emulate, but many were captivated by the concept and started to think about trying something similar. By the early 2010s, park supporters in more than a score of U.S. cities had launched conservancies and were busily raising and spending money.

The nascent conservancy faces a paradox. It needs a high profile, important portfolio of tasks to attract publicity and donations, but it does not yet have the experience to assure success. Moreover, no matter how much money a conservancy brings in, it operates on land owned by its public partner. Remembering this is crucial to issues of trust, respect and shared credit—the triad of factors that makes or breaks the relationship.

In crafting an agreement, some matters arise universally: who are the stakeholders and how much say will they have in planning and implementing it? Which partner will handle the bidding and manage the construction on capital projects? How will maintenance be divided between the partners? What will protect private dollars from being misspent? How will donors be recognised?

In this sense, the paper intends to investigate three legal instruments that could facilitate the implementation of these processes:

- The Trust, which can be useful for accelerating processes, making them more competitive in terms of efficiency, transparency and targeted use of resources where the public transfers powers to the private sector.

- The Common Good Foundation, which basically consists in deducing in the private legal form of the open foundation not only a complex of passive assets, but also a collective activity and subjectivity.
- The SPAB (Società per Azioni Buone), a newly born instrument in Favara (Agrigento, Italy), which aims to create a company open to everyone: every citizen can be a shareholder and therefore owner of a small piece of town.

## Case studies about the Trust

### The Trust

If there is one tool in the field of urban regeneration and governance of common goods that can help to address the energy produced by committees and associations easier and more effectively it certainly is the Trust.

The Trust can be useful to accelerate processes in a better way, making them more competitive in terms of efficiency, transparency and targeted use of resources. It is an effective and transparent tool for the improvement of public affairs with private resources, getting rid of the bureaucratic constraints that are otherwise burdensome and make every initiative long and complex. Especially in the transformation of public space, it allows citizens and communities, with private resources, to take control of the city, expressing themselves in a direct and productive way.

It is therefore perfectly possible to use the Trust for the management of common goods, either in order to find the necessary resources to carry out a specific project (creating innovative forms of crowdfunding), or to carry out targeted interventions on public spaces with private resources. In these possible scenarios, the disposer (or disposers) can be anyone: from the same public body that seeks resources, to private individuals that put the initial capital, hoping it will be increased by other donors, to private individuals who have all the necessary resources and simply wish to carry out the project.

In any case, these are Trusts placed for the benefit of the entire community where the trustee may be a private body with an open and democratic government. An example of such Trusts is the Community Land Trust.

The Community Land Trust was an instrument adopted by several local communities in the United States in the aftermath of the 2008 crisis in which

public administrations transferred ownership of land and other buildings to the communities. The proposal to use the Trust as a tool to achieve objectives and delegate governance of the common goods could be a solution for administrations that do not have the basis to keep under direct control the evolution of activities, according to a scheme in which the trustee is a private-law entity with open and democratic rules of government.

The Trust can actually be an aggregator of resources and energies that are already reflected in the public space. It allocates both public and private resources and listens to the various actors who demand an improvement of the “good”, without violating the rules set up to oversee the smooth functioning of the public administration. The office of trustee can also be carried out by several people, thus acquiring a collegial form, some of which may come from the public administration, thus ensuring the success of the project.

The process becomes faster than normal because the contracting entity is outside the municipality and establishes a tender procedure that is much faster and, above all, extremely consistent with the objectives of the Trust.

The Trust has progressively managed to impose itself to the attention of the operators taking firm foot in the practice. The enormous versatility of this instrument could therefore stimulate the unlocking in the realisation of public works. From the perspective of the public interest, the instrument of the Trust allows to enrich the assets of the administration without necessarily overloading it with the economic burdens linked to the realisation of the planned work.

Some doubts have arisen in this regard: while it is true that the administration can obtain the financing of the public works by private individuals and the latter can, in turn, make the granting of the financing conditional on the establishment of a Trust, the use of the Trust has given rise to serious doubts as a result of the suspected violation of the mandatory rules on public entrustment.

Article 20 of the Code<sup>4</sup> seems to provide an answer to the question, concerning the possibility of carrying out the public work by and at the expense of the private sector, following a special agreement with the administration. However, even for public contracts excluded from the scope of the Code,

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<sup>4</sup>The Trust is incorporated into Italian legal system by means of Law No. 364 (1989) (entered into force on 1 January 1992) which transposed the Hague Convention of 1985.

Article 4 of the Code remains in force, which recalls that the work must be carried out in the “respect for the principles of economy, effectiveness, impartiality, equal treatment, transparency, advertising, environmental protection and energy efficiency” (Gazzetta Ufficiale della Repubblica Italiana 1989).

Regarding the condition that individuals can provide for the realisation of a public work, on the condition that this takes place at their total care and expense, there is also the instrument of the sponsorship contract, regulated by Article 19 of the contract code: a contract with a financial interest of the sponsor, which obtains an advantageous return, often of image.

However, consideration should be given to the possibility that private individuals wish to pursue an economic interest that is not limited to image, through long-term cooperation with the public administration, within the framework of a partnership. These operations are more complex than those assumed so far because they postulate that the administration is the ordering entity and that the trustee is the private party interested in the realisation of the work.

The enormous versatility of this instrument could therefore stimulate the unlocking of the realisation of public works.

### **Case study: Isle Martin Trust**

I would like to explain the case study of the Isle Martin, an island located near Loch Broom, Scotland<sup>5</sup>.

The island is relatively inaccessible due to its location and several past attempts to restrict access to it. Nevertheless, it is a much admired and substantial element of local heritage.

It is probable that the island has been inhabited on and off for several thousand years, but no archaeological survey has been undertaken. The only specific but anecdotal references are to a Saint Martin who is reputed to have established a monastery there, probably around 300-400 AD, and from whom the island takes its name.

Agriculture and fishing must have been the mainstays of the island’s economy for most of its history. The original feu charters, dated from early 1700s, make

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<sup>5</sup>Loch Broom is located some three miles north-west of Ullapool, Wester Ross. The Island lies in sheltered waters, close to the mainland at Ardmail and close to the Pictish remains of Dun Canna.



for an interesting reading. By the eighteenth century there was an important and active trade in fish from the island, and a herring station and associated customs house were established by a John Woodhouse. The export of fish stopped in 1813 after successive years of decreasing output. During this period there were probably around a hundred people living on the island.

In the late 1930s, a wealthy local landowner, much interested in local development and employment, established a flour mill on the site of the old herring station, and some substantial housing was constructed. Most of the mill workers were ferried daily to the island. Wheat was carried to an island wharf by sailing ship and flour transported back to Ullapool from where it was distributed to bakeries across the north of Scotland. Sacks were labelled “Isle Martin Flour Mills”. However, the mill closed, and buildings and wharves were dismantled in 1948.

In 1960 the island was purchased by Mrs. Goldsmith, who later gave it to the Royal Society for the Protection of Birds (RSPB), which seeks to develop a project of environmental protection, trying to transform the island into a protected oasis and holiday area for ornithologists and bird lovers.

Under RSPB management an ambitious programme of broad-leaved woodland regeneration ensued, behind the protection of extensive rabbit fencing. A reserve warden carried out experimental work on plant populations, plantations and fertilisation of trees. RSPB recorded visiting and breeding birds and surveyed their populations. A trial of long-term house letting also took place, using two or three houses.

The project failed and in 1996 the RSPB was looking for someone to buy the island. At that point the local communities of Loch Broom and Coigach gathered to prevent the island from returning to private hands. In 1996, a 12-person steering group was appointed, with the task of formalising a proposal to the RSPB and establishing a Trust. Through some consultations, the steering group gathered ideas and proposals from the citizens on what to do with the island.

The members of the steering group, eight of whom represented interested parties (mostly local), were guided in their initial formative procedures by the local councillor and the then Head of Policy for The Highland Council (THC), Nick Reiter. Their ready help, and the resources to which they had access, proved to be essential elements in the preparation of the “professional

quality” documents and the specification of the necessary procedures for a workmanlike Trust.

The steering group was helped in its discussions by a presentation on the possible future management of the woodland on the island, together with an archaeological briefing, and also by a visit to the island to view habitats, housing and access. Meanwhile, the group also continued the work of drafting the Memorandum and Articles of Association with advice from The Highland Council.

For the approval of the Trust, of course, all the parties involved had to unilaterally accept the objectives of the Trust itself, which in this case, were:

- The regeneration of the island’s biodiversity, both from a natural and a cultural point of view.
- The development of an educational and recreational potential linked to the natural specifications of the island.
- The development of sustainable economies.
- The encouragement to open up the island to the public, while respecting the previous points.

The Trust was officially launched in 1998 with a membership open to anyone living in the Ullapool or Coigach area and to other individuals having close associations with it. Subscriptions are £5 annually and life membership £50.

On their early visit to the island members of the steering group had been impressed by its peace and tranquillity. A further visit by representatives of interested parties, such as RSPB, Scottish Natural Heritage (SNH), and THC, accompanied by members of the Board, was arranged. However, conditions in the island bay prevented landing, and it was generally accepted that adequate island access was a priority.

The fundamental theme is the economic sustainability of the Trust: the projects are funded by registered people, with their annual fee, or with a donation type fundraising, around for country festivals. To date, several initiatives have been activated, some linked to the world of research and schools, others linked to tourism. The next objectives will be to recover the few properties still on the island to create a real internal economy, made of trade and sustainable tourism.

It is hoped to generate income by encouraging and providing for visitors and by letting the houses on the island. However, both activities require summer-time attendants and a full-time warden, and the latter requires substantial funding not presently available from grant aid.

This year, Isle Martin needs someone to keep the island in good conditions for visitors in the summer. The island's community Trust said it was "swamped" with offers, many of them from "high quality" applicants. The person chosen to live there for the summer will be the first full-time resident on the island in 30 years.

### **Case Study: Trust for a kindergarten in Duino Aurisina**

An Italian case study that I would like to talk about is the Trust for a Kindergarten in Duino Aurisina, Trieste (Tonelli 2006), as a practical application of Trust in the public sphere, which occurred at the end of 2005.

In this case, the main subjects of the project were the Fondazione Cassa di Risparmio di Trieste and the Duino Aurisina municipality. There is, however, a third player, which are, fundamentally, the citizens of Duino, potential users of the public service they would have obtained through the use of the Trust.

The formalisation of the Trust has been possible thanks to the sharing of the same objective: the construction of a crèche for the citizens' community.

Therefore, the aim of the Trust was not only economic, comprised of mere savings of expenditure or optimisation of resources, but had a social aim, as it intended to ensure the realisation of the requested service in the shortest possible time for the community.

The project was to expand the existing and functioning nursery school in the city of Duino Aurisino, building a new wing to be allocated to infants.

In this case, there was a transfer of the assets to the trustee, that was, on the one hand, the land and the existing building, owned by the municipality, on which the kindergarten would arise and, on the other hand, the necessary funds for its realisation, owned by the Fondazione Cassa di Risparmio di Trieste.

The basic problem was to assess the pros and cons of a Trust with beneficiaries versus a purpose Trust. In legal terms, this leads to major differences: in one

case the owner of the Trust is in control, in the other, the third-party owner is. We must in this case recognise the role of disposers to both interested parties: the City of Duino Aurisino and the Foundation Cassa di Risparmio di Trieste, putting them on a plan of equality in terms of control and concrete sharing of the project, a commonality of roles and cause.

Recognising the status of beneficiaries among the disposers would have meant conferring them on a series of powers and rights of intervention, on the activity of the trustee, which would have compromised its efficiency and the technical discretion that they wanted to ensure instead.

With the purpose Trust, therefore, there would be no way for the disposers to express individualistic interests. Rather than that, efforts and interests will be projected towards a higher plane, namely the purpose of the Trust.

In this way, there would also have been a simultaneous impartial supervision. Strategically, the two fundamental figures have been identified in the Foundation's secretary, as trustee, and in the municipal councillor, as guardian of the Trust, directly involving, and on an equal footing, the actors.

Thanks to this instrument, the citizenship of Duino Aurisina can now benefit from a collective service, which could not have been obtained through public finances alone.

## **Case studies about the Common Goods Foundation**

### **The Common Goods Foundation**

Both private and public law provide useful tools for managing urban commons. Urban transformations, if “bottom-up”, often exploit the temporary transformations of space, like tactical urbanism, to visualise its opportunities. Temporary use produces “trends” and gives an “imprinting” to entire neighbourhoods which can in turn become places of art and sociality. The public administration is the guarantor above all of the success of these projects in their temporary nature, while civic subjectivity determines the modalities of government and destination. To ensure that this civic subjectivity can effectively assert its function as the governor of the common good, the institution of the Foundation of the Common Good can be introduced. In Italy, in particular, the figure of the Foundation for the Open Common Good and the Community Land Trust were introduced in 2011.

### **Case study: Teatro Valle Occupato, Turin**

In 2017 in Turin, together with the University, the Associazione Nazionale Comuni Italiani (national Association of Italian Municipalities–ANCI), and the network of the Houses of the District won the European project “Urban Innovative Actions” titled “Co-city”, with the aim of regenerating neighbourhoods and creating a legal toolkit in order to experiment with institutional innovation. The European Co-city project aims to offer a vision of the administrative law of commons but also to imagine a balanced interaction between the public and the community. In Turin, in particular, it was expressly stated that the collaboration agreement cannot constitute a legal form through which the municipality is free of public service obligations. The Teatro Valle Occupato, in Rome, consists in deducing in the legal form of the private foundation not only a complex of passive assets, but also a collective activity and subjectivity. With the establishment of a Common Goods Foundation, the community of reference intends to transfer a vision and a desire to future generations, fully recognising our obligation to those who are not yet there. This determines the production of a particularly dynamic statute in which every institution of diffusion of power is tested. Thus, there is a real exit of the common good or of the whole of the common goods from the perimeter of the public administration, just as in the case of a privatisation.

Public administration leaves the stage, just as when it alienates a good, giving the common good to the Foundation, in favour of future generations and to guarantee generalised access. In this way, the common good receives an absolute guarantee: if a new administration changes its mind and wants to alienate the good by privatising it, it could no longer do so because in a certain sense the good has already been alienated from future generations and governed in their own and present interests. The Foundation can therefore be an important institution for the management of urban commons, but their management is far from simple: the maintenance of their quality cannot be delegated only to citizens and active associations, but the whole community must be aware of the potential that remains unheard of in our cities and thus fight to ensure the maintenance of urban quality.

The theatre was then returned to the municipal authorities for restoration. In 2018 the theatre was entrusted to the Teatro di Roma, which, late with the restorations, reopened it as an exhibition space, inaugurating the new usage with an exhibition by Mimmo Paladino.

## **Innovative solutions**

### **Farm Cultural Park, Favara**

The Farm Cultural Park in Favara, Agrigento is another good example of urban regeneration and the use of private funds to stimulate it. The historic centre of Favara, a few kilometres from Agrigento, presents an intricate network of streets branching off in all directions. Here, Andrea Bartoli and his wife Florinda Saieva, patrons of contemporary art and architecture, had an alternative vision for the city, initiating a process of recovery and re-appropriation. They provided a new meaning to the area by involving artists and designers, creating a hub of contemporary art in Sicily. Thus, on 24<sup>th</sup> June 2010, Farm Cultural Park, a private cultural institution engaged in a project of social utility, was born. The area of intervention is known as the Sette Cortili (Seven Courtyards), an almost abandoned area in the city centre. There, the buildings were refurbished with reinforced concrete, steel, and wood, adding as well light-weight new architecture interventions.

In their project of urban regeneration the Bartolis, well-travelled and cosmopolitan, choose as their cultural references Camden Town in London, the Palais de Tokyo in Paris and the Jemaâ El Fna square in Marrakech; these places are characterised by their variety, cultural energy and humanity.

The spirit of Farm is playful, and characterised by creativity and freedom of expression; at the same time, important messages are conveyed, such as the reuse and recycle of existing buildings, the cultural value of a neighbourhood, and the resistance of the small towns against globalisation and capitalism. For the founders, art is merely a tool for urban regeneration and so Farm has become the creative environment of Favara, able to generate a flow of creative ideas and innovation.

In 2010 the first two building units were recovered; these were to house a small art gallery, a café, a shop and a sandwich-bar. Nzemmula (in Agrigento dialect “together”) emerged in the following years: a space of about 200m<sup>2</sup> devoted to food, not a restaurant, but a place where one could cook together with friends, which neatly expresses the Bartolis vision regarding the importance of relationships.

The architecture of Favara is characterised by introversion, appropriate attention for private space and disregard for public space. Sette Cortili stands

out because of its extrovert dimension, awareness of public space and attention to public and urban design. In addition to architecture and public space, the Bartolis have always paid close attention to cultural aspects, organising every year in turn two main and four minor projects, as well as numerous events, inviting well-known and emerging artists for residencies, to spend time in Favara and develop site-specific works. However, not only are the exhibitions and events here ever-changing, but everything is in constant flux, even the buildings, which are reclaimed in accordance with the criteria of adaptability, transformability and flexibility, where permanent gives room to temporariness and to endless change.

Thanks to this good practice, Favara's townspeople are now re-appropriating their historic centre; the gradual recovery of their old town has helped them understand that Farm is the driving force for the town's economic development.

The creative city, in this sense, is not only more open, multicultural and multi-ethnic, but it is also able to mobilise its diversity toward a future project. Farm cannot be defined as merely a large art gallery, a Design District, but it is also a place of experimentation and socialisation, where it is possible to meet and spend time together, to discuss issues regarding innovations, start-ups, urban regeneration and the new frontiers of architecture and design, or even to organise workshops, book presentations, concerts and theatre performances.

The urban regeneration process has involved a growing number of people, so that in June 2014, the Community Cooperative "Farmidabile" was created, with the aim of assisting the Farm in its vision and development activity.

Urban regeneration, in this sense, is no longer defined as the sum of technological interventions but as a process of technological reconnection between resources, spaces and residents. One of the most relevant innovations in the Anglo-Saxon world is the ability to involve different players in urban regeneration: investors, experts, local administrators, inhabitants. Sharing as a device of rappropriation and a practice geared towards conscious co-utilisation of urban spaces might have unexpected results and change the connotation of public and private space.

### **Case study: the SPAB**

The further evolution of Farm Cultural Park has been the SPAB (Società per Azioni Buone—Good Actions Society). It is a society that aims to improve the city and the life of its citizens, which is open to all: every citizen can be a shareholder and therefore the owner of a small piece of the city.

It will be used to implement projects, chosen by a board of directors within the SPAB with funds from the financing partners. Obviously, every project must be useful to the community with particular attention to regenerative issues. The works will have to be economically sustainable and a part of the profits from these projects will then be redistributed between the partners (all citizens) while another part will be invested into the next work.

The establishment of the company was initiated in 2019 and was, of course, also slowed down by the pandemic. This tool aims to bring together people who own strategic real estate that needs development, those who have resources to invest in the projects, and those who have the skills to carry these projects down the path of change. With what financial resources? In this case as well, the path outlined for the financing of the projects relies on the involvement of Favara citizens and their houselod savings.

Teachers, ordinary citizens, entrepreneurs, representatives of associations and professional associations, are set up in an enterprise that will use its capital to design and implement initiatives that promote a better quality of life. The goal is education in crafts and active citizenship, urban mobility and recovering the air, in a word, improving the quality of life. In short, an adherence to Article 118 of the Constitution, in full subsidiarity.

The first concrete act of the SPAB was to donate 70 trees to the City of Favara, one for each founding member. But there are already several projects in the pipeline, such as the one on sustainable mobility, promoted by a board of directors with female prevalence.

SPAB is the result of the absence and ineffectiveness of public institutions in the Mezzogiorno, it is a social enterprise. The founders are working on the statute with the Faculty of Economics of Palermo and will submit it to the verification of a consultant accountant expert in the third sector. There will be a board of directors with approval clauses to fill the post. It will take great legal, administrative, technical and economic skills.



Only people who have a professional history of excellence in relation to the above skills may be eligible. The board of directors, after hearing the shareholders' meeting of the Società per Azioni Buone and the citizenship of Favara in a participatory manner, will assume the commitment to realise the vision.

It will be up to the board of directors, however, to decide whether to start with the construction of a car park, a social housing complex, a place for the training and integration of young people into the working world, or the construction of sports facilities.

SPAB was created to design and realise the economic, social and cultural future of the city, not to perform a limited urban redevelopment intervention. SPAB is an experimental project and therefore great flexibility and the ability to constantly analyse the impacts and objectives achieved with each individual strategy or action will be required.

Some investments may produce greater sustainability, others less; perhaps some may not be sustainable in themselves but still be necessary for the realisation of the vision.

## **A personal experience**

### **Fondazione Rusconi, Bologna**

As a conclusion, I would like to talk about Fondazione Rusconi, which is a private institution based in Bologna.

Fondazione Rusconi erected as a moral entity in 1927, and was born from the will of Dr. Pietro Giacomo Rusconi who, having no direct heirs, designates the Municipality of Bologna as the universal heir of his patrimony.

In 2017, the municipality approved the use of resources, made available by the Fondazione Rusconi, to develop an action aimed at enhancing the system of public spaces in the historic centre of Bologna.

To this aim, the foundation has interacted with institutional bodies, private entities, associations operating in the area for the achievement of shared objectives, evaluating project hypotheses and, where possible, proposing interventions and projects. To achieve this goal, the Laboratory of the Fondazione Rusconi was created.

Just as a memorial tells and educates about the memory of a specific event, strategies can be put in place to reread it. One of these strategies, at an early stage, is what we can call “cleaning”: by purifying the superfluous and highlighting significant elements of public space it is possible to obtain a contemplative dimension from which to perceive the true meaning of architecture. In this sense, regenerative action is understood as the elimination of inconsistencies or urban obsolescences that bear on both the public and private spheres, in order to highlight stratifications, historical testimonies, the quality of public space and the role it has in the city.

This uncontested diffusion of incoherent elements nourishes a negative perception of public space and produces as an immediate consequence a disinterest and a repulsion for the voluntary use of places. Uneven floors, road signs, unused mailboxes, chains and bollards, poorly maintained green areas, unused light poles, etc. They are all elements that make public space lacking in quality. This also means tracing the identity of each of those spaces and working to extrapolate it from a heterogeneous context in which the stratification of superfetations has made it difficult to understand the place.

In this context, construction is an important tool for the local administration, able to keep alive the stimuli deriving from the “conflict” for the public space. Through participatory methods, integrated projects of requalification are constructed. Through this tool it is possible to give voice and impulse to a network of associations that work and live in the territory.

This dialogue between innovation (of associations) and relevant institutions, is often very difficult but necessary in order to build common languages that, through the added value of co-creation and co-design skills, help define new public services aimed at raising the awareness of the inhabitants. This awareness is so valuable because it is achieved without direct teaching actions, such as seminars or neighbourhood walks, which remain, however, fundamental. Instead, it is achieved by imagining, in perspective, a strategy to reoccupy spaces now denied or underused because of their distorted perception.

The users, the inhabitants, the students, who every day pass, stop and live in a certain space do not ask questions about its meaning, because basically they do not know it, they do not know the “hidden treasures”, or its history. At the same time, in addition to physical elements, projects must focus on relational and social aspects (aggregation, conflict, etc.) generated by public space. The square, in reality, can be seen as an endless abacus of all possible

temporary actions in the city, between those who pass, those who remain, those who take care of the space, those who dirty it, etc.

It is therefore clear that in this path the skills derived from experiences related to issues such as urban regeneration or redevelopment of spaces, which various associations have been able to transmit to the territory, will have a fundamental role, because the game will take place on the field of the management of urban commons, aspiring to an inclusive, collaborative and safe coexistence.

The tools presented so far are useful to make possible regeneration processes that otherwise could only remain on paper or in the minds of activists. In order to increase the success of these practices, I believe that the role of the architect is crucial, as he can have an overall and unitary control over the processes and direct the efforts of the citizens, proposing an evocative vision for the transformation of public spaces.

### **The role of architecture: stimulating processes, awakening consciences**

On average, a public space in a city is already decades old, sometimes centuries by the time a will to transform it comes into play. Its roads may be crumbling, its trails overgrown. It may be plagued by teetering walls, diseased trees, boarded-up restrooms, burned-out lights, chipped steps, and splintered benches. It may have become a hangout for scary people or a centre of illegal or antisocial activities—damaging to the spirits and property values of its neighbourhood or even the whole city. Some of the public space's problems, like graffiti, might be extremely visible; others may be hidden but actually more significant. Inevitably, there will be competing ideas about which problems should be tackled first. Differences of opinion can lead to emotional finger-pointing and political gridlock.

Key to staving off conflict is a plan, an attractive and visionary document that springs from a well-considered process, respects both history and change, and incorporates a great deal of input from experts and from the public. Since a master plan can be expensive and demand much effort, it can serve as an ideal first project for a conservancy, testing whether the non-profit can raise funds and tackle a complex project fraught with potential controversy.

The two most important questions a master plan addresses are: what should be done, and when. If a public space needs attention across many areas, solutions should be prioritised. But until its to-do list is strategically prioritised, the new group's scattered ambitions leave it unfocused and stretched thin, constantly scrambling to fulfill the wishes of individual board members. A well-made plan can also forestall conflicts between the stakeholders who forged the conservancy in the first place. These instigators may be as diverse as conservationists, cultural leaders, historic preservationists, dog owners, playground advocates, and neighbourhood spokespeople—each with their own set of priorities. Reconciling those interests during the planning process can be arduous but also empowering.

In this perspective, the architectural project must avoid self-proclaiming and must rather be seen as an instrument that gives quality and is able to give voice to the real needs of the inhabitants who claim a sense of belonging.

To rediscover the quality of the public space we need to educate the public to listen, through small interventions, also generated from below, by the inhabitants themselves, that do not need large economic investments.

The architecture project, and the architect's sensibility, in this sense, become an instrument through which one might delineate the most widely-shared perspective of future development. Involvement will enable to reach out to the critical masses, who may then generate innovation, suggest a solution and implement it.

If within the processes described above, the figure of the architect, who has an evocative dimension and a stimulus towards the transformation of places, is introduced, the processes themselves could gain strength and increase sharing.

Every architecture should be educational, that is to represent the reason why it was conceived, but also to represent ourselves in the moment in which we live in it.

Architecture has always been explained and described through essays, articles and magazines. Countless words are spent every day to explain a specific project, or to investigate a specific design philosophy of a more or less well-known architect.

The contemporary scenario of the story of architecture is dominated by “museum” systems: they explain, through photos, texts and sketches, the space created and the elements that are difficult to directly integrate in the project. In this way, the “concept”, the idea, the representation become almost more important elements than the building itself.

If we also consider that only a very small percentage of these words reach the eyes of those who live in the place, we suddenly recognise the necessity of teaching without using a dialectic explanation. The inhabitants of any city who meet in a new designed square do not ask about the meaning of the design choices. They simply live in it, and probably most of them do not even notice the change from the previous solution.

This is why the teaching of architecture should take place, not through captions or explanations, but through “osmosis”, due to the mere fact of existing. It is a teaching through shared empathy. The space is representing itself, and therefore through self-awareness, becomes empathic with its users. It carries out a process of liberation, self-denouncing itself and inviting its occupants to respect and recognise its own identity.

Sharing as a device for reappropriation, and a practice geared towards conscious co-utilisation of urban spaces, might have unexpected results and change the connotation of public and private space.

The contemporary debate in terms of urban redevelopment has highlighted different forms of expression such as urban plans, visions, studies, social forums or exhibitions. These have placed at the centre of their attention the physical city and its capacity, if appropriately stimulated by the project, to produce opportunities to improve daily life in the direction of greater well-being, security, health or justice.

The historic centre of Bologna, with its variety of users and uses, is fully part of this scenario of physical and social regeneration. The different associations, the various workshops and the bottom-up practices that aim to give voice to the needs of citizens are the lifeblood for supporting and implementing the various urban projects.

The public administration will have the opportunity to rely on new tools that, thanks to a broad involvement, will help to innovate, simplify and thus make more efficient and faster processes of transformation of the public space, to make them more suited to the changes we are experiencing.

The legal instruments described in this paper aim to stimulate this regeneration scenario and therefore suggest methods to nourish a practice of redemption of public spaces by citizens. The role of architecture is to cluster those processes around a single vision and to focus the energies, also thanks to some design methods typical of architecture, like the cleaning of chaotic environments, which is able to reveal a hidden quality. The participation and dialogue between the different actors that occupy the space makes them interested in it. In addition, the use of the artistic method for the realisation of installations, projects, even temporary, expose the public space in comparison with new spatial dynamics.

Thanks to these methods the population acquires, finally, awareness of the place, claims its use, recognising its value as a common good.

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