

Local policies that recognise the Commons: the case of Naples

This paper explores specific policies put in place by the municipality of Naples, in Italy, in between 2011 and 2017, which demonstrate the high attention paid to the commons at social and political level. In particular the paper focuses on the interaction between local municipality and the commons movement and struggles and the role played by these two forces towards the recognition of the value of the commons as a tool towards social justice.

It also explores the link between water as commons, in the plan for the remunicipalisation of the water supply in 2011, and the recognition of occupied urban spaces social squats as commons in 2016. It presents the differences in the approach in the two cases as well as the consistency with the general framework of the debate about the commons.

This analysis is still in a very initial desk-review phase and relies primarily on an analysis of two policy documents produced by the Municipality of Naples, in 2011 and in 2016. The paper focuses on the language of these documents and on the legal frameworks presented in these texts, and could be considered as a preliminary document to be further developed. A broader and more in-depth analysis would require further interviews and data collection with the actors involved in this process of political and legal recognition of the commons, with the purposes of understanding the interaction between bottom-up and top-down processes.

Commons and social justice:

In recent years the debate about on the commons has expanded beyond the classical political economy definition by E. Ostrom (Ostrom 1990), with a increasing social component that builds upon Ostrom's focus on commons as “beyond State and Market”. Scholars and activists contributed in different ways to the elaboration of specific concepts that connect the commons to social justice (Linebaugh 2008, De Angelis 2010, Federici 2010, Mattei 2011, Bollier and Helfrich 2012, Marella 2012, Coriat 2013, Dardot and Laval 2014, De Angelis 2014, De Angelis 2017). While not consistent nor homogeneous among the them, all the different definitions and approaches proposed in this framework lead to the recognition of the commons as a leverage and a trigger for the construction of an alternative model of society. Some of them focus more on the role of the community while others focus on the action of *commoning*, even if described differently (De Angelis 2010, Bollier and Helfrich 2012); some focus on leftist or marxist approach while others propose a less politically influenced approach. Another element of difference in this debate is about the importance given to access over property regimes. But even in this case the alternative component is prevalent.

Considering the commons as external to public/private dichotomy characterises all of these ways of practicing of commons, coherently presented as forms of opposition and resistance to diverse forms of commodification (of spaces, resources, material and immaterial goods).

Despite this increasing interest, including at political level, the legal level does not provide any official recognition of the commons, not at international, European nor national level. Despite several commonalities among the experiences developed by activists in different countries, the lack of any coherent legal framework is an important characteristic of the “new” commons. For this reason the experience of Naples (and a few other cases) may represent a significant benchmark.

Italy and the commons:

The increasing relevance of the commons described as a tool to react against privatisation and to promote social justice took different shapes and features depending on the political, social and cultural context.

During the last 10 years Italy represented one of the key countries for the debate about the commons: an interesting feature of this debate is that diverse social practices, political experiences and theoretical analysis interacted in a very productive and stimulating way.

From a chronological point of view it is worth mentioning a few events that would contribute to define the Italian debate about the commons, both at conceptual and practical level. What is particularly interesting in the case of Italy, compared with other European countries, is that it represents an exceptional attempt to provide official legal recognition and definition of the commons.

A necessary and preliminary note must be made about two specific features of the Italian contexts: on the one hand the existence of abrogative referendum and on the other hand a long tradition of occupations of (often abandoned) public spaces with social and political purposes (not for housing).

In 2007 the Ministry of Justice established a pool of legal experts under the leadership of Stefano Rodotà. The team was given the task to modify and reformulate the discipline of the civil code concerning public goods.

In conducting this exercise the experts formulated a legal definition of the commons in a broad perspective. We will come back soon to this definition, after the chronological overview. However, the fall of the government in charge prevented from the implementation of the reform.

The 2011 is particularly important in the Italian story about the commons: on 13 June, 54 % of the Italian population voted in favor of the abrogation of two laws, respectively pushing towards market oriented management of water supply over in-house management and regulating the inclusion of the capital remuneration in the determination of water tariffs.

The slogan used for the campaign in favour of the referendum makes explicit reference to the idea of democracy, human rights, public water and commons: “si scrive acqua, si legge democrazia”, “2 Sì per l'Acqua Bene Comune”, “Referendum sull'acqua pubblica”...

On June 14, the day after the success of the campaign against water privatisation, activists and artists occupied the Teatro Valle, starting a process of claiming of the commons that lasted for three years.

The experience of the Teatro Valle Bene Comune presents some very specific features: elaboration of an alternative and composite model, high level of internationalisation, relevant publicity and support from Italian scholars (in particular jurists).

The activists of the Teatro Valle Bene Comune elaborated, with the help of supportive legal experts, a charter for a foundation in order to create a virtual community of management. Compared with other communities dealing with the commons this community was much broader than the physical boundaries of the urban space (and even national boundaries, as also a few foreigners were included).

Members of the community were entitled to have a say on relevant decisions concerning the theater.

Everyday decisions were, on the other hand, taken by a smaller committee of activists.

The Teatro Valle became a model for commoners in Europe and lasted for 3 years, hosting several events and meetings on commoning and even contributing to the re-launch of the work of the Commissione Rodotà in 2013. However, the experience of the Teatro Valle, ended in August 2014.

A similar experience, but less internationally renowned, begun in another Roman neighborhood a few months before the occupation of the Teatro Valle. This experience, fortunately still active, represented another benchmark towards some sort of recognition of the commons at legal level.

In April 2011, in fact, a group of activists occupied a building, originally a cinema and renamed it under the name of “Nuovo Cinema Palazzo”. Between the two occupations the interaction was constant.

The relevance of this case, beyond the experience in itself, resides in a provision by the court of Rome in the framework of a suit filed by the tenants society against a group of activists involved in the very

first stages of the occupation and accused of strip.

The ideological vocation of the action (ie. preserving the intrinsic cultural nature of the space) is highlighted in the provision, which at the end did not condemn the activists.

Furthermore this element matched with a spread interpretation of art. 42 of Italian Constitution which, while recognising only public or private property, highlight the social and collective function of private property which determine its limits:

La proprietà è pubblica o privata. I beni economici appartengono allo Stato, ad enti o a privati.

La proprietà privata è riconosciuta e garantita dalla legge, che ne determina i modi di acquisto, di godimento e i limiti allo scopo di assicurarne la funzione sociale e di renderla accessibile a tutti.

The document produced by the Commissione Rodotà would have been a significant addition to the legal framework, since it aimed at introducing the category of “beni comuni” (beyond private and public good) and provided a clear definition of them:

cose che esprimono utilità funzionali all’ esercizio dei diritti fondamentali nonché al libero sviluppo della persona. I beni comuni devono essere tutelati e salvaguardati dall’ ordinamento giuridico, anche a beneficio delle generazioni future. Titolari di beni comuni possono essere persone giuridiche pubbliche o privati. In ogni caso deve essere garantita la loro fruizione collettiva.

The key words emerging from this formulation include: human rights, human free development,, legal protection, future generations and collective use.

Some of the members of the commissione Rodotà , composed by Stefano Rodotà, Ugo Mattei, Alberto Asor Rosa, Paolo Maddalena, Alberto Lucarelli, Rosaria Marella, Luca Nivarra, Salvatore Settis played a role at different stages of these experiences of commoning.

Not only they offered significant support to the political actions of the activists involved but actively contributed to the drafting of the questions for the referendum and the statute of the Fondazione Teatro Valle.

Several of their publications in these years focused on the experiences of the two occupied spaces in Rome and of several other similar experiences in other parts of Italy (Municipio dei Beni Comuni in Pisa, Macao in Milano, Teatro Coppola in Catania, Teatro Garibaldi in Palermo, Teatro Marinoni in Venezia) that flourished in between 2011 and 2013.

Furthermore, two of them also influenced more directly the development of the debate about the commons in Naples.

What emerges from this reconstruction is a specific attention for the topic in a significant interaction between scholars and activists (with some of them being actually both) with the scope not only of claiming the commons but also giving them “official” recognition.

Therefore the case of Naples represents a sort of model.

Water remunicipalisation:

Ten days before the referendum about water (and therefore in the middle of the campaign) municipal elections take place in Naples. The newly elected mayor creates his team of administrator and establish a department for commons (in Italian “assessorato ai beni comuni”) to be lead by Alberto Lucarelli, professor of law, member of the Commissione Rodotà and of the legal team who prepared the referendum. Not surprisingly then, right after the victory at the referendum the municipality of Naples takes the stand for public water supply.

Furthermore, in doing so, it also clearly underlines that such a change in management is consistent with the conceptual framework of the commons: in fact the new re-municipalised supply company is called “Aqua Bene Comune”.

The process of remunicipalisation is technically long and the lead of the new company is given to another member of the Commissione Rodotà and key figure of the debate on the commons within the Teatro Valle movement (Ugo Mattei).

Beyond the municipalisation in itself, which, to a certain extent is part of a trend of remunicipalisation as reaction against privatisation attitudes symbolically initiated, at least in Europe, by the remunicipalisation of water supply in Paris 2010, the interesting aspect of this specific case is the choice of the language.

For this reason this paper does not focus on the specific features of the process of the remunicipalisation, nor on its practicalities, impacts and results, which would, however, deserve some attention.

What this paper focus on it the context of the Statute of the municipal company elaborated by the municipality of Naples, where some interesting elements emerge. The first one is the idea of legal transformation.

While not citing literally the work of the Commissione Rodotà the act makes explicit reference to recent changes in legislation that produced the emersion of the category of commons at different levels: *recenti trasformazioni del diritto hanno prodotto l'emersione a livello costituzionale, normativo, giurisprudenziale e di politica del diritto della categoria dei beni comuni.*

Based on these words, that mention constitutional, normative, juridical and law politics level, one could imagine that the Italian legislation officially recognise the commons. Which, as highlighted above, is, unfortunately, not yet the case. However, quoting the work of the Commissione Rodotà is a clear positioning by the Municipality.

The second element is the actual definition of this category: in this case the text almost literally cite the Commissione Rodotà. The “beni comuni” are in fact defined as:

cose che esprimono utilità funzionali all'esercizio dei diritti fondamentali, nonché al libero sviluppo della persona e che vanno preservate anche nell'interesse delle generazioni future.

The reference to future generations is underlined a few sentences below when the statute mentions a duty towards not only all the people of Naples, but also “tutta l'umanità presente e futura” (all present and future mankind).

This choice is not strange: on the one hand the definition proposed by the Commissione Rodotà is the only one existing in an Italian piece of law (though eventually not approved) and, on the other hand, one of the members of the Commission itself was at the moment of the remunicipalisation “assessore ai Beni Comuni”.

Furthermore, this definition is connected with values that are present in the constitution and in the Statute of the city of Naples.

It can be considered a way to declare that what follows is not only consistent with the legal system and constitutional values, but also with the very core values of the city of Naples.

In this same sentence the specific case of water is introduced. Water is mentioned as part of the commons “in primis”. To a certain extent, then water is represented as a model of the “beni comuni”.

All the commons, the text adds are to stay out of the market system and cannot be privatised. This is the last step towards the explicit mention of the referendum which had just taken place.

In fact the text states that water cannot be privatised as it is incompatible with profit interests. Exactly aligned with what the referendum was intending to fight against: the idea of introducing higher margins of profit for private companies.

The referendum is explicitly mentioned in the document, as the company commits to comply with a what is called 'constitutional duty to protect the commons' and to the results of the referendum that is

presented as the foundation of the statute and the creation of the municipal supply company.

The company name itself, Acqua Bene Comune, clearly shows the connection between commons and water. The change of name (the original name was ARIN) is coupled with a significant change of juridical status (from society into public entity). Furthermore, the statute lists the main features and fundamental principles of Acqua Bene Comune: ecology, economy, efficiency, transparency and participation.

Of course the referendum is what provides the possibility of doing such a change in management rules. Acqua Bene Comune becomes then the first and unique example of remunicipalisation of water supply that explicitly mentions the commons.

From 2011 to 2016:

After 2011 Acqua Bene Comune and the Municipality of Naples try to this commitment to water as a commons a reality. They attempt to increase access to water, through the inclusion of free minimal quantity of water supplied, and to encourage citizens participation, through the creation of a citizens observatory on the commons.

Even though the experiment works (with the implementation of a citizens observatory) the situation changes to some extent. In a first phase the head of the “commons department (Assessorato ai Beni Comuni) resigns for reasons unrelated to the work at the municipality nor with Acqua Bene Comune. The first president of the municipal society also resigns and meanwhile some polemics arise with the management of the company.

However the debate about the commons remains active both in Naples and in Italy and for a while an observatory of the commons is also put in place in the city of Naples.

On the other hand the social and economic crisis keeps affecting Italy, while the results of the referendum are de facto circumvented.

At the end of 2015 the debate about the commons, even if still active, seems to have loosen some relevance, while several occupied spaces, very active at the beginning of the debate are cleared by the municipalities and in several cases fall again in a situation of abandon.

Nevertheless the commons are still a key element of the political and social resistance against social and economic crisis and capitalist model.

The discussion takes a new political direction in representing the commons not only as connected with human rights but also a form of alternative to the ongoing political, social and economic model.

Recognition of urban commons

In July 2016 the Municipality of Naples gives an official recognition of this role. The deliberation 446/2016, in fact, recognises that seven spaces, occupied and used for social, cultural and political purposes, are “commons” because of how they are used and because of their ultimate purposes.

In between the remunicipalisation of water and the recognition of occupied spaces as commons Municipality of Naples produced several other documents orienting its policy. This actions represents an exceptional case of policies production strongly embedded in the debate about the commons.

Three main elements emerges: the definition of the commons, the role played by the Municipality and the role of the citizens involved.

Compared with the Statute of Acqua Bene Comune the deliberation 446/2016 presents some exceptional elements in terms of context and purpose. This second document is in fact very special in terms of its legal basis as it goes beyond the results of a popular consultation (the referendum) and interprets laws in a way that offers actual legal basis for a claim that it far from the remunicipalisation.

The first interesting element of the deliberation are the background documents mentioned. A first deliberation in September 2011 introduced the category of “bene comune” in the statute of the

Municipality of Naples. The legal definition mentions again both fundamental rights and future generations. Another deliberation, issued in 2013, describes the principles for the management and governance of the commons. In this text the Municipality adds the idea of “titolarità diffusa”: the commons managed must be sustainable, must take into account future generations and grant collective use of them. Furthermore, the same text recognizes the existence of several abandoned spaces belonging to the Municipality.

This recognition is the basis for the next deliberation mentioned, issued in 2015. With this text the Municipality introduced the idea of an active role in exploring which spaces, belonging to the Municipality, are perceived and used by the community as commons. This deliberation is coupled by another one of the same year that provides the basis to consider as 'beni comuni' selected public goods when they are managed by a community of reference, in an inclusive manner. This last text also already recognised an occupied building, called ex Asilo Filangieri as 'bene comune'.

Therefore, the deliberation issued on July 2016 is a direct consequence of this path and explicitly mentions 7 spaces (Villa Medusa, Ex Lido Pola, ex Opg, Giardino Liberato, ex Conservatorio di Santa Fede (Liberata), Scugnizzo Liberato and ex Scuola Schipa), that the Municipality of Naples recognises as 'beni comuni' because of their nature, the practices that are implemented by the community of reference and the social impact of this use. Literally: “spazi che per loro stessa vocazione (collocazione territoriale, storia, caratteristiche fisiche) sono divenuti di uso civico e collettivo, per il loro valore di beni comuni”.

The deliberation does not assign the spaces to specific organisations, but rather recognises their nature and use as commons. All of these spaces are in fact occupied and used by a community that aims at protecting them by privatisation and letting them in use for the inhabitants.

In fact, most of these places used to be structures dedicated to public use which have been then abandoned and neglected. Even more interestingly several of them were already occupied before the whole debate about the commons emerged.

The focus, as highlighted by the activists involved in commenting the deliberation (<http://www.exasilofilangieri.it/napoli-7-spazi-liberati-diventano-beni-comuni/>), is on the collective use and the existence of a community of practices acting directly in the management of these spaces in order to preserve fundamental rights and collective use, beyond private property.

Indeed, what defines commons, for the activists involved is “una gestione partecipata, originale e collettiva, in relazione con le realtà degli specifici luoghi”.

What they consider relevant in the deliberation is exactly the fact that these spaces are not assigned to some organisations through a top-down process. On the contrary, the Municipality recognises the political and social relevance of a bottom-up action by the communities involved and their conceptual, theoretical and practical autonomy.

In their analysis of the deliberation a quite clear criticism emerges towards a certain amount of collaboration agreements between citizens and institutions that they fear as a way to reduce social conflict through a weakened form of participation.

Despite not being explicitly mentioned it is not unlikely that the hidden reference is to the case of Bologna, that some erroneously compare with the case of Naples.

In fact the key feature that characterises all of the experiences in Naples is that they are conflictual in nature and based on self-organisation.

If recognising water as a commons was in line with the results of the referendum, the recognition of these spaces as commons is a step forward a change in law.

Furthermore, the deliberation itself opens the paths to a possible extension of the list of 'recognised commons' through an coherent and active listening of the needs of the territory and the subsequent responses of the community.

Which acts in an inclusive manner, beyond citizenship, in order to protect spaces against abandon and/or privatisation while making social, cultural and economic actions that contribute to enjoyment of social, economic and cultural (fundamental) rights.

Using De Angelis (2010) definition it could be said that the Municipality of Naples considered the above mentioned actions as a process of commoning and, on this basis, decided to give them official recognition as commons.

Conclusions

One of the expressions present in the deliberation seems to define this 'commoning' as “creare capitale sociale and relazionale” (Delibera 446). The focus is on the relational component of the creation of the commons.

In both the cases (water in 2011 and urban spaces in 2017) the idea of commons clearly comes from a social process, or rather a social struggle. Which relies itself upon a system of relations and reciprocities: the results of the referendum, as well as the claims and activities of the communities of Naples are coherently embedded in an idea of resistance against commodification, privatization and exploitation of both natural and cultural/urban resource inspired, among others, by the debate about commons and oriented towards an actual enjoyment of environmental, social, cultural and economic rights.

From a juridical point of view, the remunicipalisation of the water supply company was inspired by the wording of the Commissione Rodotà, coupled with the outstanding result of the referendum and the political attention that it produced; on the other hand, the deliberation issued by the Municipality of Naples seems to make a further step forward.

While citing the same content in terms of legal framework, as clearly exemplified by the reference to fundamental rights and future generations, it adds other elements such as social relevance, social function, reciprocity and bottom-up process.

In doing so the Municipality de facto opened the path to a further juridical reflection as it affirmed that a space can be considered as commons because of a social (and political) process of commoning that takes place (in this case for long time) in its venues. Even though this applies only to the use of spaces that are public in terms of property, it still represents a significant change in the approach to these communities and their actions.

With the remunicipalisation of water we see a juridical recognition of the idea of commons in a process that in itself would have not required such a reference; with the deliberation about occupied spaces we see the active introduction of the commons as an existing category of goods. In this second case the reference is compulsory as it represents the actual core of the action implemented by the Municipality.

Both the remunicipalisation and the 'recognition of the commons' are replicable acts, as demonstrated by other case of water remunicipalisation and by at least one case of a similar deliberation (Palermo, 2017). However, the second introduces a revolutionary element that could lead to interesting consequences at political and legal level.

If the social and political component of commoning is recognised (at least when it take place in public spaces), on the basis of the legal definition provided by the Commissione Rodotà, the commons may have space to influence social dynamics through a bottom-up process and thanks to the actions put in place by local communities in an alternative and perhaps revolutionary way.

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