



Abstractly, persons who are homeless have the same property rights as anyone else, with respect to whatever they might own. But it is unlikely, if a person is homeless, that she owns much.

Jane B. Baron

Formal property rights in the face of the substantial right to housing

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Although the article should be considered a result of the common work and reflections of the two authors, A. Giampino took primary responsibility for sections 2, 3 and 5, F. Lo Piccolo took primary responsibility for section 1, 4 and 6.

Abstract

This paper explores the dichotomy between formal property rights and use value of rights in the field of the right to housing for homeless people, focusing on the entitlement of the squatting practices to claim the collective rights in the public domain. This collective claim can be considered an alternative to the 'traditional' conception of the public property as 'exclusive' domain of State. In the cities of Southern Europe, urban space has become an 'object' of contention by groups of inhabitants, who are organized at various levels, and an object of claiming – through illegal (although not illegitimate) forms of occupation of public or social private properties – the right to housing as primary expression of the broader 'right to the city'. Starting from the evidences emerging from the informal practices of reappropriation of spaces (occupied spaces) in the case study of Palermo, the aim of the paper is to demonstrate that the use value is applicable in the housing field through the lens of the right to the city. The self-help housing practises suggest a "third way" in the theoretic interpretation on the right to housing, overtaking the division between natural rights and legal rights.

Keywords: capabilities approach, right to housing, squatting

1. Introduction

Homelessness is a "hot issue" in many European countries, and there are no reasons to believe that the total number of homeless people will decrease in the next years, particularly in the framework of post-crisis scenarios where the levels of urban poverty are rising. The data seem to confirm that we are dealing with a new housing emergency. Based on UE data (2013), an estimated 4.1 million people in the EU are exposed to rooflessness and houselessness. However, paradoxically, we estimate that more than 11 million homes lie empty across Europe. The European Union Statistics Agency (EUROSTAT) has released data on the amount of people at risk of poverty or social exclusion: in 2012 it concerned a quarter of EU's population, having increased by 6 million since 2009 to 123 million in total. Between 2012 and 2013, the rate increased especially in Southern European Countries, where the application of the austerity programs have had dramatic and controversial effects on their social protection systems.

The actual housing emergency is not just a problem connected to poverty or a lack of low prices houses. It is the outcome of complex dynamics depending on the overlapping of

different factors such as the economic crisis, urban poverty and the implementation of mainstream policies of social and spatial transformation. Across the world, governments are struggling to cope to both economic recession and deficits, and as a result many of those countries - often under the urging of international financial bodies - agree to implement austerity programs with a shrinking effect on the social services sector connected to wealth redistribution, reducing the impact of the State in the economy.

Poverty and social exclusion are concentrated especially in Southern European cities where it is possible to detect a policy vacuum and an increase in protest movements and illegal occupations offering alternative and radical project proposals in contrast to the dominant social housing policy model. In many urban realities of Southern Europe like Palermo, Madrid and Lisbon, urban space has become an "object" of contention and claim by groups of inhabitants, who are organized at various levels, and claim – through illegal (although not illegitimate) forms of occupation of public or social private property – the right to housing as primary expression of the broader "right to the city" (Lefebvre 1968). Empirical evidence of these movements suggests that there are emerging

practices of reaction to traditional policy to address homelessness, but the studies of these practices are often fragmented and there is urgent need to understand their potential through a systematic approach.

In the last years a growing body of literature has critically analysed the phenomenon of squatting and the movements claiming for the right to housing in Southern European cities (SEc), focusing on the processes of institutionalization and cooptation (Mouffe 1999; Martínez 2013) of urban movements or the strategies used to permit homeless people to find a house, at the margin of norms and legality (Ward 2002; Reeve 2011). As Aguilera (2011, p.5) argued: «All these works however put aside local and national governors and decision makers. They usually do not deal with the public policies which could be implemented beyond eviction strategies». Confronting with the acute housing crisis it is possible to detect new self-help forms proposed by housing movements where the occupants/tenants adapt the empty public properties (or social private property) to the new residential use, also through micro-projects of renovation which fill the lack of formal housing policies and intend to be an innovative alternative to the current model. These practises appears as a successful model for cutting housing production costs, providing an affordable and accessible form of housing, enhancing user empowerment (Teasdale, Jones and Mullins 2010) and producing social capital in the process (Garcia and Haddock 2015). Furthermore, the renovated and transformed public property remain public and become part of the housing public stock. Nevertheless, in the Southern Europe context, the clear distinction between lawful/unlawful, legal/illegal, which descends from the legal systems, accentuates the antagonistic nature of these practices (Sandercock, 1998) and the irreconcilability of the interpretative frameworks among vulnerable people (homeless) and strong entities (State). The dominant politics of “zero tolerance” fights against every kind of “squatting” and it still remain the main form of intervention, deriving from the Southern European juridical systems based on the classical division private/public property. However, the Charter of Fundamental Rights of the European Union (2012) affirm that «in order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices» (p.16). In the last years a growing body of literature have been helpful to underline that many people squat because they have no other option, as well as squatting is not a criminal justice issue. A promising approach to solve this limitation is the theoretic approach on right to housing based on the Nussbaum’s theory (2011). The capabilities approach allows an assessment of implemented housing public policies and informal practices, verifying the use value of the right to housing, its guarantee and the use value of public heritage as a means to fully empower people.

This paper is organised in two parts. The first part deals with the nature of the right to housing. The recognition of a substantial, and not merely nominal, right to housing is discussed in terms of positive rights and negative freedoms. The theoretical argument questions the competitive nature of these categories of rights within the framework of the right to

housing, to show that it is in the verified enjoyment of those rights that differences are cancelled. Through the capabilities approach, theorised by Sen (2005) and Nussbaum (2011), we can verify the use value of the right to housing in practice, whether within an institutional or informal context. However, the use value of the right to housing may not transcend the physical order of this right which translates into having a physical space where such right may be enjoyed (Waldron 1993). It is within this theoretical framework that the theory of commons – viewed as essential public goods and instruments that allow homeless people to enjoy their freedoms – is rooted. The theoretical framework introduces, based on the metrics of the capabilities approach, an assessment of both public policies and squatting practices in Italy, and more specifically in Palermo, showing that the alternatives, developed by marginal groups in conditions of distress, have proactive capability which challenges the traditional approaches of public policies and their problem-solving strategies (Holston 1998; Miraftab 2009; Miraftab and Wills 2005). If we embrace as our working hypothesis the principle according to which «every public policy is testimonial evidence of a theory of social change» (Mény and Thoening 1996, p.115), by comparison with the current policy void, the increase in protest and squatting movements offer inputs and project proposals which are radical and alternative to the dominant policy models (Cellamare 2011), moving towards an action model that is more careful to the use value of the right to housing and of public heritage. The aim is to develop an argument that is generally applicable and not merely determined by particular circumstances in the theoretic interpretation on the right to housing, overtaking the division between natural rights and legal rights.

2. The use value of right to housing and property rights through the capabilities approach

Before addressing the way in which squatting contributes to the reformulation of the right to housing and related policies, we must discuss the debate on the “nature” of the right to housing. In the countries of Southern Europe the right to housing has evolved, within the framework of fundamental rights, as a “social right with great uncertainties” (Modugno 1995), being subordinated to the amount of resources available to public institutions. This definition has fuelled a far-reaching discussion on the right to housing as a positive right, which implies “benefits” and therefore costs for the public purse, as opposed to negative freedoms (such as freedom of expression and private property) which tend to reject State intervention and are in theory considered as “cost-free”. As Bellamy (2007) and Waldron (1999) point out, these disagreements are intimately linked to the ideological divisions (liberal vs. social view of the State) that characterise any modern, pluralistic democracy. Apparently, the debate on the right to housing as a fundamental right seems to be more a matter of ideological contraposition than a technical issue. In reality, the different acceptance of the right to housing at regulatory level has direct consequences for the public policies in this

field. In Southern European welfare systems, where housing policies are based on a positive right, lack of housing is viewed as a “need” rather than as the violation of a fundamental right. As a consequence, homeless people are regarded as “beneficiaries” of public policy, as passive subjects and not as the holders of rights (Spicker 1984). Pinker suggests that this «is the commonest form of violence used in democratic societies» (1971, p.175). This stigmatisation is relevant also in terms of space (Fitzpatrick et al. 2014). Public housing neighbourhoods in the South of Europe, built by public entities to meet housing needs, can be re-interpreted as coercive, top-down planning policies implemented by governmental institutions, often in order to guarantee an established order, including spatial order, rather than to enforce a more general right to housing, accentuating the divide between haves and have-nots (Lo Piccolo 2015). Also in economic terms, the classification of housing as a positive right has significant repercussions, for at least two reasons. First because the allocation of public funds (see Bengtsson, 2001) strongly influences housing policies. Given that the right to housing is a socio-economic claim, the State must allocate public resources to this area with a degree of discretion influenced by economic and budgetary questions, while such limits would never apply to “negative” freedoms. In practice, this is tantamount to admitting that market interests prevail over ratio of rights. The libertarian thinkers (Berlin 1969; Machan 1989) maintain that negative freedoms such as, life, liberty and property are rights that prohibit coercion and interference by third parties and that their exercise is ensured also in respect of interferences by the State. As a matter of fact, not only such theoretical outlook does not involve any dialogue between formally guaranteed legal equality and factual inequality, but it also does not consider that negative freedoms, on pair with social rights, have a cost¹. At international level, Holmes and Sunstein (1999) maintain that «A legal right exists, in reality, only when and if it has budgetary costs» (p. 19) and therefore «all legally enforced rights are necessarily positive rights» (p.41). Politically, the fact that the right to housing depends on what public resources are allocated and how they are assigned essentially makes this right depending upon a political choice. This position is found also in Bengtsson who writes «The right to housing is best seen as a political ‘marker of concern’ pointing out housing as an area for welfare state policy» (2001, p.273) and is opposed by King (2003) who claims the primacy of the existence of the right to housing on politics.

Compared with other arguments recalled so far, an approach to the right to housing in terms of acknowledging the use va-

lue of such fundamental right based on the capabilities approach theorized by Sen and Nussbaum, rather than in terms of positive rights or negative freedoms seems more promising. The capabilities approach applied to the right to housing is not based on the axiom for which individual X is entitled to right Y (in this case we would be dealing with a generic right to house), but rather on the principle that in order to be a person, and function as a person, X needs Y (namely, the right to housing). It is no coincident, in fact, that Waldron (1993) and King (2003) both agree that the right to housing is a fundamental right which other fundamental functions depend on. Reasoning of the right to housing in terms of capabilities entails introducing public policies to enable the homeless to function as individuals, taking action to exercise the right to housing which would otherwise be granted only verbally. The current housing emergency in the urban areas of the south of Europe, such as Spain or Portugal, testifies that simply acknowledging the right to housing in the Constitution is not enough to guarantee the right in terms of capabilities. In a nutshell, thinking in terms of capabilities creates a point of reference to understand what guaranteeing a right actually means: «it clarifies that it entails interventions against discrimination and institutional support, not simply absence of obstacles» (Nussbaum 1999, p.306). In other words, it shows that in order for a negative freedom to be just that, it must refer to social rights, allowing us thus to solve the querelle between positive rights and negative freedoms. This allows us to examine the issue of the right to housing in terms of public policies implemented to combat housing deprivation within the framework of a constitutionally recognised right to housing. If Sen’s functionings can be viewed as beings and doings constitutive of a person’s being, Nussbaum (1999) defines the capabilities to perform such functions as the object of interest of public policies. In this sense, the capabilities approach is an assessment method of housing policies, rather than a designing method of public policies (Sen 2009), that allows to assess the presence of those real political and social measures which empower those who are, in fact, capable of fully exercising their rights, with the opportunity to raise governments’ awareness of their needs and call for public action beyond mere paternalistic assistance. As we will see in the next paragraphs, the capabilities method is extremely useful in assessing public housing policies, as well as informal squatting as a reaction to house-related poverty. At the same time, they permit an assessment of the different degrees of existing “social capital” of homeless and consensus/resistance to traditional public policies. In more general terms, it could be said that, in contrast with a paternalistic vision that has seen the homeless/occupant as passive subject receptor of policies, the capabilities approach enables detecting the active resources of these practices, with particular attention to the capacity of existing vulnerable groups, social movements and grassroots initiatives to solve concrete problems, and to the possible role that may be played by the public hand in integrating-regulating-supporting these kind of resources. In this respect, it is clear that the house asset is not the end of public policies but the means through which ensuring human dignity, hence personal freedom in Nussbaum’s interpretation. On this basis, Waldron (1993), with a similar theory on the basic functions guaranteeing human survival, argues that homeless people can only perform these functions in public

1 As sustained by Bin, Donati and Pitruzzella (2014), with reference to the Italian context: «Misunderstandings arise from the rather common belief that with regards to freedom what we ask the State is basically to refrain from taking any action whatsoever – which makes them “cost-free” for public finances –, while public intervention is essential for rights which are therefore “costly”. This conviction is unfounded. Taking into consideration typical “negative” freedoms – such as individual freedom, freedom of establishment or private property –, we can observe that they imply major interventions and public “costs”. What guarantee would there be, indeed, to the physical integrity of individuals without a massive (and costly) security system to protect it or without the complex (and costly) judicial system? And what would property be without a protection system safeguarding – not only with police service, but also with firefighters – water supply, civil protection and public “guarantee” against natural disasters? Once more, it is clear that this distinction is more ideological than “objective”» (p.154).

spaces and commons as they are «excluded from all the places governed by private property rules» (1993, p.313). However, if the use of common property resources becomes exclusive (King 2003), on a par with private property, Waldron argues that «a person not free to be in any place is not free to do anything» (p.316). While the capabilities approach allows us assess the use value of the right to housing, Waldron's hypothesis allows us to reason about and assess the use value of property and, in particular, of public property which, based on the capabilities approach, should be the resource actively used by people, laying the basis for active construction and free expression of a person's individuality.

Public assets are a form of collective property which falls within the broad and complex category of common property resources or simply commons. In urban planning, public essentially means a space for collective use (as opposed to private) which is considered as destined and fit for collective use by a public authority. In Crosta (2000), this interpretation defines a relation between society and State where society expects the State to acknowledge and meet its needs: society is, and expresses, a social demand; it does not meet this demand itself, on the contrary it delegates the answer to the political system. This paradigm is marked by the conviction that the solution to collectively perceived problems cannot be freely determined by individuals and their interactions. Always according to Crosta, "public" is not the space permanently destined to collective use. This would be a simplistic association: collective use does not equal public space,

[...] but rather a space is public when it is designed by social interaction under certain conditions: it is a possible, not a necessary social construct, [...]. The public connotation is assigned to a place if and when all those who find themselves interacting in a situation of co-existence, using different methods and for different, unshared, reasons (co-presence can be – and usually is – characterised by tensions and conflicts), learn by directly experiencing diversity (of which they "feel" the problems) and by experiencing co-presence in terms of co-existence. Through this learning process they "become" public (Crosta 2000, p.43).

The construction of the public space as product of social interaction (possible outcome) can thus be considered as public policy. Dunn (1981) and later Dente (1990) define public policy as the set of actions carried out by a group of subjects (not by the State) which, in some way, are related to finding an answer to a collective need (problem, demand, opportunity) which is generally considered to be of public interest. If we take these concepts to extremes, the self-help practices proposed by housing movements is a form of public policy – designed by a group of subjects – which meets a collective need. The collective need in this case is not only housing, but also the exercise of right.

The category of common goods aspires to be an alternative both to public and to private goods, transcending the alternative between public and private property to which neoclassic economics traces back all possible forms of ownership. Over the past decade, there has been wide, complex and cross-cutting debate on commons. Yet the legal and economic definition of commons is still unclear. In Mancur Olson (1965), commons can be considered as any kind of property

to which the characteristic of "impossibility of exclusion" can be proven to apply, although the author associates with this distinctive feature the notion of group theory, according to which common property resources can be considered such only in respect of the group that uses them. The contemporary debate on commons originates from the need to remove some categories of commons defined as functional to the enjoyment of fundamental interests and necessary to the development of the individual from the logic of appropriation and from the market circuit. According to Elinor Ostrom (1999, p.30) «common property resources are all natural and/or artificial resources exploited jointly by a number of users, whose exclusion from their use is difficult and/or costly but not impossible». Ostrom states that the problem of commons governance can be resolved through forms of collective management which represent a sort of third way between private property and the involvement of an external coercive authority. She defines seven essential points plus one for the management of commons, where the eighth principle deals with the thorny issue of goods:

- Define clear boundaries.
- Match rules of appropriation and use to local conditions.
- Methods of collective participation in decision-making.
- Control.
- Graduated sanctions.
- Means for conflict resolution.
- Minimum recognition of the right to self-organization.
- Organizations structured in nested tiers.

In Ostrom's model, the relations between commons, on the one hand, and democracy and self-government on the other, is not occasional but rather imposed by the very nature of the common resource.

3. Public policies vs squatting practices for the right to housing in Italy

In the Italian law, the right to housing is not explicitly specified in the Constitution. In fact, the establishment of the right to housing is the result of constitutional judicial activity which has progressively recognised it as a so called fundamental social right which the empowerment of the individual depends on and from which other social rights derive. In particular, judgement no. 217 of 25 February 1988 by the Constitutional Court establishes the right to housing as a fundamental right, stating that «Laying the minimum conditions necessary for a Welfare state helps ensuring to the largest number of citizens possible a fundamental social right, such as the right to housing, and making sure that the life of each individual reflects every day, and in every aspect, the universal concept of human dignity, are duties which the State cannot, under any circumstance, renounce» while at the same time stressing that «society as a whole must prevent people from becoming homeless». However, not only there is no mention in the Italian law to the house as an instrumental asset fundamental for human dignity in Waldron's definition, but the legislation underlines that private property «is recognised and protected by the law, which establishes the methods of purchase, enjoy-

ment and limits to ensure its social function and make it universally accessible». The legislator clearly intends to balance out property rights on the house, should it be necessary to favour the right to housing, so much as to condone so-called “unauthorised building by necessity”, justified not so much by poverty as by the actual danger for the safety of the individual (Scotti 2015). If on the one hand, in theory, there are references in Italy to a right to housing as a fundamental right with precedence over the right to property, on the other hand it is yet to be determined whether this right is, indeed, merely nominal or actual. The most recent measure on housing is Law no. 80 of 2014, also known as the “Lupi’s house plan”. An analysis of this provision, using the capabilities method – in other words assessing whether, in fact, the house plan put homeless people in the conditions of finding their way out of poverty and fully exercise their freedoms and, therefore, also their right of participation to the public debate on policies to be implemented on housing deprivation (Sen 2009) –, highlights the inefficacy of the provision. In fact, beside the meagre funds allocated for this measure, the house plan suggests transferring public property (art.3) and combatting unauthorised occupation of buildings by preventing homelessness/squatters from being able to take residence, thus precluding them from enjoying a series of related rights. Furthermore, for the five years following the conviction, it forecloses the possibility for occupants to qualify for social housing. In respect to these repressive measures, which, de facto, identify the right to housing as merely formal and not as a substantial right, if on the one hand the squatting phenomenon and the movements for the right to housing bring to the surface the inefficacy of social and housing public policies, on the other hand, although by means of conflicts, they offer a solution to the housing emergency which should take the form of collective organisation and interest. If we accept to reason in terms of capabilities, the voice capability (the ability to make one’s voice heard and discuss it publicly) theorised by Sen is undermined, to the extent that an institutional entity suppresses struggle movements for the right to housing instead of involving them in a public decision-making process on issues revolving around the claims for a fundamental right such as the right to housing.

Moreover, the measures envisaged by the house plan in terms of transfer of public property (art. 5) are against not only the use value of the public property claimed by the movements for the right to housing through forms of squatting, but also the recent debate started in Italy on commons. This debate has reached at an attempt of constitutional reform undertaken by the committee chaired by Stefano Rodotà² which, re-working Book III of the Civil Code, in addition to the category of private and public goods, identifies the category – unprecedented in the Italian legislation – of common resources³.

2 Rodotà Committee (14 June 2007), the text of the draft law is available at www.giustizia.it.

3 Article 1 (c): Establishment of the category of common goods, namely things which are functional to the enjoyment of fundamental rights as well as to the free development of the individual. Commons must be protected and safeguarded by the legal system, also to the benefit of future generations. The holders of common goods can be public or private legal persons. In any case, their collective enjoyment must be ensured, within the limits and in accordance with the methods set by law. Commons can be the property of either public or private subjects: that is, it

Well aware of the need for a radically new perspective, the Rodotà project, by adding the category of commons, recovers a “new way of possessing” at anthropological, before legal, level. Indeed, Rodotà, in *Il terribile diritto* (The Terrible Right), asks the following question:

Should access to social citizenship come through property or through rights? If the response is the second alternative, not only is the role of property in the system diminished quantitatively, it may also be altered qualitatively, as the disconnection of the link between property and individuality becomes more radical.

It is worth underlining that the commons regime is indifferent to the concept of “ownership”. In practice, this translates into a restriction of property rights, both in terms of enjoyment of the good, and of its circulation. In other words: the utility that can be derived from the good, as use value and exchange value, is not all destined to the owner (Nivarrà 2012). The common good, according to the Committee’s way of thinking, is a paradigm which is strictly alternative to the other forms already present in Italian law. The work of the committee is invaluable for its effort to transcend the public-private dichotomy and to provide a regulatory framework for common goods. The category of commons which the Committee refers to is broad, not limited to an attempt to legislate their management, as in the Ostrom model. Such arguments show that if we assess housing policies in Italy through the lens of the capabilities approach, we should recognise that we are far from actually guaranteeing the right to housing. At this point, we will try to understand, through the case study of Palermo, if the assessment of squatting with the capabilities approach can provide a new meaning to the public action in the changed post-crisis scenario, towards forms of creating the (democratic) space based on emerging practices and cooperation with entities (residents, communities, groups, institutions) with different political “potentials” (Bonafede and Lo Piccolo, 2010). Where these practices are exercised, the debate, even confrontational, among different parties involved, allows, agreeing with Cellamare (2011), to collect suggestions and project proposals arising from the informal consensus of self-organisation to bring them to the level of collective organisation and interest.

4. The housing emergency in Sicily

Before going into details of the analysis of current squatting practices in Palermo, we should take a closer look at the issue. The data calculated by ISTAT (the Italian National Institute of Statistics), show a relative poverty rate in Sicily in 2015 of around 32.5%, with 1,010,154 households living in conditions of deprivation, or more than half of Sicilian households. This is the worst figure in any Italian region and, when considered together with the employment reduction of 73,568 and a 10.2% rise in the number of job-seekers (Region Sicily 2015), it paints a picture of the emergency situation which Sicilian households are going through. A long, complex scenario re-

is not ownership that defines the nature of commons but rather their use.

sulting from the effects of the economic crisis overlapping with underlying fragilities of the Sicilian production system.

Within this framework, squatting for housing purposes in Sicily has become a substantial phenomenon, and it is interwoven with a social and economic context worsened by the continuing recession. Between 2005 and 2014 eviction notices have gone up from 5,040 to 8,120, while the number of evictions for arrearage or other causes has remained stable at 3,000 per year (Ministry of Internal Affairs 2014). Moreover, based on a recent sample survey (ISTAT-Caritas 2014) there are 3,997 homeless people living in Sicily, of whom 2,887 in Palermo, confirming its third-place ranking among Italian cities in number of homeless. The data would appear to indicate that we are facing a dramatic new housing emergency related to the increase in forms of urban poverty, mainly concentrated in the three large cities of Palermo, Catania and Messina.

National measures have also proven unable to reverse the regressive trend of this item of expenditure in the welfare budget. In fact, Law 80/2014, "Urgent measures for housing emergency", allocated to Sicily: € 1,492,921.50 for the Faultless Arrearage Fund; € 7,555,321.14 for rent support and € 37,40,874.41 (with an additional € 4,409,618.87) for the recovery and restoration of public buildings. Yet to date, only funds actually assigned have been those of the Faultless Arrearage Fund, and in particular the municipality of Palermo has received € 243,932.21 in respect of the 865 evictions executed in 2014. As a reaction to a policy framework which gives only partial and insufficient responses, in Palermo some 350 households, supported by committees for the right to housing, have squatted historical buildings, convents, schools and non-residential public buildings, reconverting them to residential use with self-restoration micro-projects which compensate for the lack of official housing policies.

5. Squatting in Palermo: a narrative

In the capital of Sicily, the acts of illegal occupation of property with the intention of living there have increased considerably, in a social and economic framework exacerbated by the economic crisis which is currently affecting Italy. Based on ISTAT data (2014), in Sicily over 547,000 households live in relative poverty, and 180,000 in absolute poverty. It is the worst figure all over Italy and, on top of this, between 2009 and 2013, 46,000 jobs were lost in the city of Palermo (data from the Chamber of Commerce of Palermo and the Tagliacarne Institute, 2014). Households are facing an emergency situation; a long and complex phase caused by the effects of the economic crisis combined with the weaknesses that characterize the production system of Palermo. A sample survey recently carried out by ISTAT-Caritas (2014) highlighted that Palermo is the third city in Italy for number of 'homeless'⁴ people.

4 This category includes people living in extreme poverty, who over the months of November-December 2011, received food or night shelter services in 158 Italian municipalities where the survey was carried out.

The case of Palermo exemplifies the emergency situation confronting the large Sicilian urban areas. The latest update of the "Housing emergency ranking" of the Municipality of Palermo reports that a total of 1,513 ERP housing applications have been accepted, involving roughly 400 households more than in 2014. Unfortunately, this rapidly-escalating situation has been tackled with inertia, with only 222 houses having been assigned in ten years, against 9,865 applications received until the last "Notice of open competition 2003/2004 for the allocation of public housing units in the form of lease,". On the one hand the allocation of housing units is extremely slow, on the other hand the funds available to the public institutions for rent subsidies are clearly insufficient. Between 2009 and 2012 the funds were reduced from over € 6.5 million to under € 250,000 (specifically, from € 6,547,561.95 to € 247,409.48). In the best case scenario, these figures can cover an average contribution of a mere € 400.00 per year per applicant. From 2012 to December 21st 2013, 2,617 evictions were executed, of which 1,137 for rent arrears (Ministry of Interior 2014). The figures seem to confirm this new and dramatic housing emergency associated with increasing urban poverty. Although the problem is skyrocketing, the municipal administration showed indifference and inactivity on the one hand, while implementing a repressive policy and taking a 'zero tolerance' stance against squatters on the other. Nevertheless, squatting for living purposes, or at least the occupation acts supported by the main movements promoting the right to housing in Palermo – *Comitato Lotta per la casa 12 Luglio*⁵ and *PrendoCasa* – represent an extreme way of 'democratically' obtaining a denied right.

As recently stated by Nino Rocca, member of the *Comitato Lotta per la Casa 12 luglio*: "When legality is not legitimized by the ethics of human rights and civil rights stemming from it, the word *legality* is used as a cover for the senselessness of a society and an institution that have lost any contact with the dramatic situation faced by a community hit by poverty and despair [...]; we do assert the ethical legitimacy of the occupation of property – often deemed to decay and looting – by poor families who are denied not only the right to work, but also the right to housing. We want to carry out the 'revolution of common sense', a revolution that comes from the common sense of things; when you get to know the despair of people, you understand that illegality is indeed the illegality of the Institution that does not provides for and grants the denied right to housing"⁶.

As said before, in the city of Palermo roughly 350 households have occupied different public buildings and have adapted

5 The *Comitato di Lotta per la casa 12 Luglio* has been working in Palermo for about 14 years. Made up of the same "homeless" families, the movement promotes squatting of social private and public buildings in order to establish either a dialogue with the institutions, or a conflict with the aim of obtaining a denied right in a democratic way. Since 2002, 150 households have been assigned a house owing to this struggle. Actually the struggle for a house is part of the history of the city of Palermo and reflects the need of thousands of families, which the municipal administrations have not been capable of satisfying since 1968.

6 Plea made on January 25, 2014 by the *Comitato Lotta per la casa* and signed by Father Cosimo Scordato, Giovanni Impastato, Umberto Santino, Anna Puglisi, Augusto Cavadi, Salvatore Cusimano, Fulvio Vassallo Paleologo and by the municipal councillors Alberto Mangano, Antonella Monastra and Giusi Scafidi.

them to residential use, also through micro-projects of renovation which fill the lack of formal housing policies and intend to be a radical alternative to the current model. However, the Municipality of Palermo owns 4,827 social housing units as a whole, and 2,580 of them are squatted. In marginalized contexts such as the city of Palermo, squatting is contradictory and ambiguous; acts of claiming for a right are combined with illegal and illicit forms of occupation of public property. These buildings are taken away from homeseekers who are regularly registered in the homeseeker register and could be potentially selected; according to the figures estimated by Sunia and Sicuti, in Palermo there are about 1,000 squatted houses. A real illegal market controlled by the mafia took hold: they do control the market of squatting against payment. Such a contradiction may undermine the protest acts of those having the right to it, thus firing empty talk and the commonplace that every squatter is a Mafioso.

Among the buildings owned by the municipal administration, which are still occupied, is the former ONPI in the borough of Partanna. It is a rest home built on the land donated at the end of the '50s by Baron Filippo Santocanale to the O.P.C.E.R (Opera Pia Cardinale Ernesto Ruffini), and for many years it has been an excellence of the territory, in terms of services offered, dimensions and characteristics. Covering a surface of 10,000 m², the rest home consists of a complex of 25,000 m² split in many building having various functions: two symmetric three-storey buildings host the bedrooms for elderly people and common spaces; a chapel and clergy house connected to the two symmetric buildings (at present, allocated for free to the local Parish); a building used as a 200-seater theatre and a two-storey building symmetric to the theatre, where on the ground floor are located the decentralized offices of Partanna-Mondello borough council. Thanks to an intervention of self-renovation supported by the members of Aiace Association, the rest home was transformed into dwellings by the tenants⁷. In 2010 the complex was vacated, and the following year forty-six families (150 people in total) coming from different districts of the city transformed the spaces to adapt them to their residential needs, bearing the costs of it. In November 2012, the small church was partially renovated; it is the heart of the complex, as well as the point for meeting and social gathering of both squatters and residents in the district. Although being aware of the ambiguity of the said experience where 'legitimate occupiers' and 'illegitimate squatters' coexist, the story of the ONPI structure, in its inception, witnesses of the potential associated with self-renovation. Nonetheless, the coexistence of different types of occupiers generates a twofold conflict: externally, between residents and occupiers, and inside the complex itself between authorized legitimate occupiers and squatters. It is not only a mere formal conflict, but it also translates into the quality of the renovation interventions: the ones having the right to do so, usually perform unrefined interventions using

low quality materials, whereas squatters perform more comprehensive interventions with higher quality materials. The same dynamics can be found inside the complex, in a "geography of differences", where the contrast between the two symmetric buildings is reflected in the homogeneous settlement of the two different groups of occupiers, in the different quality of renovation and in the fortified look of the buildings occupied by squatters.

Despite the tenants renovated it, the ONPI is stereotypically seen as many places in the suburbs of the cities of Southern Italy (Magatti 2007), where occupied buildings are hardly penetrated or accessible, like islands to be protected from an 'alien' external world; as a result, communities tend to exclude and take these places out of urban life, because they are produced by a sub-culture of illegality (Bonafede and Lo Piccolo 2010).

To face such a situation, the inhabitants have implemented bottom-up adaptive processes, by organizing themselves and providing for the lack of public institutions, while at the same time, giving value to the common spaces, by taking care of the church, or refurbishing and cleaning the garden. The local associations, including Aiace, and Comitato Lotta per la casa 12 Luglio are dealing with these contradictory behaviours; they are committed to regenerating and integrating it with the other areas of the district, by urging institutions to tackle the high conflicts between occupiers and squatters and between occupiers as a whole and residents. However the municipal authorities have turned a blind eye on the problem, tolerating squatting (namely refraining from issuing an eviction order), while at the same time selling approximately 2,000 building units of public housing, instead of finding a shared path with the homeless towards solving the problem.

This is a good example and a test case to assess the metrics of the capabilities approach, while also reflecting upon the commoning process triggered on public property. If we consider the self-restoration practice of the building of the ex-ONPI (former National Body for Italian Pensioners) as an alternative housing policy, in terms of capabilities the following can be observed:

- Compared with the economic subsidies allocated under the form of rent allowance (often insufficient) or temporary accommodation in reception facilities (where sometimes families are forced to sleep all in one room), the adaptation of a public property (empty) for residential use can be re-interpreted as a self-driven process in response to a need. The agency dimension of individuals, implicit in the self-restoration practice, is an essential factor in Sen and Nussbaum's theory: the homeless who self-restores a space is an active subject, as opposed to the homeless who passively receives aid. This active role, indeed, contributes to overcoming the stigmatisation which is implicit in formal housing policies based on the axiom homeless = need (moral need) while, at the same time, giving the homeless voice capability in social choices and public decision-making (Sen 2009, p.11). Voice not only as a political protest (Hirschman 1970) but also as aspiring capability (Appadurai 2004), in other words contributing to develop a policy "by" the homeless rather than "for" the homeless.

7 In 1999 the bishop Salvatore Pappalardo sold the rest home to the Municipality of Palermo. Subsequently, the rest home was managed by many different bodies – with many co-operatives alternating rapidly – thus creating a condition of distress for the guests. On June 4th 2010, the Municipality of Palermo, led by the Cammarata administration, and after a number of attempts, issued an order to vacate and transfer the elderly people living in the rest home to other facilities, as the rest home was judged non-conforming.

- The conversion of a public building, as previously highlighted, triggered in the homeless the desire for integration, both social (with the residents in the neighbourhood) and physical (with the rest of the city), by taking care of the community spaces in the building. Using the categories of the capabilities approach, this experience suggests that the object of change observed are the functionings within which the homeless use the resources (public assets). In contrast with other forms of divestment of public property, self-restoration practices are an opportunity to use the public properties (defined as available material facilities) for individual, as well as collective, functionings to improve the quality of life of people. King (2003), agreeing with Waldron (1993), states that the right to housing implies that “we must have a place to be”. If the right to the city can be re-interpreted as “a right to belonging to a place, whether in spaces that we call cities or do not (Aalbers and Gibb 2014)”, then taking the concepts to the extreme, we could say that not having a house is tantamount to being deprived of the very right to urban life and urban spaces. Hence, public property is the element on which to rebuild urban welfare, which is progressively being eroded by securitisation policies.

6. Conclusions

As illustrated in the previous paragraphs, in Italy – although not only in Italy – formal housing policies are clearly inadequate; they are repressive or prone to privatise or abandon the public heritage. At the same time, self-organisation of public space is on the rise, and new ways and places of social production are spreading. The “inhabitants” of these spaces are sometimes very good at behaving in ways and forms that challenge the regulatory, control/repressive purposes of dominating groups (Paba 2003). By “taking possession” of space, and namely urban space, a community or group is established, with its own institutions, activities, places. As stated by Harvey (2013), it is indeed through these emerging practices that the current values can be renovated and we can take on the challenges imposed by urban neo-liberalism to societies, also in terms of democracy and social and spatial justice. If we look beyond the space of self-organisation processes, we can spot a request for sharing, for acknowledging one’s own status of inhabitant and citizen that goes well beyond the initial, although primary, claim for a physical space. Common goods do not only provide resources to their users; they also ensure the production of forms of utility and functionings, to use the concepts of Amartya Sen (2005), that greatly widen the number of beneficiaries (direct or indirect).

Now it is worth wondering how research and self-help practices implemented by squatters can contribute to modify, both theoretically and practically, the legal system they originate from. Sandercock (2000) has rightly pointed out that reviewing the legal system and the laws stemming from it is a long-term objective, which requires extensive and stable lobbying and participation actions, during a time period that can involve even more than one generation. However, in spite of being a long and complex process, it is undoubtedly paramount to come up with widespread and recognized

policies, regardless of changeable political positions. In this respect, the cumulative process of knowledge and experience – both in terms of self-help practices and drafting of local regulations on the use of public heritage – that we have been experiencing over the last few years in Southern Europe is not at all marginal or irrelevant. Even Ignatieff, despite his partial scepticism towards human rights, sees in them a valuable “common language” (Ignatieff 2000, p.349). In the long run, these practices can be the seed of a substantial change in the legal foundations of the right of ownership of public goods, and therefore could have a considerable impact on the housing policies through which the right to housing is substantially granted.

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