

Urban plan and land property regime: A few doubts and a few certainties fifty years after the Sullo Reform

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Inviolable rights

In the history of unified Italy, whenever someone has tried to undermine the *inviolable* rights of the landowners for the noble purpose of (urban) community wellbeing, he always failed.

From Mayor Nathan (with the Plan of Rome, 1909) to Minister Bucalossi (with the Law 10 of 1977, strongly impaired by the judgment of the Constitutional Court, no. 5 of 1980), to mention two of the most famous and emblematic cases.

In Italy, the private property, one of the rights guaranteed by the Constitution, still has a high content of “sacredness”, probably related to the fact that for decades and even today – despite repeated and heavy tax offensives – has proved to be one of the few sources of economic security.

No wonder if the proposal for a reform of urban planning law submitted in 1962 by the then Minister of Public Works, Fiorentino Sullo, reformist exponent of the Christian Democrats Party, has been substantially erased before being approved.

For the first time his proposal prefigured the general preventive expropriation as an instrument for the certain and egalitarian implementation of the municipal plans.

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The provision - perhaps a little ingenuous - of the preventive acquisition of all transformable and non-transformable areas by the municipalities and the subsequent sale only of the surface rights to those who would transform those areas, thus implementing the provisions and requirements of the urban plans, was a concrete response to the already widespread phenomena of speculation.

But with improbable possibilities of consensus.

Against the Sullo Reform

Why was the reform of the law on urban planning proposed by Fiorentino Sullo never approved?

There are several key issues addressed by his proposal that triggered the reaction of the real estate interests.

First of all, Sullo was trying to link tightly – by a national law – the economic Programming, and therefore the public spending, and the regional and urban planning. One thing that, we will see later, was as a matter of fact never realized in Italy, at least after Second World War.

Also, the Reform provided for mechanisms of transparency and consultation both in the phase of drafting and in the phase of approval of the various planning instruments. In this respect, the introduction of the Conference of Services (article 45) provided for a coordination with higher level plans and for the approval of the General Municipal Plan that still today is of particular interest. This measure anticipated the similar one introduced 28 years later by the Law n. 142 of 1990 and which is now an integral part of the approval procedures of the instruments of urban planning in almost all the regional laws on the government of territory.

But the real obstacle which blocked the Sullo proposal - up to its rejection – was the provision for a generalized expropriation of the areas for future urban expansion provided by the municipal plans.

According to the draft Reform, the municipalities which initiated the drafting of a General Municipal Urban Plan had the right to proceed with the expropriation of the unbuilt areas (or built with temporary buildings) both at an early stage and also following the approval of the plan as well as until the approval of the execution plans.

In fact, according to the article 23 of the proposed law, all unbuilt areas - even those belonging to other public entities – and those partially built not in conformity with urban planning instruments could be subject to expropriation.

The corresponding expropriation indemnity should have been calculated according to the following parameters.

For the areas that, prior to the approval of the municipal plan, had no building capacity (i.e. areas for agriculture), the indemnity was calculated on the basis of the agricultural value of the land.

Instead, for those areas that were already included in an urbanized zone, the indemnity was calculated on the basis of the sale value of the closest area most recently urbanized and increased by the “differential rent of position” with a specific cap.

With regard to the timing, although the validity of the execution plans of a municipal plan was (and still is today) indefinite, a strict timetable was provided for the expropriation procedures, for the development of the expropriated areas and for the sale by auction of the building rights.

In short, an organic and very brave proposal which, although in need of minor adjustments, really could have changed the course of things.

But this did not happen.

Indeed, the draft Reform was able to pull together the different interests - economic, political, social - to prevent its implementation. Successfully.

And Sullo's personal history on the one side as well as that of the Italian territory and cities on the other side, are the witnesses of that.

Urban (bad) practices and seasons of planning

But, are we sure that if, in April 1963, a new national law on planning were approved, as last action of the Third Legislature of the Republic, the situation would have really changed?

One can easily imagine that the financial aspects of the Sullo Reform (resources for expropriations and, above all, for the realization of the works for the urbanization) and the inevitable civil and administrative disputes related to the quantification of the indemnities would have paralyzed the same reform.

Probably, there was an overreliance - legitimate and strongly idealistic - on the capacities of the Public Administration. Whose unreliability - and corruption - , however, Sullo was perfectly aware of.

Corruption, made strong by what that Sullo himself called the "excessive power" of Public Administration, which was the better instrument to facilitate private interests in urban planning.

All political forces, from the Right to the Left, opposed to his reform, condemning Sullo himself to a humiliating retreat.

"A draft law that aims at facilitating the building of houses at a lower cost was falsely presented as an absurd attempt to abolish - nothing less - the right of property of the house" (Sullo, 1995).

And, as reminded by Vezio De Lucia among others, “in the program of the Aldo Moro second Government (1964), the urban reform was completely cancelled” (De Lucia, 2007), leaving the field open, instead, to what will be defined as the “long season of the urban planning counter-reform , that never ends” (De Lucia, 2007).

So, could we then say that the urban planning in Italy has been one of the major concerns of national governments after the end of the Second World War (and actually even before) and that it has always oriented urban and territorial developments?

Probably not.

The story at this regard appears to be a bit schizophrenic.

On one side, there are the institutional architecture of the new Republic, which defines the roles and competences of the various administrations of the State, and the legislation then in force, dictated by the Planning Law approved in 1942 and, despite repeated criticisms, still in force today (!!!).

But on the other side, the series of “extraordinary events” that have marked Italian history in the last 65 years and that have “turned away” the ordinary economics and territorial programs.

Even the post-war reconstruction, in fact, has strongly contributed to separate the ambitions of territorial government from its actual transformation. Principally this was due to the interventions subsidized by the U.S. government through the Marshall Plan as well as to those great infrastructural and industrial interventions put in place by various Italian governments since the mid-Fifties (first of all the construction of the Autostrada del Sole, when the ordinary road and rail networks were still in degraded conditions).

From the season of the (perhaps ephemeral) economic boom on the second half of that decade, the awareness of

assisting to a radical transformation of socio-economic and physical geography of Italy began to spread.

While the first general urban plans of major cities were approved only between the mid Fifties and the late Sixties.

However, in those years, after the end of the war, the growth of large cities, expanded well beyond the limits established by the previous urban plans because of strong speculative pressures, was almost always legitimated by the municipalities themselves.

When finally the “new” urban plans (designed on the basis of the Urban Planning Law of 1942) , which, for the first time, submitted the whole municipal territory to the planning regulations – and that could not avoid the strong estate pressures – were adopted, they were approved by public institutions different from those indicated by the Constitution of 1948, the Regions, which began to operate only in the Seventies.

And it's not only that. The law of 1942 provides that the Municipal General Plan is part of the Territorial Coordination Plan, an instrument that was supposed to address and “coordinate” the choices of local planning. But despite vain attempts in the Fifties and Sixties by the Ministries of Public Works, then competent, no Territorial Coordination Plan was ever approved before 1998 (fifty years after the Constitution and fifty-six after the enactment of the urban planning law).

The attempt made by the Sullo urban planning reform happened in a critical historical moment: the growth of the large (and also not so great) Italian cities, due to internal migration of the post-war period, often took place outside any form of programming and, sometimes, even of urban planning. But it was then clear that if nothing were done to radically intervene on issues related to the land use, urban planning, economic planning and real estate finance, it

could have become no longer possible to correct the dangerous course already undertaken.

And actually a few attempts were made.

It may be useful to recall how, in 1964, the Centre for Economic Studies and Plans, on behalf of the Ministry of Finance (Program Office) and the Committee of Ministers for the South, began a series of investigations, at regional and interregional level, with the aim of defining a first draft of national territory structure plan (published in "Urbanistica", no. 49 of 1967¹) that was supposed to accompany the first Economic Program of 1966-70.

The rules of the Constitution about the Regions were still not implemented but the question, of growing importance, of a breakdown of the State resources on a regional basis was already being addressed, where the regional dimension was considered - for the first time - as the place, at least in the intent, of the maximum integration between urban planning and economic dimension.

The declared objective was to build the national economic program on a consensual apparatus and mechanisms of understanding, forerunners of the tables of co-programming and co-planning, provided by the Sullo Reform and that only twenty-five years later would lead to the birth of the Unified Commission (State, Regions and Local Authorities).

The explicit intent, in line with what was proposed by Sullo, was to link the economic planning at the regional and urban planning and therefore the public expenditure to the territory: it is not possible to plan on the territory without first defining the economic objectives of the plan.

This first study prepared by the Centre for Economic Studies and Plans turned out as an attempt to set the problem of the land use, that albeit with effects limited and circumscribed, was a factor of considerable cultural and intellectual progress, because it created the basis for a more

detailed assessment of territorial aspects of national programming.

From this study derived the subsequent “Project 80: Preliminary Report to the National Economic Program 1971-1975”, second study promoted by the ISPE, Institute for Economic Planning of the Ministry of Finance, and entrusted to the Centre for Economic Studies and Plans in the years 1968-69, which was to constitute the basis of the national economic program for the period 1971-75.

The overall territorial model proposed by Project 80 was an “integrated system of settlement structures and free territories, distributed according to the location of the territorial resources available and supported by a grid uniform and open to the outside world” (Fabbri, 1983).

From here, considering the issue of the city-region, there was an attempt to articulate the Italian territory into “systems of cities” (or “metropolitan systems”), substantially coinciding with the current regions or most urbanized areas.

Although they did not have any coherent follow-up at the political level, both documents, of great cultural and academic interest, were the last organic proposals which tried to organically link the economic planning to the territorial interventions in the perspective of an implementation consistent with the spatial planning strategy, issue for which the national central government was competent.

That season, of the “territorial programming”, which started in the early Sixties and that was presented as “the attempt to redefine the territorial structure in the context of programming, was the last chance to make urban planning” (Fabbri, 1983).

The transfer of competences on urban planning to the Regions, which occurred few years later (between 1972 to 1977) hindered “any serious political and academic

intention of studying the problems on a national scale” (Fabbri, 1983); at the regional level, moreover, there were several but inhomogeneous attempts to operate in the same direction, but the lack of operational capacity of the newborn administrative structures and a not hidden unwillingness to “do urban planning” did not permit to make a coherent territorial plan - when it would have been still possible.

And the role of guidance and coordination, that the Constitution had assigned to the State, was gradually replaced by the role of manager of national “emergencies” (post-war reconstruction, Jubilees, major sporting events, post-earthquake reconstruction, home emergencies, etc ...), role which in the long run has encouraged and bankrolled the private interests of politicians, administrators and operators at various levels.

Thus, “in the short span of three decades, the link between structural development of the economy, transformation of the territory and budget policy was broken” (Vittorini, 1986), with the consequences on the territory that today everyone - and not just the professional observers - can see. But in the course of the Nineties there was a new attempt to “change things”: a new season starts, that we might call of the “institutional enlightenment,” in which the institutional structure, within which are located the Regions, undergoes an evolution, thanks to which the relationship between the central government and the Regions has been modified to the advantage of a greater participation of the latter to the decision-making processes of national interest affecting local dimensions.

By the Law of 8 June 1990 no. 142, “Reform of Local Autonomy”, the transition from the centralized state - as it resulted from the Municipal Act of 1934, enacted during the fascist regime - to the ultimate expression of decentralization, was realized, “where the local community,

as a social formation that the State does not create but merely acknowledges, is equipped with a statutory power and self-regulation power” (Sichera, 1990).

One of the main innovations of the Law no. 142 was the retrieval of the Province as an intermediate administration - so vainly invoked in the urban debate of the previous three decades² -, correcting the framework of urban planning competences and enriching it of the task, assigned to the Provinces, of drawing up the Territorial Coordination Plan. At the same time, always by the Law no. 142/90, and soon after, by the Law of August 7, 1990, no. 241, two innovative procedural instruments were introduced, the Program Agreement and the Services Conference – the latter perfectly coinciding, in their logic, to that proposed by Sullo in its proposal of new law on urban planning of 1962.

The Program Agreement aims at ensuring the coordination of actions and the definition and implementation of programs and works, simplifying and unifying the procedures and thereby avoiding the fragmentation of the main proceedings in numerous sub-proceedings (such as those relating to authorizations, etc.); its approval determines the instant amendment of the planning instruments involved, both at territorial and municipal level.

The Service Conference is instead called by the administration that intends to implement a program or a work, when it is appropriate to conduct a contextual examination of the different public interests involved in a particular administrative procedure, and allows the simultaneous adoption of measures such authorizations, approvals, etc..

Yet, despite this “castle” of competences, even today it is hard to establish a proper cooperation between the various level of the administration. Actually, in theory, with the

instruments available today to govern the territory, one could launch any type of procedure or plan or program. But the unresolved issue remains the substantial impossibility of expropriation as a mechanism for acquisition of areas for the implementation of public interventions in the interest of the community. Impossibility that is strictly connected to the unresolved question of the (land and building) property.

We can not conclude this brief excursus without mentioning at least two other themes.

First, the laws for the Building Amnesty (1985, 1994 and 2004).

The problem of “unauthorized building” was already relevant at the end of the Seventies; but the causes of those first illegal buildings, dated early Fifties, and also of the following were well known even before the Seventies³.

But going from the solution of the problem of “unauthorized building”, at least as different regions (such as Lazio) tried to do at the beginning of the Eighties – intervening on the spontaneous settlements raised on the fringes of big cities since the early Seventies, recognizing their genesis and trying to provide them with the works of urbanization which were missing - to that of “amnesty” or, better, of “sale of indulgences” marked a non-return time in the (already poor) Italian culture of planning.

And lastly, at the end of that season of the *institutional enlightenment* which saw the light in the course of the Nineties and that, among other things, had its climax with the establishment of the Unified Conference State - Regions - local administrations as the highest moment of coordination on the policy choices concerning territorial issues at different levels, the reform of the title V of the Constitution was approved, a clear sign of a new centralism of the State that, after thirty years of delay in implementing the institutional framework required by the Constitution of

1948, inflicts a low blow to the already complicated and cumbersome functioning of the Regions, thereby jeopardizing any form of coordination between different levels of the State .

Compromising, once and for all, the capacity of planning.

A provocation?

Can we then speak of chronic weakness of the administrations or the administrators?

Or are we facing a collective and cross-sector costume, which, through time and people, in fact ignores the fundamental role of the community, undermining the sense of nation and erasing its already tenuous social conscience⁴? With a design probably very shiny, the machine of the various public administrations has been slowly but surely transformed into an inefficient pachyderm that has encouraged, for decades, this pernicious “Italian way” to the welfare state.

In terms of government of the territory, the inefficient system of the authorizations and the lack of clarity, far beyond what Sullo imagined in 1964, has produced an efficient “parallel” apparatus, much more efficient than the cumbersome administrative machinery that deals with - or better would be responsible - of the urbanism issues.

“The corruption, speaking frankly, is first of all in the current planning system that entrusts, because of an error , conscious or not, the authority to enrich or impoverish the individual citizen through a graphic sign of a designer” (Sullo, 1962).

Several times, both the Italian cinema and investigative journalism have recounted the repeated looting of the Italian cities and territory, speculation and hidden networks that have made it possible, from “Hands Over the City” by

Francesco Rosi of the 1963 to the investigation of the RAI television magazine “Report” in 2010.

Yet, this is normally considered as a problem, rather, as “the” problem that prevents, among other things, that “harmonious growth of the city as we all want” (Sullo, 1962).

Perhaps because even today a significant (hidden) proportion of the national GDP is based on this system?

It is not a coincidence that recently Cecile Malmstrom, the European Commissioner for Home Affairs, presenting the first report on corruption in the EU, has denounced the alarming data on corruption in Italy (European Commission, 2014). Fifty years after the proposal of the Sullo Reform...

How could one deal with the “cancer” of the parasitic interests of land rent?

If we try to sum up, it could be said, without the risk of falling into error, that the urban planning was the more effective “tool” to ensure the real estate rent in Italy until today .

The large real estate developers, as the speculators of the old days are named today, have anticipated and often driven planning choices by putting in place an action among the simplest possible: the anticipated acquisition of all of the great extensions of land - clearly ex farm - around the city, waiting for the transformation of their urban destination. In fact, they realized, in reverse, just what Sullo had in mind to prevent their action: the generalized “expropriation”.

And thus guaranteeing a capital gain in revenues that, although realized after long time, would certainly have been beneficial. Capital gains that no one has been able to, also partially, redistribute.

This type of “behaviour” in recent years, in the time of the crisis, changed again but not in substance. The owners of

this “reserve of land” have changed, but not the strategy, that is waiting for the change of the destination.

So some banks, which have replaced many of the traditional operators, by taking over their debt or directly getting involved in real estate investments, have become the new real estate developers⁵.

This is one of the causes for the lack of decline in the value of real estate in the big Italian cities in recent years - never more than 8%, despite the collapse in sales of buildings (- 25%) and the substantial block of new buildings. The income of the potentially buildable areas, close to those already built, can not fall because that value today is dictated by the value of loans granted or of financial investments. Or rather, it can not fall below the amount of investments in the sector made by financial institutions.

And then the provocation - because it can be nothing more than a provocation - would be to eliminate the legal effectiveness of the Municipal Urban Plan, the only planning instrument really used until now, one to which one can refer, in one way or the other, the origins of all the ills of Italian cities and territories.

Delete the legal effectiveness of the Plan would mean that, if the Plan were prepared, it would simply be a policy document and a layout-plan for public works - aimed at improving the functioning of the city or territory, at various scales - and anyone could make whatever building transformation deemed profitable and anywhere in the country.

The transformation of the territory - for building purposes - would in fact be liberalized.

Of course, what would disappear suddenly would be the “speculation.” Or at least, it is the speculation which has been fostered by municipal urban plans which would disappear. Those areas, still undeveloped, which are close to large cities and are or will be subject to the prior

acquisition by real estate developers just waiting for a plan to obtain significant capital gains would immediately lose value. And, probably, the differences in value between agricultural areas and urban areas would be outweighed. It would therefore be (finally) the “market” to give a value to the land, not speculation.

The construction of infrastructure and urbanization, essential to the functioning of the new built-up areas, would be left to individual projects. And any connections to networks, both public and private, should therefore to be “bought”.

And the protected areas? Or rather, those areas to be protected?

The protection of the environment and the landscape would remain ensured by the rules relating to non-building areas “*ope legis*” and by the plans for hydrogeological setting, which now exclude the possibility to build - if not to realize any physical transformation - for many areas of landscaping or archaeological relevance as well as for the seismic or landslide risk areas. But did such “sectorial” planning really “protect” the “protected areas”?

If we try instead to think about this not as a provocation but as a concrete proposal, then we should first work on the taxation of real estate transformations - and, in general, of real estate property. And on a plan-program of public works, at different levels (national, regional, local) that would be the only element of direct intervention of the State on the territory.

Moral (if there is a moral ...)

Maybe we, urban planners, should definitely shift our focus from the instruments or the policies to the “cultures” - from planning to civic consciousness - to be able to think

in a constructive way about the city and the territory - but also about citizenship and nation.

From the beginning, the modern urban planning has always “run after” the city, very rarely has directed it.

And in Italy - but not only - truly planning have been rarely made. The fact that only the city of Ravenna, from 1965 to the present, has planned its territory, making the “planning process” a tangible reality, certainly can not leave us indifferent.

Why then only in Ravenna?

Because it is clear that the planning is not part of the popular culture. And with it, in fact, the respect of the “public thing” and of the community. That is, of “others”.

And it is only on this that we can work to change the state of things.

¹ “That first study was an attempt to approach the problem of regional planning at national scale, with limited purposes: it was a factor of considerable cultural and intellectual progress, because it created the basis for a more thorough examination of the aspects of national planning. The result has been an increased awareness of the need to base the policy of the territory on an analytical assessment of vocations, resources, predispositions, needs, purpose, distributed in the territory as an essential condition for the location of the settlements, social investment, productive investment, infrastructure” (Cabianca et al, 1967)

² In its proposal to reform the law on urban planning, Sullo introduced local plans called “*piani comprensoriali*”, identified by the regional plan, which would had to be managed by “special institutions, with consortium character, ... with the participation of provincial administrations, municipalities and concerned public authorities” (Article 7, “*Comprensoriali*” plans, Draft of new urban planning Law) (Sullo, 1962).

³ In this concern see Cerasoli (2008) and Clementi and Perego (1983).

⁴ In this concern, it is interesting to read the volume by the historian Emilio Gentile (2011), investigating on the well-being of the Italian nation after 150 years.

⁵ Banking, insurance and financial institutions (such as Unicredit, Intesa San Paolo, Banca Popolare di Milano, UNIPOL Assicurazioni, Fondiaria Sai, Bnp Paribas, Camfin, Assicurazioni Generali, Mediobanca, Banco Popolare, MPS, UBI, Generali, RAS, Allianz) are partners of the major real estate companies currently operating in Italy (De Cristofaro, 2014).

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