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The legal field as a battleground for social struggle: Reclaiming law from the margins

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Abstract

Scepticism towards law's potential of fostering social change has been widespread in critical theory and contributed to strengthen social movements' mistrust vis-à-vis the use of legal tools to advance their claims. Such "anti-law" posture is based on the assumption that law would formalise existing relations of domination and posits the need for a political praxis liberated from "legalistic drifts". This article discusses how legal tactics in favour of social change have been employed by social movements exerting a counter-hegemonic use of law in the post-2008 economic crisis conjuncture. The example of the struggle for the commons will be analysed as paradigmatic of how the interests of the marginalised can be protected by resorting to existing property arrangements, and how it is possible to reclaim law from the margins.

Key words

Law; Critical Legal Studies; social movements; property; commons

Resumen

El escepticismo acerca del potencial que tiene la ley para fomentar el cambio social es general en la teoría crítica y contribuyó a fortalecer la desconfianza de los movimientos sociales respecto al uso de instrumentos legales para reivindicar sus reclamaciones. Esta postura "antilegal" se basa en la idea de que el derecho formalizaría las relaciones de dominación ya existentes; y afirma la necesidad de una práctica política libre de cualquier "deriva legalista". Este artículo analiza cómo las tácticas legales a favor del cambio social han sido empleadas por movimientos que han ejercido un uso contrahegemónico del derecho en la coyuntura posterior a la crisis económica de 2008. El ejemplo de la lucha italiana por los bienes comunes se analizará como paradigmático

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de cómo se pueden proteger los intereses de los marginalizados recurriendo a las formas de propiedad existentes, y cómo es posible reivindicar el derecho desde los márgenes.

Palabras clave

Derecho; Critical Legal Studies; movimientos sociales; propiedad; bienes comunes

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1. Introduction

Radical positions within social movements tend to consider law mainly as an instrument of capitalist domination, whose use by activists can at best achieve reform, but ultimately cannot alter the existing power relations and framework of socio-economic inequalities. In this perspective, law is seen as indissolubly intertwined to power and reproducing relations of domination through legal and institutional arrangements that create and recreate hierarchies and imbalances. The civil rights era represents a landmark historical phase in which scepticism towards the emancipatory potential of law is heavily questioned in Western societies, and activists broadly resort to courts with the conviction that social change is achievable through legal reform. As a result, a new strategic posture vis-à-vis the law has gradually emerged among social movements, one in which grassroots political practice and legal advocacy blend into a hybrid "law and organizing" approach (Cummings and Eagly 2000). In broader terms, we can say that activists have realised the extent to which law works first of all as a technique, a "machine of abstraction" that produces and reproduces reality (Spanò 2015, p. 89).

In the post-2008 economic crisis conjuncture, the process of privatisation of resources and services pursued by the neoliberal political agenda at the global level has been opposed by mobilisations broadly resorting to legal tools as means to achieve social justice and wealth redistribution (Mattei 2011). One of the most blatant examples of what can be defined as a counter-hegemonic exploitation of law in this phase is the case of the Italian movement for the commons. In the aftermath of the 2008 crisis, this struggle claimed the right to collectively use and access all spaces and things that, either publicly or privately owned, ensure the exercise of fundamental rights also in the interest of future generations. The movement for *beni comuni* has used legal instruments in multiple ways, which have included resorting to courts, creating institutional arrangements realising a collective governance of spaces and resources, and exploiting EU legal tools of public participation, such as the European Citizens' Initiative (Bailey and Mattei 2013). The ultimate result has been a contestation "on the field" carried out by activists of the individualistic, absolute vision of ownership predominating in the Western legal tradition, as well as the realisation of the social function of property enshrined in the Italian Constitution (Marella 2017b).[1]

Despite the increasing engagement in the legal field to pursue objectives of social justice, widespread scepticism persists both in the theoretical debate and among movements about the potential of law to realise systemic change and to serve other interests than those of the dominant classes. This article aims at highlighting some of the advantages for activists of a counter-hegemonic use of the law and to illustrate how the practices of the Italian struggle for the commons paved the way for an expansion and re-signification of existing legal arrangements on property.

The first part of the paper will unveil some of the theoretical roots of the scepticism towards uses of law to achieve social change. It will investigate how the possibility of a radical use of legal tools is dismissed by certain strains of contemporary critical theory,

[1] "Property is public or private. Economic assets may belong to the State, to public bodies or to private persons. Private property is recognised and guaranteed by the law, which prescribes the way it is acquired, enjoyed and its limitations so as to ensure its social function and make it accessible to all" (Article 42 of the Italian Constitution, first paragraph).

and which assumptions concerning the relation between law and politics support this mistrust. As I shall explain, the "suspicious mind" of some critical thinkers towards the law often stems from specific interpretations of Karl Marx and Michel Foucault's thinking, which blur any distinction between the notion of law and that of power, and significantly shrink the conception of law itself to its repressive function.

I will then turn to a set of remedies to such anti-legal stance that can be found both in the theoretical and the technical-legal realm. As for the first aspect, Critical Legal Studies will be taken into consideration as a scholarly tradition related to critical theory adopting a vision of law marked by intrinsic indeterminacy and openness to diverse political projects, which makes it malleable to becoming a battleground for social conflict (Xifaras 2018). As for the second aspect, I will discuss an array of legal tactics employed by social movements to expand predominant conceptions of property and protect the interests of the most disadvantaged. Such legal "tricks" provide an example of how advantageous it is for activists to resort to law as a set of tools to resist domination and exploitation, and how the fact that "there is no outside" to law is actually empowering – rather than hampering – for social movements. In the conclusion, reimagining law from the margins will be advocated as an urgent theoretical and political project in times of staggering socio-economic inequalities.

This article stems from a doctoral research conducted between 2015 and 2019 in which I investigated the commons as a political and legal concept through the observation of the Italian movement for *beni comuni* in Southern Italian cities, focusing on the strategic use of legal tools made by activists in urban contexts affected by the consequences of economic recession.

2. The "anti-law" stance in critical theory

Within contemporary critical theory, different streams of thought have been fostering scepticism toward the potential of law of tackling socio-economic structures perpetuating inequality. This attitude can be resumed as *anti-juridism*: according to this view, law would bear a specific social ontology that formalises existing relations of domination, hence the urgency to conceive a political praxis fully liberated from legal relations (Xifaras 2018).

In the past decades, some critical theorists have been arguing against what they deem as a "legalistic drift" of politics. A fundamental reason why social struggles only partly succeed, it is argued, is that the language of law is progressively substituting – and emptying – the one of politics. The examples are manifold: affirmative action would be watering down the claims of anti-racist movements, formal equal rights discourse would be overshadowing LGBTQ communities' quest for substantial equality, and any struggle choosing to move into the legal field would obtain nothing but to weaken the original radicality of its claims. The ultimate risk, critics warn, is the political neutralisation of social movements, which by using law significantly undermine the transformative force of their proposals. Law, then, is accused of working as a *blinder*: by mystifying the actual power relations operating in society under the guise of its universalistic language, it would contribute to the consolidation of existing power structures (Xifaras 2018).

A clear outline of this position is offered by an important work such as *Left Legalism, Left Critique* edited in 2002 by Wendy Brown and Janet Halley. In criticising what is defined

as the "legalistic turn" of leftist political projects, authors warn that the activists' strategic engagement with law can easily strengthen those same institutions that produce inequality patterns fought by social struggles. The suggestion is to aim at a "non-legalistic political practice", one that would preserve the characters of openness, fluidity and plurality inherent to transformative political action (Brown and Halley 2002). Such "purity" of politics would then be the only available horizon for social struggles refusing to operate within the inherently individualistic "rights discourse" typical of neoliberalism (Marella 2017a, p. 392).

From this argument, it is possible to explore three theoretical limits concerning the notion of law and that of the relation between law and politics. Firstly, such an approach seems to reduce law to the sum of existing legislation – and to State legislation more specifically – rather than conceiving law as a "legal field" in which actors compete for controlling available resources (Bourdieu 1987, p. 808). Secondly, this perspective seems to embrace a quite narrow conception of law as limited to its repressive function, that is, to criminal law. Indeed, the adoption of such a viewpoint from the side of social movements is understandable and often based on the lived experience of repression against social protest. In the Italian context, for instance, penal law has effectively been broadly deployed against social movements who fought for the commons and against the privatisation of natural resources, as is the case of the harsh repression against the "No TAV" movement in Piedmont's Susa Valley (Chiaramonte 2019). Thirdly, and perhaps most importantly, this kind of view presupposes a sharp separation between the realm of law and the one of politics, overlooking the circular relation that the two entertain: legal reform can take place under the pressure of political action, just as political praxis can be stimulated by advancements in legislation. In other words, this analysis fails to notice the dialectic interchange of languages and practices that law and politics entertain.

Surprisingly, anti-juridism in critical theory persists even in the face of the recent social struggle for the commons, which has made extensive use of legal tools for counterhegemonic purposes and will be analysed in the next sections. In *Assembly* (2017), Michael Hardt and Antonio Negri interrogate the political effectiveness of leaderless social movements operating in the late capitalist conjuncture. In this work, the commons are conceptualised as a sort of "negative" of property – where there are commons there is no property, and vice versa. More specifically, it is suggested that the commons bear an intrinsically non-proprietary nature, as they consist in "a fundamentally different means of organising the use and management of wealth" (Hardt and Negri 2017, p. 97). The authors argue that the risk undertaken by the struggle for the commons is that of ultimately just reclaiming more social rights, and thus contributing to the strengthening of the State and of the public law domain. In other words, activists' requests for an egalitarian property reform – even the most radical ones – would only end up reaffirming State sovereignty. The ultimate goal of today's social struggles, it is claimed, should be that of inaugurating a new non-State political horizon, in which State sovereignty is finally dismantled: "legal projects to reform property and limit its power have certainly had beneficial effects but now we need to finally take the leap beyond" (Hardt and Negri 2017, p. 120).

This "leap beyond" is an elusive phrase to describe, again, the move – theoretical and political at the same time – through which social struggles should finally manage to do without law in their path towards the achievement of social justice.

3. A genealogy of anti-law scepticism

The suspicious mind of critical theory towards law that was just sketched through a few examples has some illustrious ancestors. Indeed, it is useful to trace an intellectual genealogy of this stance, though an inevitably partial one: starting to unveil the theoretical roots of anti-juridism can help us reframe the relation of law and politics and disclose possibilities for a radical use of law beyond its solely repressive function.[2]

Predictably, the first progenitor of the anti-law posture of critical theory is Karl Marx, or more precisely, the broader discussion concerning the role of law throughout his writings. A proper Marxist theory of law does not exist, as the Marxist analysis focuses on the economic infrastructure and the corresponding power relations in society (Guastini 1980, p. 14). Nevertheless, Marx does take into account legal systems in light of the important role they exert in social formations, such as capitalism (Collins 1984, p. 9). In *A Contribution to the Critique of Political Economy*, the well-known critique of Hegel's legal philosophy, Marx argues that legal relations are based on material relations, that is, relations of production. The sum of the latter constitutes the economic structure of society, namely the real basis upon which the political and legal superstructures are built (Marx 1859). Hence, law and politics emerge as two separate fields both put on the side of the superstructure. Law, in particular, guarantees existing power relations as it legitimises them through the penal tool; the actual (economic) relations of power are stabilised through criminal law. Thus, the role of law in conventional Marxist analyses is quite negligible, since distribution is determined by the relations of production between a capitalist class owning the means of production and a proletariat that does not own them. The fact that such relations assume a legal form is nothing but a reflection of the underlying material conditions (Kennedy 1991, p. 90).

While it is undeniable that a certain Marxist tradition approached law in quite a limited way, several Marxist intellectuals have developed approaches to ideology that update classical Marxist conceptions (Althusser 1971, Lukács 1978, Žižek 1989). A particularly notable exception to the lack of a Marxist theory of law is Pashukanis's extensive critique of law and his thesis on the legal form as intrinsic to the ideological apparatus of capitalism. According to this view, the legal principle of equality among citizens at the heart of representative democracy is nothing but a mask of "the despotism of the factory" (Pashukanis 1924/2002, p. 39).[3]

A second important root of critical theory's scepticism vis-à-vis the law can be found in the poststructuralist scholarship drawing on part of Michel Foucault's thinking. Two texts of the French philosopher are the main references for such a theoretical elaboration. Firstly, in *The Will to Knowledge* Foucault famously argues that in order to build an

[2] I owe to Lorenzo Coccoli, and to his intervention at the Summer School at the Department of Law at University of Perugia in July 2019, a first attempt to sketch a genealogy of anti-law positions in critical theory.

[3] For a reconstruction of Pashukanis's theory of the legal subject and its usefulness for a contemporary critique of the role of law in reproducing inequalities, see Parfitt 2019.

analytics of power, it is necessary to overcome "the juridico-discursive representation of power", since "we have been engaged for centuries in a type of society in which the juridical is increasingly incapable of coding power, of serving it as its system of representation" (Foucault 1998, p. 89). If power cannot be reduced to its juridico-discursive representation, Foucault suggests, that is because it would then just be a prohibitive power – and not a generative one – in which the formulation of the ban is central. Secondly, in *Discipline and Punish* the notion of discipline is proposed as a sort of "counter-model" to law, disciplinary regimes being a separate, more sophisticated realm than the one previously ruled by law; Foucault here seems to equate law with the sovereign's legislation – and with the ban more specifically (Foucault 1995, p. 222).

However, it should be noted that the Foucauldian reflection on law is much broader than the aforementioned speculation on the prohibitive and disciplinary sides of power. In fact, in other parts of Foucault's work law and power are neatly disentangled, and the idea of the latter as naturally inscribed within legal rules is dismissed. This position is clear in one of the philosopher's outlines of the genealogical method, in which he argues that humanity is far from progressing to a point in which "the rule of law finally replaces warfare". Rather, mankind would be proceeding at a nonlinear pace, through a series of interpretations of the legal rule that "in itself has no essential meaning, in order to impose a direction, to bend it to a news will, to force its participation in a different game" (Foucault 1984, p. 86). This nuanced conception of the relation between law and power is also reflected in other parts of his work, such as the reflection of governmentality, famously defined as "the ensemble formed by institutions, procedures, analyses and reflections, calculations, and tactics that allow the exercise of this very specific, albeit very complex, power that has the population as its target, political economy as its major form of knowledge, and apparatuses of security as its essential technical instrument" (Foucault 2009, p. 144).

To sum up, some situated readings of Marxian and Foucauldian thinking converge in the tendency of conflating law and power, and law with its criminal and repressive function. Relying on this kind of interpretation, it is easy to infer that oppression and domination are embedded in the legal institutions ruling society, and that true emancipation can only be found in a horizon lying beyond the legal field (Xifaras 2018).

4. The perspective of Critical Legal Studies: Law as a battleground, or "there is no outside" to the legal field

The Critical Legal Studies (CLS) are an intellectual movement active in the United States between the 1970s and the 1990s and animated by a network of scholars from Harvard, Georgetown and other law schools. CLS mainly drew on the theoretical tradition of American legal realism of the 1930s, which developed in opposition to the approach of legal formalism predominant at the time. According to formalists, law is an intrinsically consistent set of norms, a complete system that does not admit gaps or indeterminate points. Realists challenge this vision arguing that in order to understand law it is necessary to analyse what judges *actually do* – that is to say, how legislation is enacted in practice, how rules are applied in cases, how courts make their decisions (Shiner 1995).[4]

[4] For some landmark contributions within the tradition of American legal realism, see at least Hohfeld 1913 and Llewellyn 1940.

Furthermore, each legal rule has its own exceptions and indeterminacies; for this reason, its application to concrete circumstances cannot be univocally determined a priori (Blank and Rosen-Zvi 2010).

Some decades later, these intuitions of American legal realism will provide the theoretical foundations of CLS: what will be central, in particular, is the idea of the indeterminacy of law that makes it malleable to different political projects. Even if law has been too often protecting the interests of the powerful at the expense of the weak, CLS claim, it is open to being used for different objectives of social justice and resource distribution: "law is at least partially responsible for the outcome of every distributive conflict between classes" (Kennedy 1991, p. 88). This is the reason why social movements should not turn away from it: "because it distributes, law has value for people in struggle, and is often also at stake in conflict" (Kennedy 2016, p. 177). Such an approach also implies overthrowing the institutional ways in which legal education is conventionally organised: if so far legal experts have mainly been trained to naturalise oppression and hierarchy as legitimate, it is possible to subvert this trend by reconnecting law to the pursuit of social justice. The CLS will then split into two theoretical strains, namely the feminist Crits and the Critical Race Theory, which will deepen the critique of law with an emphasis on the gender and race dimensions.

By conceiving law as a battleground in which social conflict can be articulated, CLS expand the conceptualisation of the legal field produced by certain strains of critical theory. In this view, all basic legal conceptions – for instance, property – are no longer considered as bearing an immutable or fixed essence, and what emerges is instead their *relational* nature. Their infusion with a variety of non-legal contents – moral, political, social aspects – makes it impossible to consider them as "neutral". Such inescapably non-legal character of legal conceptions is not a residual component: on the contrary, there is a persisting socio-political content of law, which allows to exploit it "as the scene of conflict, mediated and administered through the law's allocation of wealth and power" (Schlag 2015, p. 233).

CLS are thus useful to dismiss visions of law conceived as a general form shaping society from above and to rather see it as a system structuring social relations on a daily basis. From a CLS perspective, critical theory and social struggles mistrusting law tend to conflate the *legal forms* – which represent social reality on an abstract level and remain indifferent to social contents – with *legal practices* – consisting in the contingent historical and political processes through which legal forms concretely produce effects on social reality. CLS remind us that the legal field "has to do with ways and standards which will prevail in the pinch of challenge, with rights and the acquisition of rights which have teeth, with liberties and powers whose exercise can be made to stand up under attack" (Llewellyn 1940, p. 1364). If law is malleable to different political projects enacting diverse modes of resource and wealth distribution in society, then it is also a crucial field of struggle for all disadvantaged subjects that can exploit legal arrangements to protect their interests. Patterns of socio-economic inequality – such as poverty and unfair access to property – are not immutable facts; they are produced and perpetuated by specific institutional and legal arrangements (Kennedy 2016, p. 199).

5. Rethinking property as a radical political project: The Italian struggle for the commons

Adopting the CLS perspective on law as indeterminate and legal conceptions as relational provides us the opportunity to rethink property as an emancipatory political project. This means to conceive property not as a monolithic substance, but as a sum of relations in which different subjects other than the owner are involved. This is the so-called *bundle of rights* approach that allows allocating different "sticks" of the same property to a variety of actors bearing diverse interests on the same thing.[5] In this way, for instance, the property title can be distinguished from the use of a thing. Ultimately, unbundling property means to undermine the idea that there is an immutable "essence" of property – one that is reflected in the absolute, individualistic, exclusive notion of property predominating in modern liberal constitutionalism (Bailey and Mattei 2013) – and to focus on the diverse interests competing over resources and spaces. A relational approach to property also means to delve into the everyday practices through which this competition takes place (Blomley 2016).

Such relational, non-essentialist approach to property opens space for the conceptualisation of the commons as a legal concept. Already in the 1990s, Elinor Ostrom dismissed Garrett Hardin's theory of the "tragedy of the commons", by arguing that legal systems enforcing flexible rules of access can enforce models of collective governance of "common pool resources" (Ostrom 1990). This theoretical take on the commons was then adopted by international agencies engaging in the preservation of natural heritage and was heavily criticised by Marxist critical thought, especially in the aftermath of the 2008 economic crisis. Criticism points to the need of taking into consideration the broader context of socioeconomic imbalances in which the collective use of common resources and spaces becomes essential for survival (Dardot and Laval 2014); it also highlights the commons as both a material and immaterial realm, which cannot be reduced to Ostrom's reifying approach (Hardt and Negri 2009). The commons are not static but relational, perpetually made and remade by communities entertaining a circular and mutually constitutive relation with them (Chatterton 2010, Federici 2016).

The Italian movement for the commons that rose after the 2008 economic crisis can be read as an enactment of this critical take on ownership. The relational approach to property is the backbone of the legal definition of the commons provided by the Rodotà Commission, a group of legal experts appointed by the Italian Ministry of Justice with the task of reforming the civil code in 2007. The reformers' aim was to update the existing legal framework to cope with an economic context in which privatisation and commodification of the State patrimony had become widely implemented since the late 1980s. In the reform draft, *beni comuni* are defined as

> the things expressing utilities functional to the exercise of fundamental rights and the free development of the individual. The commons must be protected and safeguarded by the legal system, also to the benefit of future generations. The holders of the commons can be public legal persons or private ones. In any case their collective fruition must be guaranteed, within the limits and according to the modalities fixed by the law. (...) The commons are, among others: rivers, streams and their water springs; lakes and other waters; air; parks as defined by law, forests and woodlands; high altitude

[5] For an outline of the "bundle of rights" approach introduced by American legal realism see Hohfeld 1913.

> mountain areas, glaciers and perennial snows; coastline declared environmental reserve; wildlife and protected flora; archaeological, cultural, environmental goods and other protected landscaping areas. (...) Everyone has access to the jurisdictional protection of the rights connected to the safeguard and fruition of the commons. (...) The State is legitimised in an exclusive way to the exercise of the action of damage caused to the commons (Rodotà Commission Bill 2007)

The first crucial aspect that emerges from this legal definition of the commons is precisely the operation of unbundling property, that is, defining a clear distinction between the property title – which can be either public or private, as established by Article 42 of the Italian Constitution – and its function, which is related to the use made by those who access the property. A second important element of this legal conceptualisation of *beni comuni* is the reference to the fulfilment of fundamental rights. The commons can be reclaimed by any individual appealing to the national and supranational legal frameworks protecting the right to a dignifying life, education, and health among others. Thirdly, this notion is open-ended and non-essentialist, as it does not identify any "core" substance of the commons and therefore can be strategically used by social struggles to reclaim spaces and resources through their practice. In sum, this definition of *beni comuni* does not consider the commons as a non-legal horizon to be attained beyond property; rather, it is built on a critique of the latter which enables to recognise a right to use and access that can be disentangled from the property title. In this view, the commons as a legal concept are available here and now – within the existing legal framework – and can be immediately reclaimed by movements struggling for social justice (Marella 2017b).

In the years following the elaboration of this legal definition – which was eventually not included in the national legislation, but heavily influenced both the doctrine and the jurisprudence[6] –, the Italian struggle for the commons has been backed by legal experts supporting activists in bringing forward a critique of property "on the field". Indeed, after the 2008 crisis, the occupations of spaces otherwise doomed to privatisation and neglect have been followed by the experimentation of modes of self-government realised also through legal tactics. The most paradigmatic example of how this struggle successfully resorted to the legal field to strengthen its political action is the one of the Valle theatre, a public space occupied in 2011 by a community of precarious cultural workers with the aim of subtracting it from future privatisation. To protect themselves against the accusations of illegal occupation and threats of police eviction, the occupants decided to unite into a private law foundation to benefit from the protection offered by the acquisition of a legal status, which became a source of legitimacy for their collective use of the space (Bailey and Mattei 2013). This legal stratagem allowed the struggle for the commons to gain political strength in the public debate in a twofold way: on the one hand, bearing a legal status immediately provided credibility and visibility to activists, producing an instant "legitimacy effect" against stigmatising visions of them as mere law-breakers; on the other hand, shifting the struggle onto the legal field added a further

[6] In a landmark judgement on the legal status of the Venetian Lagoon, the Italian Court of Cassation argued that some resources are a commons independently from their (public or private) property title and due to the fact that they are functional to the interests of a community, and in particular to the enjoyment of the fundamental right to the environment recognised by Article 9 of the Italian Constitution (Italian Court of Cassation 2011).

dimension of legitimacy that is intrinsic to law "as a mode of engagement, a set of procedures for dispute, a vocabulary of arguments for advocacy and persuasion" (Kennedy 2016, p. 173).

A remarkable result of the alliance between legal experts and activists at the core of the Italian movement for the commons has been the expansion of the realm that Bourdieu called the "juridical field". This consists in an area of social practices built on specific protocols, behaviours, values, in which competition for the monopoly on the right to determine what law is constantly takes place. The internal organisation of the juridical field also implies drawing a sharp line between those subjects who can participate in law-making and legal practice and those who are excluded from them. So even though the juridical field is stable, a perpetual struggle exists between those who are inside (the "professionals") and those who are outside (the "laypeople") of it to determine which values and practices are hegemonic within it (Bourdieu 1987). We could say that one of the merits of the Italian struggle for the commons has been its ability to bring the struggle *within* the Bourdieusian legal field and to question the underlying power relations instead of letting them be reproduced by legal arrangements.

6. Legal arrangements to reconceive property as an emancipatory project

This section moves to the field of legal techniques and presents an array of legal mechanisms that can be used by social struggles to protect the property interests of the most disadvantaged, realising a rethinking of property as an emancipatory political project. In this part it, will also be demonstrated how the commons can be achieved in the existing legal framework, and more generally how movements can benefit from resorting to legal "tricks" to pursue goals of social justice and wealth redistribution.

The bundle of rights approach to property is the optimal starting point to identify a few legal mechanisms adequate to these goals, for two reasons: firstly, because it allows to recognise the existence of overlapping property interests on the same spaces and things, which entertain a dialectic, at times conflictual relation with each other; secondly, this approach provides an opportunity to take into account property claims otherwise dismissed as marginal, and to instead consider them as legitimate even when they "do not look like property to us, and we have tended to ignore them" (Rose 1998, p. 142). Indeed, social mobilisations reclaiming the commons can be read as conflicts between clashing property arrangements: public-private property regimes on the one hand, brought forward by often enmeshed State and market actors, and common property regimes on the other hand, expressing the collective interest of communities (Cuff 1998, p. 135). In this view, practices of occupation and unauthorised use of spaces – deemed as informal or even illegal by the State – can be interpreted as expressing legitimate property rights (Singer 1988).

This is particularly true in a conjuncture like the current one, in which social movements have been struggling against the consequences of privatisation policies conducted under the neoliberal political agenda worldwide, and with particular intensity in post-austerity Southern Europe (Della Porta 2015, Arampatzi 2017). In the current late-capitalist stage, value extraction is prominently targeting everyday practices, affective networks and social institutions – a process defined as the bio-political exploitation of labour (Hardt and Negri 2009). In this context, the poor's everyday lives are increasingly considered

folkloric by investors and touristic economies; their "authentic" and "marginal" character thus becomes the very object of capitalist accumulation (Umbach and Wishnoff 2008, Pecile 2021). It is possible to use certain property arrangements with the aim of protecting the interests of the poor, whose status is founded on the lack of possessions, privilege and power (van der Walt 2009, p. 241). Outlining a repertoire of legal instruments operating in this sense also highlights how the commons can exist *within* property, and not as a negation of it, and how social struggles can find antidotes to domination and oppression within the legal field. What will be presented here is a non-exhaustive series of legal techniques enacting a counterhegemonic use of both private and public law, whose use can be strategic for struggles seeking to legally protect the collective use and access to spaces of the most disadvantaged.

6.1. Private law arrangements: Community Land Trusts

Private law is a first realm in which legal techniques to rethink property and reclaim the commons are available. In this field, the Community Land Trust (CLT) provides a relevant exemplification of a legal mechanism that can be used by activists to fulfil such aim. CLT is a property form first introduced in North America in the 1970s to satisfy a grassroots need for democratic community control on land and affordable housing solutions (Di Robilant 2014, p. 377). It has been revived after the 2008 economic crisis, when it has been used by activists struggling with worsening housing emergencies in North America and, later, in Western Europe. To build a CLT, a community must first set up a non-profit organisation for promoting access to housing for low-income subjects on land whose property title does not belong to the community. The aim is to create a participatory model of governance able to take into account both the owner's and the community's property interests, without subordinating the latter to the former. To do so, the property title of the land and the one of the buildings occupying the land are kept separate. The community becomes the trustee of the property: this means that it does not fully dispose of it, but rather it administers it to the benefit of inhabitants and future generations. This stratagem of splitting property has the powerful effect of subtracting the real estate built on the land from processes of market speculation.

The CLT was adopted in about 300 cases in North America and later exported to some European civil law systems. Its flexibility allows to use it not only as an antidote to housing crises but also, more broadly, as a bottom-up instrument of government aimed at counterbalancing socio-economic inequalities produced by urban requalification processes (Vercellone 2016). This is possible because the membership of the CLT is always kept open and its members are in charge of approving any sale operation concerning the land, which guarantees a governance structure committed to democracy and deliberation (Di Robilant 2014, p. 378).

6.2. Public law arrangements: The regulations for the shared government of the commons

Legal tools to reclaim the commons can also be found in the public law field. A paramount legal tactic that has been experimented by social struggles in this realm is an array of regulations for the self-government of the commons, which have been consistently used by the Italian movement for *beni comuni* to reclaim the right to a collective use of spaces. These arrangements establish a shared State-community model

of governance, notwithstanding whether the property title is public or private, and have been broadly adopted to enact the self-government of spaces collectively exerted by users.

However, at times these public law regulations have also worked against the original purposes of activists, since they have been deployed by public administrations to partly co-opt the struggle for the commons into existing bureaucratic frameworks and to foster a liberal culture promoting civism and decorum in urban contexts. In particular, some regulations adopted by Italian municipalities in the post-2008 crisis conjuncture establish that movements reclaiming a common use of spaces should submit a formal request to city administrations, which are the only subjects entitled to establish ex ante which property can acquire the status of commons. The legal recognition of this procedure is not built on the concept of commons elaborated by the Rodotà Commission and embraced by the movement, but is rather based on Article 118 of the Italian Constitution in which the principle of horizontal subsidiarity, recognised at the EU level, is enshrined. Hence, such regulations may end up channelling the political praxis of the commons into a governmental logic and turning activists into the State's handmaiden, ultimately reinforcing an absolute, individualistic conception of property. In the end, they risk taming the struggle for the commons into a disciplinary logic through which the urban space is reorganised, and contributing to the exploitation of citizens' free labour to ail a suffering State welfare (Pecile 2019). In the Regulation on the collaboration between citizens and administration for the care, regeneration and shared management of urban commons, first adopted in Bologna in 2014 and then replicated in about two hundred municipalities at the national level, we read that the objective of such public law codification of the commons is a structure defined as "shared administration", that is, according to Article 2:

> the organizational model which, by implementing the constitutional principle of horizontal subsidiarity, allows citizens and administration to carry out activities of general interest on an equal level.[7]

The same article of the regulation defines activists mobilising for the commons as "active citizens", namely:

> all subjects (...) who, independently of the requirements concerning residence or citizenship are activated, for also limited periods of time, for the care, regeneration and shared management of urban commons.

What is perhaps the most problematic aspect of this public law formalisation of the commons is the non-conflictive definition of citizenship backing the regulation: the lack of access to resources and spaces and the material conditions of socio-economic inequality which initially fuelled the movement for the commons are overlooked to promote a governmental vision of *beni comuni* in which the status quo is reinforced and no significant redistributive effort is implied. Ultimately, a highly exclusionary and hierarchical concept of civil society is validated and legitimised as the only (morally and legally) acceptable political subject.

Nevertheless, ways to guarantee the common use of spaces through non-paternalistic public law mechanisms have also been found along the trajectory of the Italian struggle

[7] The prototype of the regulation is available online. See Tonanzi 2020.

for the commons. A possible counter-model to the previously described tool is the Regulation for the participation to the government and the care of the commons (*Regolamento comunale per la partecipazione nel governo e nella cura dei beni comuni*) adopted in Chieri, in the Turin province, in 2014 – at the acme of the national struggle for the commons.[8] This regulation establishes that communities – not the city administration – are the most relevant subject for the recognition of the commons as such. In fact, after signing the regulation the municipality ceases to exert its interests on the commons and leaves them to the self-government of the communities, with the goal of fostering their autonomy. Article 20 of the regulation establishes that "self-government, accessibility and impartiality in the use of the commons" must be guaranteed; *beni comuni* are not only places of fruition, but also "spaces in which decisional practices that determine the conditions of use are exerted". Importantly, and echoing the conceptualisation of the Rodotà Commission, any use of the commons must be compatible with the conservation for future generations.

Besides, Article 23 establishes that the inspiring model is not a bureaucratic structure of shared administration, but rather one of "assembly democracy" (*democrazia assembleare*) in which all members of the community are involved and asked to decide on matters of use, relations with external actors, and budget; decisions are made using a consensus-based system (Article 24). More generally, the emphasis of the Chieri regulation on the possible informal nature of the communities taking care of the commons – so that anyone taking part in the common care of spaces has a right to use and access them (Angiolini 2016) – preserves the purpose of fighting against substantial inequalities that animates the mobilisation for the commons; it also protects the community's property interests without subordinating them to the public/private ones. In conclusion, the enactment of this regulation has the potential of rebalancing the governance of urban space in favour of the urban poor, especially when it is applied on public or private land with a high residential value (Mattei and Quarta 2015, p. 305).

6.3. Hybrid public/private approaches: Usi civici*, the object as holder of rights*

Social struggles reclaiming the commons can also resort to a set of hybrid public/private legal tools guaranteeing collective property rights. Within the Italian struggle for the commons, an exemplification of this possibility is the occupation of the ex-Asilo Filangieri in 2012, a 16th-century publicly-owned palace in the centre of Naples that the municipality wanted to sell out to private investors. Activists reclaimed the right to a "civic and collective use" of the space, as they defined it, drawing on the distinction between property title and use previously elaborated by the Rodotà Commission. With the support of legal experts, the community drafted a regulation that revived the pre-modern legal institution of *usi civici*, whose aim was to guarantee collective access to natural resources and survived in the Italian legislation as a residual form of ownership (Marinelli 2013). Activists urged the municipality to adopt this tool to provide a legal framework for all grassroots communities occupying spaces in several parts of the city with the aim of delivering forms of non-State welfare to the most disadvantaged (e.g. self-organised medical cabinets, educational services in peripheral areas, legal expertise to irregular migrants). The city administration eventually recognised *usi civici* as the

[8] The Chieri regulation is available online: see City of Chieri 2014.

legal basis to assign the status of "commons" to seven occupied spaces. The strategic use of law exerted by the Neapolitan movement for the commons thus managed to unpack property and horizontally distribute its access to disadvantaged subjects (Capone 2016).

Beyond the Italian case, the resort to hybrid public/private legal tools to reclaim common property can take even more radical paths. The reference here is to the ongoing debate concerning the legal recognition of objects as holders of rights, and more generally on the possibility of establishing "rights of nature" in the context of a worsening ecological crisis (Nash 1989, Voigt 2013). For decades now, legal scholars have been exploring the possibilities offered by civil law to build techniques allowing non-human subjects to exert rights (Stone 1972). One of the main legal conundrums in this discussion is understanding how to imagine rights without a subject or, in practical terms, how to deal with situations in which a right is not accompanied by a subject, such as in the case of pending inheritance (Orestano 1960). The problem becomes even more urgent today, when facing the issue of recognising interests for non-human entities, such as nature, also in the interest of future generations; the question is whether it is possible to institute nature as a subject of law with a legal standing (Monterossi 2020). In the current phase, we are moving from a solely theoretical discussion on such issues to the practice of judicial decisions made on the legal subjectivity of nature. It is well known that Ecuador and Bolivia both enshrined rights of nature in their Constitution, adopted respectively in 2008 and 2010. Besides, courts in different national contexts have recently recognised natural resources, such as rivers, as autonomous legal entities. In 2017, for instance, a river in New Zealand was recognised as a legal subject with rights and duties (O'Donnell and Talbot-Jones 2018). A board was instituted to act on behalf of the river and according to mechanisms of legal representation.

The enforcement of these rights poses significant challenges and the debate on how to guarantee rights without a subject is far from being solved. The aforementioned approaches are also criticised by legal scholars arguing, for instance, that these recent judicial advancements are based on too artificial "legal fictions", such as the one of the board, in which the human subject is still central (Thomas 1998). Nevertheless, these judicial decisions pave the way for innovative institutional arrangements that in the future could ensure full protection of the collective use not only of natural resources, but of any resource or space which entertains a mutually constitutive relationship with a community. In this view, the latter is not as a gated group, but "a quality of relations, a principle of cooperation and of responsibility to each other and to the earth" (Federici 2016, p. 386).

7. Conclusion: Rethinking law from the margins

This article aimed at discussing some legal theories and tactics to overcome the scepticism towards the potential of law as a battlefield for social change. In response to a persisting "anti-juridism" in critical thought, the theoretical approach of Critical Legal Studies has been suggested as useful to rearticulate the concepts of law and politics in a way that sheds light on a crucial aspect: despite its appearance of neutrality, law is politics all the way down, hence it is malleable to be used to pursue diverse political projects by different actors, including social movements. Indeed, "we can read in legal norms and institutional arrangements both sediment of past struggle and the tools available for new projects" (Kennedy 2016, p. 171). The case of the Italian movement for

the commons was then presented as a powerful exemplification of this approach on the field, as this struggle has resorted to a counter-hegemonic use of law – specifically, of property forms – to protect the property interests of the most disadvantaged.

Rethinking property "from the margins" is an urgent political project in a global scenario in which increasingly large numbers of people are being subjected to eviction, speculation and other processes related to current forms of capitalist exploitation, which generate a "machinery of dispossession" (Rolnik 2019, p. 4). Furthermore, a marginal perspective on property allows broadening our analytical spectrum up to encompass not only the dispossessed, who are in a material situation of poverty and deprivation, but also all activists, squatters and "property outlaws" (Peñalver and Katyal 2010) who fight existing legal structures perpetuating imbalances through their political action (van der Walt 2009, p. 243). It helps, in other words, to translate into institutional and legal forms the interests of what postcolonial studies have called the "political society", that is, the vast majority of humanity that does not fit into the Western parameters of civil society, and whose form of living implies a series of illicit acts as the only way for survival (Chatterjee 2004). Ultimately, reimagining property from the margins allows movements to protect the collective use and access to spaces exerted by the political society through "a network of different day-to-day negotiations with power that renders vacuous any neat binary of legal/illegal" (Liang 2005, p. 15). This implies a radical rethinking of property that takes into account the property interests of the have-nots.

> Property law is not exclusively or even primarily about owners and holders of rights, but about those who do not own property and whose lives are shaped and affected by the property holdings of others; those who are required to respect property and who are owned as or through property. In the margins, property law is as deeply concerned with absence of property; no-property; not-property; as it is with property. (van der Walt 2008, p. 238)

Rethinking property in this way opens up to a much broader theoretical and political project: reimagining law from the margins through the use of legal forms to be exploited in favour of the most disadvantaged. The margin is a space of radical possibility, an edge of social reality in which communities of resistance are built (hooks 1989, p. 19). In the hands of the marginalised, law becomes a powerful tool to reduce the gap between the haves and the have-nots, the oppressors and the oppressed, the centres and the peripheries of power.

References

Althusser, L., 1971. Ideology and Ideological State Apparatuses (Notes towards an Investigation). *In:* L. Althusser, *Lenin and Philosophy and Other Essays*. New York: Monthly Review Press.

Angiolini, C., 2016. Possibilità e limiti dei recenti regolamenti comunali in materia di beni comuni. *In*: A. Quarta and M. Spanò, eds., *Beni Comuni 2.0: Contro-egemonia e nuove istituzioni*. Milan-Udine: Mimesis, 147–156.

Arampatzi, A., 2017. The spatiality of counter-austerity politics in Athens, Greece: Emergent "urban solidarity spaces". *Urban Studies* [online], 54(9), 2155–2171. Available from: https://doi.org/10.1177/0042098016629311 [Access 27 May 2021].

Bailey, S., and Mattei, U., 2013. Social Movements as Constituent Power: The Italian Struggle for The Commons. *Indiana Journal of Global Legal Studies* [online], 20(2), 965–1013. Available from: https://doi.org/10.2979/indjglolegstu.20.2.965 [Access 27 May 2021].

Blank, Y., and Rosen-Zvi, I., 2010. The spatial turn in legal theory. *HAGAR Studies in Culture, Polity and Identities* [online], 10(1), 37–60. Available from: https://ssrn.com/abstract=2937221 [Access 27 May 2021].

Blomley, N., 2016. The Boundaries of Property: Complexity, Relationality, and Spatiality. *Law and Society Review* [online], 50(1), 224–255. Available from: https://doi.org/10.1111/lasr.12182 [Access 27 May 2021].

Bourdieu, P., 1987. The Force of Law: Toward a Sociology of the Juridical Field. *Hastings Law Journal* [online], 38(5), 814–853. Available from: https://repository.uchastings.edu/hastings_law_journal/vol38/iss5/3 [Access 27 May 2021].

Brown, W., and Halley, J., eds., 2002. *Left Legalism/Left Critique*. Durham: Duke University Press.

Capone, N., 2016. Del diritto d'uso civico e collettivo dei beni destinati al godimento dei diritti fondamentali. *Politica del diritto* [online], 4(a. 48), 597–636. Available from: http://www.demaniocivico.it/attachments/article/1912/Capone%20N%20%20Del%20diritto%20duso%20civico%20e%20collettivo_politica%20del%20diritto_dicembre_2016.pdf [Access 27 May 2021].

Chatterjee, P., 2004. *The Politics of the Governed: Popular Politics in Most of the World*. New York: Columbia University Press.

Chatterton, P., 2010. Seeking the Urban Common: Furthering the Debate on Spatial Justice. *City* [online], 14(6): 625–28. https://doi.org/10.1080/13604813.2010.525304 [Access 27 May 2021].

Chiaramonte, X., 2019. *Governare il conflitto: La criminalizzazione del movimento No Tav*. Milan: Meltemi.

Collins, H., 1984. *Marxism and Law*. Oxford University Press.

Constitution of the Italian Republic, 1948 [online]. Rome: Parliamentary Information, Archives and Publications Office of the Senate Service for Official Reports and Communication. Available from: https://www.senato.it/documenti/repository/istituzione/costituzione_inglese.pdf [Access 27 May 2021].

Cuff, D., 1998. Community Property: Enter the Architect or, The Politics of Form. *In*: M. Bell and S.T. Leong, eds., *Slow Space*. New York: Monacelli Press.

Cummings, S., and Eagly, I., 2000. A Critical Reflection on Law and Organizing. *UCLA Law Review* [online], 48, 443-517. Available from: https://escholarship.org/uc/item/473524bg [Access 27 May 2021].

Dardot, P., and Laval, C., 2014. *Le Commun: Essai sur la révolution au XXIe siècle*. Paris: La Découverte.

Della Porta, D., 2015. *Social Movements in Times of Austerity: Bringing Capitalism Back Into Protest Analysis*. Cambridge: Polity Press.

Di Robilant, A., 2014. Property and Democratic Deliberation: The *Numerus Clausus Principle* and Democratic Experimentalism in Property Law. *American Journal of Comparative Law* [online], 62(2), 367–416. Available from: https://doi.org/10.5131/AJCL.2014.0004 [Access 27 May 2021].

Federici, S., 2016. Feminism and the Politics of the Commons. *In*: M. Hlavajova and S. Sheikh, eds., *Former West: Art and the Contemporary After 1989*. Cambridge, MA: MIT Press, 379–390.

Foucault, M., 1984. Nietzsche, Genealogy, History. *In*: P. Rainbow, ed., *The Foucault Reader*. New York: Pantheon Books, 76–100.

Foucault, M., 1995. *Discipline and Punish: The Birth of the Prison*. New York: Vintage Books.

Foucault, M., 1998. *The Will to Knowledge: The History of Sexuality* (vol. 1). London: Penguin Books.

Foucault, M., 2009. *Security, Territory, Population: Lectures at the Collège de France 1977-1978*. London: Palgrave Macmillan.

Guastini, R., ed., 1980. *Marxismo e teorie del diritto*. Bologna: Il Mulino.

Hardt, M., and Negri, A. 2009. *Commonwealth*. Cambridge, MA: Harvard University Press.

Hardt, M., and Negri, A., 2017. *Assembly*. New York: Oxford University Press.

Hohfeld, W.N., 1913. Some Fundamental Legal Conceptions as Applied in Judicial Reasoning. *The Yale Law Journal* [online], 23(1), 16–59. Available from: https://doi.org/10.2307/785533 [Access 27 May 2021].

hooks, b., 1989. Choosing the margin as a space of radical openness. *Framework: The Journal of Cinema and Media* [online], 36, 15–23. Available from: http://www.jstor.org/stable/44111660 [Access 27 May 2021].

Kennedy, D., 1991. The Stakes of Law or Hale and Foucault! *In*: D. Kennedy, *Sexy Dressing, etc.* Cambridge, MA: Harvard University Press, 83–119.

Kennedy, D., 2016. *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy*. 1st ed. Princeton University Press.

Liang, L., 2005. Porous Legalities and Avenues of Participation. *Sarai Reader 2005: Bare Acts* [online], 6–17. Available from: http://archive.sarai.net/files/original/8d57bfa1bcb57c80a7af903363c07282.pdf [Access 27 May 2021].

Llewellyn, K.N., 1940. The Normative, the Legal and the Law-Jobs. *Yale Law Journal* [online], 49(8), 1355–1400. Available from: https://doi.org/10.2307/792545 [Access 27 May 2021].

Lukács, G., 1978. *The Ontology of Social Being: Marx's Basic Ontological Principles*. Trans.: D. Fernbach. London: Merlin.

Marella, M.R., 2017a. "Queer eye for the straight guy". Sulle possibilità di un'analisi giuridica queer. *Politica del diritto* [online], 3(48), 383–414. Available from: http://www.euronomade.info/wp-content/uploads/2018/05/MarellaQueer.pdf [Access 27 May 2021].

Marella, M.R., 2017b. The Commons as a Legal Concept. *Law and Critique* [online], 28(1), 61–86. Available from: https://doi.org/10.1007/s10978-016-9193-0 [Access 27 May 2021].

Marinelli, F., 2013. *Gli usi civici*. Milan: Giuffrè.

Marx, K., 1859. *A Contribution to the Critique of Political Economy*. Moscow: Progress.

Mattei, U., 2011. *Beni comuni: Un manifesto*. Bari: Laterza.

Mattei, U., and Quarta, A., 2015. Right to the City or Urban Commoning? Thoughts on the Generative Transformation of Property Law. *Italian Law Journal* [online], 303(1), 303–325. Available from: https://repository.uchastings.edu/faculty_scholarship/1287 [Access 27 May 2021].

Monterossi, M.W., 2020. *L'orizzonte intergenerazionale del diritto civile: Tutela, soggettività, azione*. Pisa: ETS.

Nash, R.F., 1989. *The Rights of Nature: A History of Environmental Ethics*. Madison: University of Wisconsin Press.

O'Donnell, E.L., and Talbot-Jones, J., 2018. Creating legal rights for rivers: Lessons from Australia, New Zealand, and India. *Ecology and Society* [online], 23(1). Available from: https://doi.org/10.5751/ES-09854-230107 [Access 27 May 2021].

Orestano, R., 1960. Diritti soggettivi e diritti senza soggetto. Linee di una vicenda concettuale. *Jus* [online], 1, 149-196. Available from: https://www.academia.edu/31024428/Riccardo_Orestano_Diritti_soggettivi_e_diritti_senza_soggetto_Linee_di_una_vicenda_concettuale_1960 [Access 27 May 2021].

Ostrom, E., 1990. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge University Press.

Parfitt, R., 2019. *The Process of International Legal Reproduction: Inequality, Historiography, Resistance*. Cambridge University Press.

Pashukanis, E., 2002. Preface to the Second Russian Edition. *In:* E. Pashukanis, *The General Theory of Law and Marxism*. London: Transaction, pp. 37–45. (Originally published in 1924).

Pecile, V., 2019. Beni comuni e discorso della legalità. Il caso di Palermo. *Sociologia del diritto* [online], 3, 139–155. Available from: https://www.francoangeli.it/riviste/Scheda_rivista.aspx?IDArticolo=65366 [Access 27 May 2021].

Pecile, V., 2021. Gli *urban poor* ai tempi della turistificazione neoliberale delle città. *In*: L. Coccoli, ed., *I poveri possono parlare? Soggetti, problemi, alleanze*. Rome: Ediesse, 119–137.

Peñalver, E., and Katyal, S.K., 2010. *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership*. New Haven: Yale University Press.

Rodotà Commission Bill, 2007. Relazione per la modifica delle norme del codice civile in materia di beni pubblici. *Atti parlamentari* [online], no. 2031. Available from: http://www.senato.it/service/PDF/PDFServer/DF/217244.pdf [Access 27 May 2021].

Rolnik, R., 2019. *Urban Warfare. Housing under the Empire of Finance*. Trans.: G. Hirschhorn. London: Verso Books.

Rose, C., 1998. The Several Futures of Property: Of Cyberspace and Folk Tales, Emission Trades and Ecosystems. *Minnesota Law Review* [online], 83, 129–182. Available from: https://digitalcommons.law.yale.edu/fss_papers/1804/ [Access 27 May 2021].

Schlag, P., 2015. How to do things with Hohfeld. *Law and Contemporary Problems* [online], 78(185), 185–234. https://doi.org/10.2139/ssrn.2465148 [Access 27 May 2021].

Shiner, R.A., 1995. Legal Realism. *In*: R. Audi, ed., *The Cambridge Dictionary of Philosophy*. Cambridge University Press.

Singer, J., 1988. The Reliance Interest in Property. *Stanford Law Review* [online], 40(3), 611–751. Available from: https://doi.org/10.2307/1228814 [Access 27 May 2021].

Spanò, M., 2015. Le parole e le cose (del diritto). *In:* Y. Thomas, *Il valore delle cose.* Rome: Quodlibet.

Stone, C.D., 1972. Should trees have standing? Towards Legal Rights for Natural Objects. *Southern California Law Review* [online], 45, 450-501. Available from: https://iseethics.files.wordpress.com/2013/02/stone-christopher-d-should-trees-have-standing.pdf [Access 27 May 2021].

Thomas, Y., 1998. Le sujet de droit, la personne et la nature. Sur la critique contemporaine du sujet de droit. *Le Débat* [online], 3, 85-107. Available from: https://doi.org/10.3917/deba.100.0085 [Access 27 May 2021].

Umbach, G., and Wishnoff, D., 2008. Strategic Self-Orientalism: Urban Planning Policies and the Shaping of New York City's Chinatown, 1950-2005. *Journal of Planning History* [online], *7*(3), 214–238. Available from: https://doi.org/10.1177/1538513207313915 [Access 27 May 2021].

van der Walt, A., 2009. *Property in the Margins*. Oxford/Portland: Hart.

Vercellone, A., 2016. Urban Commons e modelli di governo. Il Community Land Trust. *In*: A. Quarta and M. Spanò, eds., *Beni Comuni 2.0: Contro-egemonia e nuove istituzioni*. Milan: Mimesis, 171–184.

Voigt, C., ed., 2013. *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law*. Cambridge University Press.

Xifaras, M., 2018. The Role of the Law in Critical Theory. The case of Property and the Commons (As a Commentary on the first chapter of Negri and Hardt's Commonwealth). *Critique and Praxis 13/13* [online], 2 December. Available from: http://blogs.law.columbia.edu/praxis1313/mikhail-xifaras-the-role-of-the-law-in-critical-theory-the-role-of-property-in-the-commons/ [Access 27 May 2021].

Žižek, S., 1989. *The Sublime Object of Ideology.* London: Verso.

Regulations

City of Chieri, 2014. *Regolamento comunale per la partecipazione nel governo e nella cura dei beni comuni. Approvato con deliberazione del Consiglio Comunale n. 105 del 24.11.2014* [online]. Available from: http://www.euronomade.info/wp-content/uploads/2015/01/regolamento-BENI-COMUNI-CHIERI-emendato-n-105-del-24_11_2014.pdf [Access 27 May 2021].

Tonanzi, R., 2020. Regolamento sulla collaborazione tra cittadini e amministrazioni per la cura, la rigenerazione e la gestione condivisa dei beni comuni urbani. *Labsus, laboratorio per la sussidiarietà* [online], 22 October. Available from: https://www.labsus.org/2017/04/regolamento-beni-comuni-il-nuovo-prototipo-di-labsus/regolamento-labsus-definitivo/ [Access 27 May 2021].

Case law

Sentenza 3665 delle Sezioni Unite civili della Corte di Cassazione [online]. 14 February 2011. Available from: https://www.demaniocivico.it/public/public/886.pdf [Access 27 May 2021].