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December 13-15, 2023

Long abstract

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Ph.D. research topic: *Collaborative Agreements as Contractual Models to Govern the Development of Sustainable Regeneration Projects in Large Metropolitan Areas.*

*Research carried out within the MUSA – Multilayered Urban Sustainability Action – project, funded by the European Union – NextGenerationEU, under the National Recovery and Resilience Plan (NRRP) Mission 4 Component 2 Investment Line 1.5: Strengthening of research structures and creation of R&D “innovation ecosystems”, set up of “territorial leaders in R&D”, Spoke 1, research line “Legal engineering for urban regeneration: collaborative frameworks with multilateral approaches.”*<sup>2</sup>

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*Who owns the city?*<sup>3</sup>

*Cities have the capability of providing something for everybody,  
only because, and only when, they are created by everybody.*<sup>4</sup>

**The city as a commons: games, economic behaviors and new institutional frameworks for the governance of urban resources**

Does it exist a right to the city? Since the publication of Henri Lefebvre’s “*Le droit à la ville*” in 1968<sup>5</sup>, scholars have tried to define the contents of this right and to understand whether city inhabitants are entitled to specific states or actions that can be enforced in the name of such right (Gardini, 2020).

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<sup>1</sup> The Ph.D. program in Intersectoral Innovation trains young professionals with field-specific and interdisciplinary skills and helps them navigate the switch from academia to industry (or vice versa). The Intersectoral Innovation Ph.D. program is strongly interdisciplinary, hosting research themes belonging to all the disciplines studied at UNIMI, and intersectoral, meaning that research is carried out in collaboration with industries and public administrations. In this program, the Ph.D. positions are financed by external investors or by special programs of the Ministero dell’Università e della Ricerca (MUR). More information at: <https://www.unimi.it/en/education/postgraduate-and-continuing-education-programmes/doctoral-programmes-phd/ay-2022/2023-intersectoral-innovation>

<sup>2</sup> MUSA (Multilayered Urban Sustainable Action) is a project designed by the largest four universities of Milan - Università degli Studi di Milano, Università degli Studi di Milano Bicocca, Politecnico di Milano and Università Bocconi - that aims at drawing up new public-private partnership models to promote the sustainable development of large metropolitan areas. The targeted areas involved in MUSA are university campuses. The research carried out by Spoke 1 combines design and planning with the investigation of the psycho-social needs of the population in a multi-stakeholder approach that considers the demands of students, professors, university staff, residents, and companies located in the area for the purposes of promoting urban regeneration project. More information at: <https://musascarl.it/>

<sup>3</sup> Saskia Sassen, *Who Owns our Cities and Why this Urban Takeover Should Concern Us All*, GUARDIAN (Nov. 24, 2015), <https://www.theguardian.com/cities/2015/nov/24/who-owns-our-cities-and-why-this-urban-takeover-should-concern-us-all>.

<sup>4</sup> Jacobs, J. (1993). *The death and life of great American cities*. Vintage Books.

<sup>5</sup> Lefebvre, H. (1968, first edition) *Le droit à la ville*. Anthropos, Paris. See also: Lefebvre, H. (1967) *Le droit à la ville*. In: *L’Homme et la société*, N. 6, pp. 29-35. According to Lefebvre, two main elements are included in the “right to the city”: the right of everyone to experience the city, and to participate in the decision-making process concerning its developments and transformations. An interesting analysis of Lefebvre’s view is provided in: Ferri, P. (2015), Henri Lefebvre (1968), *Le droit à la ville*, *Scienze del Territorio*, vol. 3, annual 2015, pp. 342. As highlighted by Ferri (2015), Lefebvre’s right to the city is “different

However, even before defining the right to the city, there is the challenge of defining the *city* and the role of *urban planning*. These issues have relevant implications in understanding what the right to the city encompasses.

As regards the definition of the *city*, there is a growing movement of urban reformers that calls for defining city spaces and resources as ‘commons’ because they identify a shared interest among city inhabitants in protecting urban goods from the threat of non-inclusive and non-equitable forms of governance (Foster et al., 2016). Identifying the city as a commons raises the question of its management and control and requires a strict assessment of the institutions that govern urban spaces and resources.

Indeed, the city conceived as a commons is a “*shared resource that belongs to all of its inhabitants*” (Foster et al., 2016), which requires more democratic (Fainstein, 2010) and polycentric (Ostrom V. *et al.*, 1961; Ostrom E., 2010) governance instruments to empower and include representatives of local communities. Therefore, the ‘commons claim’ is a matter of governance concerning the different uses and distribution of urban goods among local authorities, city residents, and industries.

As per the role of *urban planning*, not enough consideration has been given in this field to the institutional framework responsible for causing ‘tragic’ scenarios due to the limitation of urban resources, which are either overexploited or under-used, in a context where injustices and inequalities are perpetrated at the expense of the poorest urban communities.

Elinor Ostrom was one of the first scholars to challenge the proposition that the tragedy of the commons cannot be avoided. She has demonstrated that there are options for commons management that are neither exclusively public nor entirely private and suggested a solution based on cooperative management.

That is to say, implementing the right to the city entails cooperation, given that the urban space is limited and consequently gives rise to conflicts and contestations.

However, since cooperation is difficult to establish, competition over urban goods is the rule, even if *i*) this situation leads to *tragic* scenarios and *ii*) collaboration has proven to deliver better economic, environmental, and social outcomes in the development of construction projects involving multiple parties (Mosey, 2023).

This begs the questions of 1) whether it is possible to implement a different approach to urban governance, where resources are protected, inequalities are addressed, and the development model is socially sustainable,<sup>6</sup> and 2) what kind of contractual models can support an institutional change that favors more collaborative models of action among urban actors.

The following issues shall be discussed to answer the questions above and explain the need for new institutions to protect urban goods within a cooperative framework.

First, the city as a commons, and second the potential for a new institutional framework to protect urban goods and resources. Elinor Ostrom’s research has opened the way to the possibility that individuals in a commons problem are not “*inevitably caught in a trap from which they cannot escape.*” Ostrom insisted that the ability to avoid the tragedy of the commons “*varies from situation to situation*” (Ostrom E., 1990). This includes the possibility of entering a “*social contract without the sword*” (Ostrom E., 1992), *i.e.*, an agreement that users enter to set the rules of cooperation and distribution of benefits and burdens, to monitor

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*from that supposed right to (passive) participation in the fate of the urban environment: rather it is the recognition of interdependence and integration in the reconstitution of a space-time unity”.*

<sup>6</sup> Social sustainability can be defined as the “*set of circumstances in which large asymmetries of human freedoms and opportunities within and across generations are being avoided*” (Chiappero-Martinetti et. Von Jacobi, 2015).

compliance and self-impose sanctions in the event of deviations and through which they develop a voluntary adherence to such rules and so avoid overexploitation.

The results of Ostrom's studies also have laid the stone for a new investigation into the influence of the initial stage of discussion and bargaining over rules of cooperation, the subsequent behaviors of the parties, and their attitude toward compliance.

This brings in a third element to be discussed, *i.e.*, the conditions necessary to elicit cooperative behaviors and establish new institutions. The analysis can be carried out from a game-theoretical perspective, where the tragedy of the (urban) commons takes the form of a prisoner's dilemma (PD) (Garnett, 2012).

Evidence from experiments carried out within behavioral economic studies shows that the result of a PD game changes where a 'pre-play' communication phase is introduced. The discussion then affects individual behaviors and limits defection, even if playing a defection strategy - the dominant strategy in a PD - would benefit the individual player in the event the others comply with the agreement instead.

Pre-play communication can lead to an agreement between the participants on the distributive rules of costs and benefits deriving from the commons management.

In addition, some studies have demonstrated that this agreement can be construed as a form of 'social contract,' which also affects the players' beliefs regarding mutual conformity to the agreed rules of cooperation and creates reciprocal and symmetrical expectations so that the players believe that each of them will comply with the agreement because they are willing to comply (Sacconi et. Ottone, 2015).

This is to say that, before the non-cooperative PD game is played, there could be a pre-play bargaining stage, where the parties agree, under a veil of ignorance, on certain norms to be applied in the actual game, thus giving rise to a 'social contract.'

The social contract approach states that "*norms and institutions must be based on the consensus and voluntary compliance of those regulated by the norm itself*" (Sacconi et al., 2011). Therefore, the next step is identifying an instrument that allows public and private parties in the urban setting to converge on fair distribution principles of benefits and burdens to reach an agreement they will be willing to comply with.

Applying the theorization above to urban planning is a challenge. How could it be possible to conceive a 'social contract,' *i.e.*, an impartial agreement under a veil of ignorance in situations where, on the one hand, there are robust private interests at stake, and on the other hand, there are issues of accountability and legitimacy concerning the actions of public authorities?

An idea to be explored could be to use the pre-play stage to make representatives of public authorities, industries, and local communities agree upon precise and concrete guidelines and principles concerning the development of city spaces. This plan poses the challenge of defining the criteria for identifying the stakeholders to be brought into the negotiation process. A follow-up potential application is the drafting of a standard model of a collaborative agreement to be entered into prior to the traditional agreements governing urban transformations (which alone have proven ineffective for an equitable and just development of the city).

It is worth mentioning that collaborative contractual models already exist in the construction industry, and they have been tested with very positive results<sup>7</sup> as a voluntary regulation of the relationships among the parties involved.

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<sup>7</sup> <https://www.kcl.ac.uk/construction-law>. In Italy, the research on collaborative agreements in the construction field has been carried out by the Centre of Construction Law and Management founded by the University of Milan, the University of Brescia and the Politecnico of Turin (<http://www.cclm.eu/>). See also: Mosey, D. (2023), *The FAC-1 Framework Alliance*

As of today, however, collaborative contractual models have been mainly used to control the overall performance of the construction process. A challenge that could be further investigated is whether the framework of collaborative agreements can be used as the starting point to conceive a contractual model to foster cooperation for implementing social targets within urban interventions.

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