

Revisiting the Commons - Symposium

Democracy and Spatial Justice in Times of Austerity. Creative Use of Law in Italian ‘Emerging Commons’

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Abstract

This paper analyses how EU economic governance – especially austerity and the Next Generation European Union (NGEU) framework – exacerbates Italy's territorial disparities and spatial injustice. Specifically, it investigates how Commons and pact-based instruments interact with democracy and equality.

Public space is framed as a site of political participation, where the present EU economic governance is fostering securitisation and privatisation. The Commons are presented as a participatory response to these pressures. The study then shows how austerity policies, exemplified by the management of urban voids, temporary uses and project-based funding, tend to align with an ordoliberal logic, moving spatial governance beyond representative and participatory circuits. Conversely, the paper concludes by exploring a collaborative role for private law, proposing advocacy tools to formally support its constitutionally oriented use. The aim is to identify limits and potentials of private law as an hypothetical institutional partner for community-led governance in the pursuit of spatial justice.

I. Introduction

This work is elaborated in dialogue with Veronica Pecile's book on *Law, Social Movements, and the Politics of the Commons. Cases from the Italian South*. The reflection delves into the bottom-up construction and the legal recognition of ‘emerging Commons’, ie Commons that are defined as such not only by their nature and function, but also by their governing, shared between public sector and people.¹ In this article, the phenomenon is analysed in the Italian constitutional context, affected by the evolution of democracies and economic governance of the European Union.

Democracy hinges on representation, a controversial theoretical concept whose implementation is permanently under construction and to be realised through the concrete achievement of equality in participation. Currently, this system is in profound crisis, hollowed out by a dual force: on one side, the crisis of traditional ideologies, with the corresponding decrease of the ‘party-identification vote’, and, on the other side, the ‘capture’ of public institutions by private interests, whose voice

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¹ G. Micciarelli, ‘I beni comuni e la partecipazione democratica. Da un “altro modo di possedere” ad un “altro modo di governare”’ *Jura Gentium* XI, 1, 67-69 (2014).

is often privileged in public decision-making processes.

Furthermore, in Southern European Countries, such as Italy, another factor comes to the fore: the ‘debt system’, which endangers political self-determination of elected authorities by means of austerity rules that rein in public spending decisions.

As Pecile’s book underlines, urban Commons address both democracy and public resources. These experiences are becoming – in many parts of Europe – a way to redistribute resources and rethink political subjectification by imagining and practicing new forms of relation and institutional organisation beyond the neoliberal imprint.² These experiences stem from political conflict, aiming to reappropriate collective self-determination by reclaiming the public goods essential for fundamental rights and democracy. By means of direct action and claims for legal recognition, they subtract public and private properties to mere economic profitability – instrumental to austerity policies and rental revenue – and use them for mutual aid purposes, to respond to concrete needs and practice horizontal self-organisation for political purposes.

Our working hypothesis – to be further demonstrated in the article – is that these peculiarities distinguish them from other participatory processes and other legal tools for the management of properties.

Within this framework, ‘emerging Commons’ raise a double-sided legal enquiry on self-organisation and self-regulation. First, if, and under what conditions, the tools of self-regulation are appropriable by grassroots self-organisation instead of privileged actors, with greater resources and social capital to assert themselves in public decision-making. Secondly, questions arise about the role of the public sector, namely how it can recognise self-regulation and avoid overly top-down approaches, while intervening in society to pursue effective equality in democratic participation. These questions cut transversally different topics that are key in Pecile’s book: austerity, social and territorial inequalities, and the role of collective self-determination in the use and management of Commons.

These problems will be addressed in this work by learning from, and rearticulating, Pecile’s discussion of ‘emerging Commons’ in Southern Italy. Section II addresses the international and national legal context where ‘emerging Commons’ have increased in Italy. Section III depicts the example of ‘urban civic and collective uses’ in Naples, as a case study to describe legal tools susceptible to being used to recognise ‘emerging Commons’. Finally, Section IV explores the possibility and conditions for different instruments – based on private law – to be used for the same purposes.

II. Self-Regulation in the Wake of Neoliberal Governance and Austerity

² A. Kioupiolis, *The Common and Counter-Hegemonic Politics: Re-Thinking Social Change* (Edinburgh: University Press, 2019), 186.

The motivations for communities to reclaim the recognition of ‘emerging Commons’ can be traced back to intertwined global phenomena, including the growing reliance of the public sector on *lex mercatoria* and corporate self-regulation to govern the relationships between economic development and fundamental rights.

At global level, legal scholars have long noted that ‘the difficulties of political mediation of social conflict have suggested the use of self-regulatory mechanisms of civil society, including through specific public institutions capable of being (rather than a place of authoritative decision-making) the seat of that self-regulation (as in the case of independent authorities).’³ Even judicial proceedings are sometimes entrusted to public-private arbitration bodies that use informal procedures, if not entirely secret ones.⁴ As for regulatory methods, market rationality becomes the main tool for assessing and interpreting current regulations.⁵ Every State is influenced by an ‘economic constituency’, which prevails over the political constituency and exerts pressure on the public sector by threatening not to invest its capital.⁶ As has been effectively written, today’s political conditions and power relations ‘are such as to lead us to conceive the state as representing the general and overall interests of capitalism,’ whose logic is

‘to create the formal but also [...] material conditions and premises so that production and accumulation can continue and their continuity is not interrupted, clashing with the phenomena of material, temporal and social instability that are inherent in the anarchic socialisation of the capitalist process’.⁷

In this context, representation can serve as a unifying point of reference in the face of extreme pluralism among those represented, thereby strengthening the latter.⁸ Yet this outcome cannot be taken for granted, nor does it automatically follow from representation *per se*. Rather, there is a need to adapt its forms, accepting the crisis of the ancient ideological identities of the *demos* and engaging

³ M. Luciani, ‘Il paradigma della rappresentanza di fronte alla crisi del rappresentato’, in N. Zanon and F. Biondi eds, *Percorsi e vicende attuali della rappresentanza e della responsabilità politica* (Milano: Giuffrè, 2001), 113. Cf G. De Minico, *Regole. Comando e consenso* (Torino: Giappichelli, 2004), 10-54.

⁴ See, for example, Investor-State Dispute Settlement mechanisms: A. Algostino, ‘ISDS (Investor-State Dispute Settlement), il cuore di tenebra della global economic governance, e il costituzionalismo’ *Costituzionalismo.it*, 1, 135-174 (2016).

⁵ T.G. Weiss, ‘Governance, Good Governance and Global Governance: Conceptual and Actual Challenges’ *Third World Quarterly*, 21, 796 (2000); G. Scaccia, ‘Il territorio fra sovranità statale e globalizzazione dello spazio economico’ *RivistaAic.it*, 3, 15-16 (2017).

⁶ G. Ferrara, ‘La sovranità popolare e le sue forme’, in S. Labriola ed, *Valori e principi del regime repubblicano* (Roma-Bari: Laterza, 2006), 270-271.

⁷ G. Ferrara, ‘Democrazia e stato nel capitalismo maturo. Sistemi elettorali e di governo’ *Democrazia e diritto*, 4-5, 518 (1979), (quotation at 518). In fact, it has been noted that capitalism is not based, as it may appear, on *laissez-faire*, but rather requires a legal order that is instrumental to the economic system: P. Nahamowitz, ‘Difficulties with Economic Law’, in G. Teubner and A. Febbrajo eds, *State, Law and Economy as Autopoietic Systems* (Milano: Giuffrè, 1992), 549.

⁸ M. Luciani, n 3 above, 117.

with society in order to embrace new, changing and heterogeneous identities, adopting flexible forms capable of restoring a link with equality. In other words, today representative democracy needs new means to achieve the same goals.

New regulatory forms emerging at global level show that representation in its traditional forms is in crisis, but has reorganised itself in new ways. The law has also been able to adapt when it comes to responding to the alleged ‘confusing centralisation’ of the current representative state, identified as one of the factors of ‘ungovernability’ in European democracies.⁹ In fact, in terms of the free market, it has developed advanced mechanisms for involving private individuals as regulators or co-regulators.¹⁰ These decision-making practices have been able to engage with pluralistic and changing forms of aggregation,¹¹ using flexible methods based on continuous ad hoc adjustments,¹² as well as being capable of articulating the involvement of different actors in different issues and procedures.

In the context of the European Union, these tensions have been combined with a peculiar use of conditional regulations, supporting austerity measures and subsequent economic governance choices.

In principle, spending conditionalities are used by funding authorities to impose certain disciplines to spending authorities, other than technical monitoring obligations.¹³ For example, they can be useful for federal States to steer sectors where there is no federal jurisdiction to enact binding provisions.¹⁴ Hence, conditionalities effectively influence spending decisions, even though the strict enforcement of the condition – ie, cutting funds in case of non-compliance – is rarely implemented, as it would create tensions with the autonomy of the spending authority.¹⁵

⁹ M.J. Crozier et al, *La crisi della democrazia. Rapporto sulla governabilità delle democrazie alla Commissione trilaterale* (Milano: FrancoAngeli, 1977), 30, available at <https://tinyurl.com/54hk8k2d> (last visited 31 January 2026).

¹⁰ R. Mayntz, ‘La teoria della “governance”: sfide e prospettive’ *Rivista italiana di scienza politica*, 1, 14 (1999); S. Cassese, *Oltre lo Stato* (Roma-Bari: Laterza, 2006), 42-64. In this regard, it has been observed that ‘lex mercatoria is a source of law – the only possible source of law capable, at present, of producing transnational law’: F. Galgano, *La globalizzazione nello specchio del diritto* (Bologna: il Mulino, 2009), 76. *Contra*, S. Cassese: ‘It can even be said that it is the universalisation of rights, rather than the globalisation of markets, that is the defining feature of globalisation’.

¹¹ R. Mayntz, ‘La teoria della “governance” ’ n 10 above, 16.

¹² H. Willke, ‘Societal Guidance through Law?’, in G. Teubner and A. Febbrajo eds, *State, Law and Economy as Autopoietic Systems* (Milano: Giuffrè, 1992), 382-383; J. Chevallier, ‘La gouvernance, un nouveau paradigme étatique?’ *Revue française d’administration publique*, 105-106, 216 (2003); M.R. Ferrarese, ‘La governance e la democrazia postmoderna’, in A. Pizzorno ed, *La democrazia di fronte allo Stato* (Milano: Feltrinelli, 2010), 63, 72; V. Giordano and A. Tucci, *Razionalità del diritto e poteri emergenti* (Torino: Giappichelli, 2013), 89.

¹³ V. Vita, ‘The rise of spending conditionality in the EU: what can EU learn from the U.S. conditional spending doctrine and policies?’ *EUI LAW*, 16, 3-4 (2017), available at <https://tinyurl.com/3k8j4876> (last visited 31 January 2026).

¹⁴ T. Daintith, ‘The Techniques of Government’, in J.L. Jowell and D. Oliver eds, *The Changing Constitution* (Oxford-New York: Oxford University Press, 1994).

¹⁵ S.R. Bagenstos, ‘Spending Clause Litigation in the Roberts Court’ *Duke Law Journal*, 58, 409 (2008). In a critical sense: E. Pasachoff, ‘Agency enforcement of spending clause statutes: a

Outside of a federal framework, the EU has applied conditionalities to reinforce austerity rules through funding programs¹⁶ and even ‘bailout funds’ during crises. These measures have derived from the Treaties’ *favor* for financial consolidation and have preserved what critical scholarship calls the ‘debt system’. Indeed, they have limited spending for fundamental rights while proving ineffective for the economic emancipation of the indebted Member States; hence, they have fallen short of ensuring the settlement of the debt, while guaranteeing the long-term remuneration of the capital to creditors.¹⁷

The imposed cuts to public expenditures have also been used to promote the privatisation of public services. These measures have been approved under the assumption that they would serve spending efficiency, but at the cost of disempowering social actors. Indeed, they have resulted in the raise of economic barriers for end users – needed to cover the businesses’ profit – and the diminished accountability of the provider.

Moreover, objections have been made to the alleged economic advantages of privatisations.¹⁸ First of all, public services are often provided under monopoly conditions, hence they are likely to generate revenues, rather than loss.¹⁹ Secondly, privatisations generate additional costs for public actors,²⁰ such as, for example: outsourcing and negotiations, the profit margin of the companies themselves, or the possible outsourcing of certain functions. Furthermore, privatised companies are often controlled by managers and investors who do not possess the innovative characteristics normally attributed to the private sector.

A partial revision of this framework came when financially ‘virtuous’ EU Member

defence of the funding cut-off *Yale Law Journal*, 124, 253 (2014).

¹⁶ F. Barca, *An agenda for a reformed cohesion policy. A place-based approach to meeting European Union challenges and expectations* (Independent Report prepared at the request of Danuta Hübner, Commissioner for Regional Policy, 2009).

¹⁷ É. Toussaint, *Le système dette. Histoire des dettes souveraines et de leur répudiation* (Paris: Les liens qui libèrent, 2017). Contra D. Dollar and J. Svensson, ‘What explains the success or failure of structural adjustment programmes?’, in *Policy, Research working paper* no WPS 1938 (Washington, DC: World Bank Group, 2000). S. Haggard, ‘The Politics of Adjustment - Lessons from the Imfs Extended Fund Facility’ *International Organisation*, no 39, no 3 (1985). A. Ivanova et al, ‘What determines the success or failure of fund-supported programs’, Paper presented at the Second Annual IMF Research Conference, 29-30 November 2001, available at <https://tinyurl.com/2nj3us3v> (last visited 31 January 2026).

¹⁸ On the uncertain effects of privatisation on growth: M. Florio, ‘Privatizzazioni e debito pubblico’, in *Working Paper N 04/2013, Csil (Centre for Industrial Studies)*, 3-4, available at <https://tinyurl.com/2s4bj5hz> (last visited 31 January 2026). S. Kishimoto et al, ‘Conclusion by the Editorial Team’, in Id ed, *The Future is Public: Towards Democratic Ownership of Public Services* (Amsterdam-Paris: Transnational Institute et al, 2020), 230-239.

¹⁹ I. Bantekas and C. Lumina, ‘Sovereign Debt and Human Rights: An Introduction’, in Id eds, *Sovereign Debt and Human Rights* (Oxford: Oxford University Press, 2018), 4. Cf M.J. Romero and B. Ellmers, *The Financial and Social Cost of Public-Private Partnerships*, in I. Bantekas and C. Lumina eds, *Sovereign debt* no 18 above, 114-116, 122.

²⁰ S. Gabriele, ‘Italy and European Economic Policies: When It Is Time to Change the Paradigm’, in S. Mangiameli ed, *The Consequences of the Crisis on European Integration and on the Member States. The European Governance between Lisbon and Fiscal Compact* (Cham, 2017), 181-182.

States have criticised budget consolidation for hindering state support to ‘good’ investments like digital innovation and environmental protection.²¹ Covid-19 provided the alibi for the EU to take action in that sense, by using an emergency narrative and not openly contradicting its austerity ideology.²² On that basis, the EU Commission approved a reinforced Multiannual Financial Framework for 2021-2027²³ and created the *Next Generation EU* (NGEU) instrument for recovery, disciplined by Regulation 2021/241.²⁴

Arguably, these novelties have mitigated and not abolished the debt system. Indeed, Reg 2024/241 still imposes both content and financial conditions.²⁵ Additionally, the economic rationale of these tools was to use public investments to leverage the private ones; hence, short time spans have been imposed on Member States to realise the funded investments. Hence, Member States were encouraged to rely on structured civil society actors – rather than grassroots organisations – to implement the publicly funded actions.

A similar rationality has inspired the subsequent revision of the Growth and Stability Pact that now provides flexibilities to ensure certain investments – like the green and digital ones, but also defence – without renouncing austerity regulations. It is worth noting that this new kind of conditional funding is susceptible to being used for different political priorities, including the creation of ‘war debts’²⁶ along with the ReArm EU plan, considering Defence as a pivotal sector for the competitiveness of the EU economy.²⁷

²¹ On the debate, see J. Gill, ‘EU budget battle stretches into extra time as divisions continue’ *Euronews.com*, 21 February 2020, available at <https://tinyurl.com/5a2dkczw> (last visited 31 January 2026). Friends of Cohesion, *Joint Declaration on the Multiannual Financial Framework 2021-2027* (Beja, 1 February 2020), available at <https://tinyurl.com/wrhp4fue> (last visited 31 January 2026).

²² Comitato per l’Abolizione dei Debiti Illegittimi (CADTM), ‘Il debito ai tempi del covid. Next generation EU. Nuovi assetti europei?’ (2021), available at <https://tinyurl.com/jfj2z4k8> (last visited 31 January 2026).

²³ Council Regulation (EU, Euratom) 2020/2093 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027, OJ L 433I, 22.12.2020, in <https://tinyurl.com/yde6nhx4> (last visited 31 January 2026).

²⁴ European Parliament and Council Regulation (EU) 2021/241 of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57 of 18.2.2021, in <https://tinyurl.com/2c6cfpzu> (last visited 31 January 2026). The instituting regulation is: Council Regulation (EU) 2020/2094 of 14 December 2020 establishing a European Union Recovery Instrument to support the recovery in the aftermath of the COVID-19 crisis, OJ L 433I of 22.12.2020, in <https://tinyurl.com/bdd3dd49> (last visited 31 January 2026).

²⁵ Concerning the latter, see in particular the possibility of activating an ‘emergency brake’ – ie the interruption of funding – in case of failure to comply with such objectives: Art 24.

²⁶ A. De Lellis, ‘La pace non come fine della guerra, ma come inizio di un nuovo mondo’, *PaxChristi.it* (2024), available at <https://tinyurl.com/3yk5xb5k> (last visited 31 January 2026).

²⁷ European Commission, *White Paper for European Defence – Readiness 2030*, 3/2025, 16. Cf Bruxelles, 22 April 2025. See also the proposal for a European Parliament and Council Regulations (EU) 2021/694, (EU) 2021/695, (EU) 2021/697, (EU) 2021/1153, (EU) 2023/1525 and 2024/795, as regards incentivising defence-related investments in the EU budget to implement the ReArm Europe Plan, COM(2025) 188 final, 2025/0103(COD).

III. Creative Use of Law in ‘Emerging Commons’. The Example of ‘Urban Civic and Collective Uses’

Against the above backdrop, the mobilisation for the reappropriation of Commons grew as a response to social distress and perceived lack of democracy: austerity was imposed with a technocratic language, perceived as circumventing democratic accountability. To a certain extent, Commons have ‘hacked’ the rhetoric of ‘open government’, by proposing the legal recognition of mutual aid actions self-managed by civil society. However, this path did not correspond to a withdrawal of the public sector, but to a more participatory exercise of its functions.

This attempt has been defined by commoners themselves as a ‘creative use of law’, a concept that enlightens an area that is usually an area of shadow in legal studies, ie the intersections between positive rules and the political, economic, and social forces in which legal decisions are generated. Pecile explores the issue drawing from the ability of the legal system to institute and name reality, ie to abstract and codify social phenomena in order to give them a discipline. As demonstrated in Pecile, these legal definitions are performative and influence – sometimes supplant – the practices that they aim to regulate. This resonates with the struggle of ‘emerging Commons’, since a part of their claim for self-determination is to be able to have a say in what is defined as Commons and under which label it should be recognised. This approach is in tension with a basic principle of positive law, which is that the power of giving legal definitions belongs to political authorities and is enforced by jurisdictions, who always have the prerogative to requalify – according to their own interpretation – phenomena that have been differently named and ‘labelled’ by civil society. While communities seek to appropriate the right to define their own identity and functioning, they need to engage with technicalities of law, as well as political conflict with legislative authorities.

Pecile’s methodological stance combines a materialist approach – based on concrete power relationships – with a structuralist one, grasping the performative powers of institutional acts of rules, producing things and subjects acting in society. This perspective helps in analysing the intertwine of legal and political spheres in the struggles for the recognition of Commons. While ‘emerging Commons’ might be defined as a ‘partnership’ between the public sector and Commons, it is essential to mention the (still) non-linear and conflictual relationship between institutions and commoners that has generated the creation and ‘maintenance’ of new legal tools for ‘emerging Commons’.

The objective of this section is to engage in a dialogue with this perspective in order to provide a concrete illustration of these paths and their difficulties. With this purpose, this work will draw from the pilot example of civic and collective uses, which has emerged in Southern Italy since 2012. After a preliminary illustration of the constitutional framework of reference, the text will delve into the functioning and legal rationale of the tool, differentiating it from the others.

1. Constitutional Principles Governing ‘Emerging Commons’

The creation of innovative legal tools for ‘emerging Commons’ took place in the absence of explicit mentions in primary laws and its justification lies directly in the Italian Constitution (1948) and its principles related to equality, social function of economic rights, and democratic participation.²⁸

The first reference is substantive equality (Art 3.2 Constitution), expressed as a basic value guiding the interpretation of the Constitution as a whole:

‘It is the duty of the Republic to remove economic and social obstacles which, by limiting the freedom and equality of citizens, impede the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country’.

The second is the social function of property (Art 42 Const),²⁹ according to which ownership rights are subordinate to individual rights and social utility.³⁰ All the more so when the asset is publicly owned, its management must be intrinsically geared towards the general (public) interest.³¹ In broader terms, the entire system of economic relations highlights the functionalisation of economic freedoms and their subordination to social welfare. Additionally, Art 42 Const challenges the modern definition of public and private ownership embedded in the 1942 Civil Code,³² granting broad faculties of *usus*, *fructus*, and *abusus* of property. In order to enforce the supremacy of Constitution over ordinary legislation, the so-called Rodotà Commission drafted a bill aimed at changing the Civil Code itself:³³ this proposal defined as Commons those goods that express utilities necessary for fundamental rights, and placed this category of goods *extra commercium*, guaranteeing, in any case, their collective use and preservation for the benefit of future generations.³⁴ This regulatory hypothesis limits ownership rights – and in particular the *ius fruendi* and the *ius excludendi alios* – in order to enhance the

²⁸ M. Graziadei, ‘Urban Commons in Italy’ *FIU Law Review*, 18, 836-844 (2024).

²⁹ G. Ferrara, ‘I diritti del lavoro e la costituzione economica italiana ed in Europa’ *Costituzionalismo.it*, 3, 5 (2005). On the concept of social function, S. Rodotà, ‘Articolo 42’, in G. Branca and A. Pizzorusso eds, *Commentario alla Costituzione* (Bologna-Roma: Zanichelli-Foro Italiano, 1982), 104-120. M. Luciani, *La produzione economica privata nel sistema costituzionale* (Padova: CEDAM, 1983), 77-141.

³⁰ Corte costituzionale, decisions no 55 (1966), no 155 (1972), no 153 (1977), no 5 (1908). Cf S. Rodotà, n 29 above.

³¹ A. Lucarelli, ‘Beni comuni. Contributo per una teoria giuridica’ *Costituzionalismo.it*, 3, 3(2014), 3.

³² S. Rodotà, *Il terribile diritto. Studi sulla proprietà privata e i beni comuni* (1981) (Bologna: il Mulino, 3rd ed, 2013), 47-171.

³³ U. Mattei, *Il benicomunismo e i suoi nemici* (Torino: Einaudi, 2015), 91.

³⁴ Senato della Repubblica, Law proposal no 2031, Delegation to the Government for the amendment of the Civil Code concerning public assets (*Delega al Governo per la modifica del codice civile in materia di beni pubblici*), transmitted to the President on February 24th, 2010, art 1. The bill – never approved by Parliament – was subsequently reintroduced as a popular initiative bill (cfr Official Journal no 294 del 19/12/2018).

powers that are conducive to its essential social vocation. According to a part of the legal scholarship and jurisdiction,³⁵ this circumstance might be deemed present also in the case of properties that are sometimes occupied by communities in a formally illegal manner, but for social purposes in line with Constitutional objectives.

In the same vein, ‘emerging Commons’ argue that an asset may be defined as necessary for fundamental rights not only by its nature – such as water, air or soil – but also when, due to the way it is managed, it becomes functional to social or political rights. In this direction, the implementation of Art 42 is a necessary precondition for Art 43 of the Constitution, which allows essential services to be entrusted to cooperatives of users and workers in order for them to generate social value by exercising direct decision-making power.

The third constitutional principle that comes to the fore is horizontal subsidiarity under Art 118.4 Constitution, linked to political rights under Arts 48 and 49 Constitution. The Italian Constitution fully admits and promotes self-government. Indeed, not only does it ensure collective rights, such as the freedom of assembly and association (Arts 17 and 18 Constitution), but also the right to ‘concur in accordance with a democratic method to determine the national politics’, not only in the elections. More importantly, Art 118.4 regulates the hypothesis in which civil initiatives go beyond the exercise of freedoms and overlap with public responsibilities, because they share the same commitment to general (public) interest.³⁶ Namely, the rule imposes that public entities

‘favour the autonomous initiative of citizens, individual or associated, for the undertaking of activities of general interest, on the basis of the subsidiarity principle’.

Pursuant to these provisions, ‘emerging Commons’ are an effort to imagine ‘new institutions’ based on the organisational methods and policy needs that are experimented from the concrete practices of mutual aid and social use of a public good. Here, the struggle is to connect the verb ‘to favour’, used in Art 118.4, with the already mentioned Art 3.2, interpreting it as an obligation of the public administration to not only avoid interferences with civil organisations, but also help – with funding, spaces, tools, or organisational support – the grassroots initiatives that mobilise themselves to pursue a general interest but cannot afford it.

So, when the public administration finds that the spontaneous initiatives are not able to fully cover a general need, the answer is not to direct power towards an authoritative level, but to first support the initiative.³⁷ Otherwise, Art 118.4

³⁵ R. Cavallo Perin, ‘Proprietà pubblica e uso comune dei beni tra diritti di libertà e doveri di solidarietà’ *Diritto Amministrativo*, 4 (2018).

³⁶ A. Albanese, ‘Il principio di sussidiarietà orizzontale: autonomia sociale e compiti pubblici’ *Diritto Pubblico* (2002), 66-72.

³⁷ V. Cerulli Irelli, ‘Sussidiarietà (diritto amministrativo)’ *Enciclopedia Giuridica* (Roma: Treccani, 2004), 14-16. With a different approach: L. Antonini, ‘Sulla giustiziabilità del principio di sussidiarietà orizzontale’ *Quaderni Costituzionali*, 636-637 (2003).

would violate the basic principle of substantial equality, because it would empower only those who have enough resources to conduct an autonomous initiative (for example, run an artistic production centre on their own). In other words, the principle would be key to legitimise the privatisations of social services, because enterprises are the only ones who can afford to deliver an efficient product.

Despite this Constitutional setting, many forms of implementation of 'horizontal subsidiarity' are vulnerable to being instrumentalised by public administrations to delegate and privatise social functions with little concern to substantial equality. For example, this risk has been identified in the 'shared administration' paradigm originated by the *2014 Regulation of Bologna on the collaboration Between Citizens and Administration for the Care and Regeneration of Urban Commons*.³⁸ This instance was an innovative experiment of a regulatory reasoning which has been standardised in a new 'prototype Regulation'³⁹ elaborated by an association specialised in consultancy and dissemination of horizontal subsidiarity. The prototype is considered a prominent point of reference by local administrations, although it is designed on the premise that it must be adapted by individual representative bodies, and based on the social, political, and economic context.

The 'shared administration' paradigm is based on a doctrine that has expressly recognised horizontal subsidiarity as a way to innovate the traditional vertical model of administration.⁴⁰ These Regulations usually create a municipal/local regulatory framework to authorise and regulate the stipulation of 'collaboration pacts', ie bilateral agreements whereby 'the municipality and active citizens define the scope of interventions for the care or regeneration of urban Commons'.⁴¹ This instrument usually differs from traditional concessions in that it also allows individual 'active citizens' to enter into a cooperation agreement, and does not necessarily require the establishment of a legal entity. Furthermore, it assumes that the right to manage the space corresponds to a responsibility of active citizens, consisting of the care and regeneration of Commons. Finally, 'shared administration' is conceived as a short term experience, leaving leeway for public administrations to decide on a different form of use and valorisation after the end of the experiment.

As Pecile underlines, this legal tool is connected to ambitions of self-government and participation of 'active citizens', creating solidary communities thanks to the collective management of spaces. This aspiration does not exclude that, from a legal point of view, the *ratio legis* of this tool is clearly different from the 'emerging

³⁸ Comune di Bologna, 'Regolamento sulla collaborazione tra cittadini e amministrazione per la cura e la rigenerazione dei beni comuni urbani', City Council Resolution no 45010/2014, 19 maggio 2014.

³⁹ 'Regolamento sulla collaborazione tra cittadini e amministrazioni per la cura, la rigenerazione e la gestione condivisa dei beni comuni urbani', available at <https://tinyurl.com/bdezfdzdc> (last visited 31 January 2026). Cf F. Giglioni, 'Regolamento beni comuni: il nuovo prototipo di Labsus', 10 April 2017, available at <https://tinyurl.com/28ae43j7> (last visited 31 January 2026).

⁴⁰ G. Arena, 'Il principio di sussidiarietà orizzontale nell'art. 118 u.c. della Costituzione', in *Studi in onore di Giorgio Berti* (Napoli: Jovene, 2005).

⁴¹ Comune di Bologna, 'Regolamento sulla collaborazione' n 37 above.

Commons'. The most evident reason is that in the 'shared administration' model – from a legal point of view – the identification of goods to be regenerated is a prerogative of the public administration and not the effect of a spontaneous grassroots action reclaiming self-government of urban Commons. Secondly, the paradigm has no clear redistribution and anti-austerity purpose. These Regulations do not prevent the broad delegation of economic responsibilities – like utilities and extraordinary maintenance – to active citizens. In turn, this might lead to a 'natural selection' of actors and management models, in favour of solutions capable of ensuring a return of economic investment.

Of course, these differences do not exclude that an experience of 'emerging Commons' might be temporarily recognised through a 'pact of collaboration' or that both instruments may coexist within the same Regulations, provided harmonisation efforts are made in the adaptation of the prototype.⁴²

2. 'Urban Civic and Collective Uses' as a Legal Tool for 'Emerging Commons'

The first instance of legal tools explicitly created under the paradigm of 'emerging Commons' has appeared in Naples since 2012, with the establishment of 'urban civic and collective uses'.⁴³ This experience is relevant for engaging in dialogue with Pecile's work on legal creativity in Southern Italian Commons. The case highlights that law is a sometimes contradictory, yet a fertile field for campaigns. As described in Pecile's work, heterogeneous discussions and self-organisation among commoners have led to the overcoming of the mere 'anti-law' stance: law was considered a stake of these experiences, since it had to be changed in order to modify institutions and bring them closer to citizens. Pecile makes it very clear that the criticism of some legal mechanisms – including ownership rights – is the starting point for commoners to delve deeper into the legal system and try and appropriate legal provision, according to the spirit of democracy.

The tool is inspired by a pre-existing legal instrument called 'civic uses', regulated – at this moment in time – by Law 168/2017. This tool – that has also been occasionally framed within Art 118.4 –⁴⁴ was considered an interesting example because it is emblematic of the legal possibility for rules to be generated by community practices of use. Moreover, as a pre-modern institution, 'civic uses'

⁴² The cities of Casoria, Padua, and Turin decided to amend their own 'shared administration' Regulations. For an (only theoretical) attempt, see: For example: 'Regolamento per la cura, l'uso, la gestione e la rigenerazione dei Beni comuni XYZ', available at <https://tinyurl.com/yex55wjp> (last visited 31 January 2026).

⁴³ On the transformative potential of the tool and its ability to question the modern understanding of ownership: C. Crea, "Spigolando" tra *biens communaux*, usi civici e beni comuni urbani' *Politica del diritto*, 461-463 (2020). L. Principato, 'I profili costituzionali degli usi civici in re aliena e dei domini collettivi', *Giurisprudenza costituzionale*, 1 (2015). N. Capone, 'Del diritto d'uso civico e collettivo dei beni destinati al godimento dei diritti fondamentali' *Politica del diritto*, 618 (2016).

⁴⁴ F. Marinelli, 'Dagli usi civici ai domini collettivi' *Giustizia civile*, (2018).

represent the possibility to preserve alternative forms of ownership –⁴⁵ different from the general discipline contained in the 1942 Civil Code – that are attentive to the preservation of community bonds⁴⁶ and environmental ecosystems.⁴⁷

The trigger for the spontaneous grassroots actions, which led to the creation of the ‘urban civic and collective uses’, were campaigns against austerity, territorial inequalities, and ecological exploitation of the Region. The background for these conflicts can be broadly related to the same Southern question which is eloquently described by Pecile: a long-standing problem of territorial inequalities across the Italian territory, reinforced by the 2001 constitutional reform and subsequent legal acts that have deeply hindered the mutualisation of resources at national level. As described by Pecile, the stark social disadvantages of the city clash with its international branding as a tourist destination: the tourist industry and the related real estate speculation have been considered by local and national policies as the only path forward for the development of a territory that has been abandoned by different cohesion and redistributive policies.

In this context, Commons can be seen – along with Pecile’s work – as an empty signifier, joining together different intersectional claims, but with a profound awareness of the risks that would emerge from a romanticisation of a community, unable to address contradictions and internal hierarchies.

In the Italian context, the ‘legal way’ to Commons was also an attempt to reappropriate democratic decision-making and re-empowering the community in budget decisions. After the ‘Rodotà Commission’'s law proposal of 2007, the ‘Water Referendum’ of 2011⁴⁸ with the turnout exceptionally passing the 50 per cent threshold and with 95,8 per cent favourable votes – was accompanied by a popular law proposal drafted from the bottom-up by the Italian Forum of the Water Movements, aiming to enact a participatory management of water as a Common.

Urban commoners, with a special role of cultural workers, took the legacy of this debate. Since 2011, communities have started occupying theatres – firstly, Teatro Valle – and other abandoned and underused spaces.

In the wake of these initiatives, *l’Asilo* was the first initiative in Naples to engage in ‘creative use of law’ to reclaim urban Commons.⁴⁹ From the outset, the experiment has existed as a form of conflict with the institution, initiated with the symbolic occupation of ex *Asilo Filangieri* by art and cultural workers, protesting

⁴⁵ P. Grossi, ‘Usi civici: una storia vivente’ *Archivio Scialoja-Bolla - Annali di studi sulla proprietà collettiva*, 20 (2008). L. De Lucia, ‘Usi civici (diritto pubblico)’ *Digesto delle discipline pubblicistiche* (1999), § I. M.A. Lorzio, ‘Usi civici’ *Enciclopedia Giuridica* (Roma: Treccani, 1994), 1.

⁴⁶ F. Politi, ‘Assesti fondiari collettivi e cultura giuridica. I valori delle proprietà collettive come fondamento di responsabilità civica e quali strumenti di risposta alle sfide contemporanee’ *Archivio Scialoja-Bolla*, 37 (2013).

⁴⁷ Corte costituzionale, decisions no 133 (1993), no 46 (1995), no 103 (2017).

⁴⁸ A. Lucarelli, ‘Premessa’, in Id, *Beni comuni. Dalla teoria all’azione politica* (Viareggio: Dissensi, 2011).

⁴⁹ To delve deeper on scientific literature and reportages on the experience see <https://tinyurl.com/34sz9c6a> (last visited 31 January 2026).

against their working conditions and the poor allocation of public resources for cultural and civic activities. Through a process of permanent public assemblies open to all, the community decided not to manage the building as the headquarters of a particular entity, but to keep it open to all, both in terms of use and management.

The two main pillars of this legal-political experimentation are the legal recognition of the community self-government and the commitment by the city to participate in financial responsibilities linked to the use of the space, in order to enhance its concrete openness to the city, without any financial barriers.

Concerning community self-government, the use of the building is always free and non-exclusive – ie shared, if possible, or subject to rotation – and is regulated by a public assembly. Decisions are made without any content curatorship and based on the exclusion of fascist, racist, or sexist content. This criterion of virtually unlimited openness has necessitated practical reflection of a pre-legal nature, as it has made it necessary to critically and collectively examine the decision-making and management practices that could effectively prevent voluntary and involuntary barriers. This reflection has been translated into a legal instrument: a Declaration of urban civic and collective use,⁵⁰ written by the assembly itself, which reflects and formalises the concrete self-management practices developed through experience. This regulatory process was legitimised by the city administration with City Government Resolution 400/2012, legally recognising the existence of a self-governing community in the ex *Asilo Filangieri*, with the focus on participatory processes already demonstrated in previous years.

The Declaration of urban civic and collective use differs from a statute or contract for at least two main reasons. The first is its purpose: the Declaration does not result in the creation of a formalised legal entity and does not seek to regulate a relationship between identified or identifiable parties, but to lay down rules for the use and management of a space, designed to respond to the general interest. According to the above interpretation of a horizontal subsidiarity principle, *l'Asilo's* Assembly has created rules to self-organise its mutual aid activities, later recognised by the city government as a form of public management of the building, reinforced by the participation of a broad and heterogeneous community. The second reason, which follows on from this, is the formation process, whose nature is not bargaining, but reaching consensus as a form of democratic decision-making.

Subsequently, the Declaration was presented to the Municipality of Naples, the

⁵⁰ <https://tinyurl.com/3t5fxhpt> (last visited 31 January 2026). Similar attempts, despite being incomplete, exist across Italy. See the Declarations of Mondeggi Bene Comune at <https://tinyurl.com/578dk8ma> (last visited 31 January 2026); Cavallerizza Reale at <https://tinyurl.com/27a8kdym> (last visited 31 January 2026); Teatro Montevergini a Palermo at <https://tinyurl.com/yxx2xpwt> (last visited 31 January 2026). See also political resolutions along the same lines: Comune di Torino, 'Riconoscimento uso civico per la Cavallerizza Reale', Mozione no 60, approved by the City Council on 25 September 2017; Comune di Palermo, *Modello dell'uso civico e collettivo urbano* presso il Complesso del Teatro Montevergini. Atto di indirizzo, Delibera della Giunta comunale no 74 del 13/4/2017.

owner of the property, who recognised it with the City Government Resolution 893/2015. Later on, new Commons were recognised – with the same legal tool – by Resolution 446/2016 and then City Government Resolutions no 297/2019 and no 424/2021.⁵¹ Furthermore, the community’s power of self-government is maintained, with the possibility for the latter to amend the Declaration.

Concerning financial responsibilities, these are shared between the community, taking care of everyday management thanks to donations, and the public administration, who is responsible for ensuring the physical accessibility of the property and therefore utilities and extraordinary maintenance, as well as certain hours of custody. The financial allocation and services provided by the administration are intended not to surveil,⁵² but to support the experience, along with the constitutional principle of substantial equality. This provision – contained in the Declaration and recognised by the city – as a general rule, is in contradiction to austerity remedies, imposing spending cuts and economic profitability of public management. Such a derogation is justified, in this case, by the prior recognition of the ‘civic profitability’ of the experience: the social and cultural value generated by the community, due to the accessibility of the initiatives – where the inability to pay is never a reason for exclusion – and their governance.

According to the same purposes, two properties that had been reclaimed as ‘emerging Commons’ – Ex OPG and *Scugnizzo Liberato* – were transferred from the State to the City under the framework of Law 85/2010 (so called ‘public property federalism’). The law allows the transfer of goods to ‘valorise’ them. While its general rationality was ‘austeritarian’ – to valorise them economically and feed local budgets – in this case it was used by the city government for a cultural and social ‘valorisation’: the two buildings were transferred and then recognised as Commons. Using this legal path also implied the obligation on the city government to find funding to ensure the valorisation of the goods, according to specific plans.

In addition to the recognition of ‘urban civic and collective use’, Neapolitan Commons were also able to propose their own participatory forms and vindicated the appointment of two consultative organisations: the Observatory on Commons⁵³ and the Council of Audit on Public Debt and Resources⁵⁴ of the City of Naples. Both organisations were created via a public call, aimed at selecting those who were experts in social, political and economic activism, and represented a new kind of administrative board, in a dialectical position with respect to administration, with the function of analysis, proposal and control on the protection of the Urban Commons. Additionally, at the beginning of 2019, more than twenty of these organisations decided to build a ‘Network of Emerging and Civic Use Commons’

⁵¹ The full archive of Declarations, Resolutions, and other legal acts related to ‘emerging Commons’ is retrievable in: <https://tinyurl.com/yv6d6v53> (last visited 31 January 2026).

⁵² *Contra*, R.A. Albanese and E. Michelazzo, *Manuale di diritto dei beni comuni urbani* (Torino: Celid, 2020), 252.

⁵³ <https://tinyurl.com/5495f3uf> (last visited 31 January 2026).

⁵⁴ <https://tinyurl.com/2c96ph6a> (last visited 31 January 2026).

(*Rete Nazionale dei Beni Comuni Emergenti e a Uso Civico*) to strengthen existing connections and obtain a stronger voice in the national political and legal debate. In particular, the network committed to democratising legal knowledge and work on shared legal proposals to amend existing regulations and pending law proposals on Commons.

In this experience, urban Commons were defined and recognised pursuant to the definition of ‘emerging Commons’. This definition draws from the work of the Rodotà Commission, but has also extended this definition through an additional identification criterion:

‘in order to be classified as a common, an asset must be characterised by a form of governance that is inspired by and implements forms of direct participation by the relevant communities in the care and management of the asset’.⁵⁵

As it can be seen, the element of participation in management is strong in this approach, to the point that the second defining element was expressly claimed as necessary when attempting to reintroduce the Rodotà Commission’s draft as a popular initiative law in 2019.⁵⁶

To summarise, the case of Neapolitan Commons is the history of a new legal tool emerging in the city regulations and beyond, created by commoners themselves – and not by any exponential or consultancy organisation – in dialogue and conflict with public administrations. This genetical path has intersected technical dialogues and political negotiations between different branches of local administrations and commoners.

This process highlights a constant and never ending political conflict between ‘new institutions’, based on redistribution and equality, and the context where they are grounded, pivoting around repression and austerity. This conflict is the engine constantly generating legal innovations, through a permanent questioning of property and relations with State and Market actors. In this sense, participation through commoning is also different from the traditional paradigm of deliberative democracy, whose focus is not on an ‘exchange of information and arguments, backed by reasons’,⁵⁷ where ‘participants [...] are committed to the values of rationality and impartiality’.⁵⁸ In these experiences, consensus does not pursue reasonableness, but care of relations and extirpation of dynamics of discrimination.⁵⁹

⁵⁵ L’Asilo, *Declaration of Urban Civic and Collective Use*, Preamble.

⁵⁶ Cf *Un appello per costruire in comune lo spazio urbano e difendere i beni comuni naturali*, 17 January 2019, <https://tinyurl.com/545z5kaz> (last visited 31 January 2026).

⁵⁷ R. Bifulco, ‘Democrazia deliberativa’ *Enciclopedia del Diritto*, Annali IV (Milano: Giuffrè, 2011), § 1.

⁵⁸ J. Elster, ‘Introduction’, in Id ed, *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998), 8.

⁵⁹ M. D’Andrea, *La grammatica della collaborazione tra diritto e conflitti. Poteri pubblici e privati nella governance del riciclo* (Napoli: Editoriale Scientifica, 2025), 218.

In short, ‘emerging Commons’ in Naples are a constant research into new ways to counter privatisations and boost self-government logics.⁶⁰ Along the same lines, an imaginative effort is needed to use Commons to rethink welfare through mutualism. Indeed, public welfare as it is disciplines society, because it encourages certain choices and discourages others.⁶¹ Moreover, it enhances the buying power, and therefore consumer spending, but does not solve the basic disparity given by the ownership of means of production. This is especially true – as discussed in Pecile’s book – considering the privatisation of welfare itself in the Italian context, appearing as detached from the concrete needs in the territory and delegated to a certain number of non profit organisations. In this sense, Commons are instead a way to gain both autonomy and access to shared means of production, thus transforming democracy.

Finally, ‘urban civic and collective uses’ raise the issue of separating the bundle of property rights to ensure a collective management and use of public estate. To this end, we can see this instrument as a way for public law – taking inspiration from traditional civic uses – to give substance to the intrinsic nature of public ownership, which is, as discussed above, per se oriented to general (public) interest. The creation of a horizontal community and civic activation around such use is an essential part of this legal tool, but does not suffice to qualify an experience as an emerging Commons. Another basic element is the reasoning and practice regarding how ownership is detached from profit making and attached to its use value and the social redistribution of such value with criteria of substantial equality. This theme is connected to the issue of time of the permanence of collective use together with public ownership, as a means to avoid a crucial issue of temporary social uses, ie the possibility of the property falling back into the realm of speculation.

As Pecile points out, ‘rethinking property from the margins is part of rethinking law as a political project for socioeconomic emancipation and wealth redistribution’. There is also a methodological lesson to be drawn from the Neapolitan experience: the possibility of legal innovation for ‘emerging Commons’ only exists when the public sector enacts appropriate regulation, aiming to deconstruct the material premises of social privileges and political power inequalities and leaving room for experimentation. This also means that institutions need to provide a framework to accompany innovation itself, aware that the possibility of practicing self-management is needed as a necessary premise to regulate such a new phenomenon. The instance of ‘urban civic and collective use’ is a good example of a non neutral posture towards social-economic hierarchies in participatory processes: the risk of private ‘capture’ has been averted through community action, under the constant material

⁶⁰ A. Cozzolino, ‘The Commons and the civic and collective urban use: from theory to the praxis of L’Asilo, Napoli’, Paper presented at the Conference ‘Participatory governance in Culture: Exploring Practices, Theories and Policies. Do it Together’, 22-24 November, Rijeka (Croatia), 1-2.

⁶¹ L. Bazzicalupo and C. Clò, ‘The Ambivalences of Biopolitics’ *Diacritics* 36, (2006), 112. W. de Graaf and R. Maier, ‘The Welfare State and the Life Course: Examining the Interrelationship between Welfare Arrangements and Inequality Dynamics’ 51 *Social Policy & Administration*, 48-49 (2017).

support and policy accompaniment of the public administration, by which political-electoral responsibility is assumed.

All of these steps were undertaken to pursue the final purpose of ‘emerging Commons’: not only changing the governance of a certain place, but enacting a legal precedent capable of changing legal settlements in the long term. This matter is still an open question in the present debate, as shown in the next subsection.

3. The Issue of Long-Term Stability of ‘Urban Civic and Collective Uses’

A major question concerning ‘urban civic and collective uses’ is the ability of this innovation to last, notwithstanding adverse political conditions at local and broader level and despite this legal tool being an exception to the ordinary management of public property.

It is widely recognised that Neapolitan Commons were also due to the political convergence of different social movements and a political majority, related to the municipalist government elected in 2012: these political forces had emerged from the crisis of traditional parties and found their political strength in certain points of convergence with anti-neoliberal and anti-austerity movements. This experience showed that institutional innovation is possible when public administrations decide to bear the political responsibility of questioning defensive and traditional paths. At the same time, concerns had been raised about whether commoning experiences would have survived in a new and potentially hostile local government. Indeed, ‘urban civic and collective uses’ are commonly considered as a legal tool based on political recognition, rather than legal solidity.

While it is certainly true that political changes can affect the legal tools for the management of public estate, ‘urban civic and collective uses’ – albeit with some difficulties – have shown that grassroots legal creativity is also capable of penetrating administrative structures widely. Indeed, the identification of certain officers as points of contact with commoners has granted a continuity in the relationship and mutual accountability between the city government and commoning experiences.

After October 2021, it is now possible to observe in practice how these tools work under a new local government. Both the political orientation of the City Council’s majority and the social context were then different to 2012, as the 2021 Elections occurred in a post-pandemic context where social and economic recovery was considered a priority. At national level, a government had been formed to address these tasks, partially in continuity with the praxis of ‘technical government’, frequently used to face crisis situations in Italy: a national government supported by a political majority in the Parliament, but appointed by the Head of the State mainly on the basis of its technical legitimization. In this case, the government was of mixed composition – ‘technical’ and ‘political’ – even if the former fulfilled

the more relevant roles during the recovery period.⁶² Within this nation-wide political context, the local government elected in 2021 has been using its expertise as a political leverage, by appointing members with significant technical backgrounds who are available to step into politics. The political-economic context and the local government's choices were also different: the PNRR expanded public spending, but did so whilst enforcing a system of conditionalities. Another example is the so-called 'Pact for Naples' (pursuant legge no 234/2021) which guaranteed new central government funds for the city, but only if the Municipality committed to a set of measures aimed at rationalising the public sector and administrative spending.⁶³

In this context, it was clear then that technical expertise and power would come to play a huge role in the future of the city and this was further demonstrated by the decision-making processes initiated on Commons. Firstly, the city government has directly appointed an advisory group (City Government Resolution no 258/2022) including experts of different disciplinary fields related to urban studies and participation. Secondly, the participatory procedures for the expenditure of funds for two Commons – *Scugnizzo Liberato* and *ex-OPG* – were led by yet another group of experts under the payroll of a cooperative to whom the process was directly entrusted. These bodies were added to the existing Observatory, whose mandate has been temporally extended by the new administration with the same Resolution 258/2022. Hence, the political relationship between commoners and local government is more complex and mediated than before. The inclusion of layers of technical legitimisation of decision-making as well as of private contractors as consultants and facilitators appear to weaken the forms of participatory democracy that had been brought to the legal innovation of 'urban civic and collective uses'.

Notwithstanding the changes, commoners have been adapting to and navigating this scenario, showing the technical – rather than political – bases of the innovative legal tools developed for Commons. Indeed, 'emerging Commons' have continued to exist as a legal and administrative innovation, embedded in urban policies as well as in administrative structures. While Commons respond to general public interest issues – and have been capable of penetrating the social and institutional fabric – the demolition of these experiences would burden the city government with a considerable political responsibility. Indeed, 'urban civic and collective uses' in Naples are based on an entire set of decisions,⁶⁴ ranging from the introduction of Commons in the City Statute to the acquisition of properties to be transformed into Commons, to a set of Resolutions disciplining the management of the buildings, as well as to acts entailing the reorganisation of public offices to ensure a smooth

⁶² Cf N. Lupo, 'Un governo "tecnico-politico"? Sulle costanti nel modello dei governi "tecnici", alla luce della formazione del governo Draghi' *Federalismi.it*, 8 (2021).

⁶³ P. Frattasi, 'Cos'è il Patto per Napoli firmato da Draghi e Manfredi e quanti soldi porta alla città' *Fanpage.it*, 29 March 2022, available at <https://tinyurl.com/3rknd9x7> (last visited 31 January 2026).

⁶⁴ For an explicated collection of these decisions, see N. Capone ed, *Rapporto sui beni comuni a Napoli. Atti e documenti (2011-2021)* (Napoli: La Scuola di Pitagora Editrice, 2022).

dialogue between commoners and the administration. Additionally, the everyday practice of commoning has transformed commoners into experts, capable of engaging in technical dialogues with public administrations and proposing technical solutions.⁶⁵

As summed-up by the Observatory on Commons in its 2018-2022 Report, in the current context:

‘politics is absent from the traditional venues of democratic debate and increasingly operates through the complex and hard-to-access governance of the PNRR. In some cases, Commons’ communities have repositioned themselves, having put their relational capacities at stake, in other words, updating their institutional capacities from within. In other cases, communities are experiencing a stiffening of this kind of governance that adopts excluding selection criteria (for example, access to funding is only granted to those already capable of carrying out projects), as they are tailored to major university institutions and the private industry world’.

IV. ‘Emerging Commons’ and ‘Use Property’

The methods and aspirations discussed in the above section are evidently contiguous with many other forms questioning the traditional understanding of ownership. In particular, Pecile’s book addresses private law as an infrastructure capable of supporting commoners’ efforts to innovate law. Of course, private law is an essential part of any effort to question ownership and this has led in practice to numerous experimentations in such a field.

Forms of non speculative private ownership seem to open practicable paths where other routes are precluded, since the interlocutor is a private owner, or a public owner who has inexorably decided to sell the asset. In such cases, ‘emerging Commons’ and social spaces in general have begun to elaborate a toolkit for the collective purchase of these properties, mainly imagining models such as the Mietshäuser Syndikat and housing cooperatives as a starting point for an open and horizontal use of private law.

Precisely, the specific governance make these tools innovative, since private autonomy is used to weaken the faculties connected to property itself in the long term. In substance, the right to alienate and lease the asset no longer appears as the exercise of a unilateral will, but as a meeting of wills that takes place in a

⁶⁵ This aspect is discussed more deeply in a joint reflection with G. Micciarelli: M.F. De Tullio and G. Micciarelli, ‘Hacking ‘technical’ decision-making as a neomunicipalist strategy. The case of Neapolitan urban Commons’, in I. Bianchi and B. Russell eds, *Radical Municipalism. The Politics of the Common and the Democratization of Public Services* (Bristol: Bristol University Press, 2026). See also: M.F. De Tullio and R. Sciarelli, ‘Commoning Beyond the Crisis: Urban Civic Uses and The Democratization of the Urban Transformation and the Ecological Transition’ *Tracce Urbane*, no 17 (2025).

collective process, distributed in a system of mutual checks and balances that ensure respect for a common ‘consent protocol’.⁶⁶ The shared decision-making criterion is given by the objective of maintaining accessible rent and of inserting the asset into a non speculative market.

As well understood by doctrine and by the French experience, the first frontier these instruments open is in recreating a form similar to the ‘use property’:⁶⁷ a property that is not intended to produce rent, but to allow each person access to the house and to the means of production they need.

These unresolved issues have emerged forcefully in the Italian context when attempts were made to introduce, at the administrative level – in the overall silence-assent of national law – private law instruments of non-speculative ownership.⁶⁸ Pecile’s book delves into these tools and underlines their ability to recognise a different understanding of ownership. In order to take this potential seriously, it is useful to analyse the specific characteristics and conditions that can make these tools innovative and avoid possible risks of both privatisation and public repression.

The 2014 Chieri Regulation⁶⁹ introduced forms such as ‘open-purpose foundations’ and Community Land Trusts (CLTs),⁷⁰ although without providing detailed regulation to typify specific guarantees of access and benefit for the community. The revision of the Turin Regulation on Commons in 2019⁷¹ the ‘Common Foundation’ tool, allows the transfer of a public asset to a foundation, after a short-term usufruct. The declared intent is to use privatisation to protect the community management of a common and make it independent from the administrative authority, especially in view of a possible shift in the political majority in a conservative direction.⁷² However, that same community management

⁶⁶ The term is borrowed from the field of blockchain technology. In this case it involves a different type of act of will; however, there is a very similar criterion – one that has proven very effective in practice – of distributing the decision to prevent behaviour that violates the common rule.

⁶⁷ B. Friot, ‘Un droit fondateur de la démocratie économique’ *Sujet dans la cité*, 103 (2012). On its practical applications: F. Sultan et al, ‘Propriété d’usage’ *Cahier de propositions en contexte municipal*, 1 (2020), available at <https://tinyurl.com/2r4rprcs> (last visited 31 January 2026). CLIP, ‘Pour un archipel de lieux en propriété d’usage’, 10 February 2011, available at <https://tinyurl.com/4ky36taj> (last visited 31 January 2026).

⁶⁸ A. Vercellone, ‘Capitolo 10 – Beni comuni urbani, fondazione e altri strumenti di destinazione patrimoniale’, in R.A. Albanese and E. Michelazzo eds, *Manuale di diritto* n 44 above.

⁶⁹ Comune di Chieri, ‘City regulation on participation in the management and care of the Commons’ - City Council Resolution no 105 of 24/11/2014 (henceforth Chieri Regulation), available at <https://tinyurl.com/yc549x6y> (last visited 31 January 2026).

⁷⁰ A. Cuccia, ‘Community Land Trust e beni comuni. Le implicazioni della dimensione comunitaria e i risvolti applicativi in Italia’, 18 February 2019, 11, available at <https://tinyurl.com/yskfp6jt> (last visited 31 January 2026).

⁷¹ Comune di Torino, ‘Regulation for the Governance of Urban Commons in the City of Turin’ - City Council Resolution of 2/12/2019 (mecc. 2019 01609/070), available at <https://tinyurl.com/jyd9anae> (last visited 31 January 2026).

⁷² This rationale responds to the idea that Commons ought to be protected from the public sector as much as from the private one: U. Mattei, *Beni Comuni. Un Manifesto* (Roma-Bari: Laterza, 2011), IX-X.

— which it claims to realise — becomes an uphill battle if the asset is privatised. The tool replicates the economic and organisational barriers discussed above and proves particularly rigid in governance, since it requires a minimum capital for its establishment. Nor does the Regulation counterbalance these risks: the participation of the community in the foundation is only mentioned, but without adequate guarantees⁷³ concerning decision-making procedures and bodies. In light of these critical issues, the practical effect is, most probably, determined by social power relations, where the community intervention is symbolic, and bigger investors claim and obtain greater weight.

In the specific Turin context, several actors active in the Commons have forcefully contested the instrument,⁷⁴ considering it in continuity with a context in which foundations have for years been the privileged interlocutors of the city,⁷⁵ which has delegated entire segments of welfare and public function to them, thus clouding its political responsibilities and feeding inequalities. Not by chance, the Turin Regulation itself — with a provision of doubtful applicative effectiveness but high symbolic importance — ensures that, in case of extinction of the Foundation and return of the property of the asset to the City, the Administration must maintain the destination established by the Foundation.

In summary, the lesson that can be drawn from the Italian experience is that the described instruments can be valuable, but require adaptation to be transplanted to public property. As underlined by the US doctrine on CLTs,⁷⁶ civil law instruments have a democratising power only when they provide legal constraints and economic characteristics that ensure a horizontal governance of the asset and safeguard egalitarian participation in the public governance of the territory. This is a challenge that still remains open even in the countries of origin of these instruments.⁷⁷ In Italy, the practice of ‘emerging Commons’ has shown that these instruments are abstractly usable, but can hardly have egalitarian effects without public intervention with a social and regulatory orientation. Therefore, they may become counterproductive if they give rise to the privatisation of public assets. Rather, their transformative

⁷³ The same happens in Chieri Regulation concerning Community Land Trusts.

⁷⁴ For all, cf Attac Torino, ‘Comune di Torino: OPEN for business’, 29 November 2019, available at <https://tinyurl.com/45jxessm> (last visited 31 January 2026).

⁷⁵ S. Belligni and S. Ravazzi, *La politica e la città. Regime urbano e classe dirigente a Torino* (Bologna: il Mulino, 2012).

⁷⁶ The doctrine has highlighted that there can be various reasons, not necessarily social ones, for resorting to a CLT (J. Hocker, ‘Land Trusts: Key Elements in the Struggle Against Sprawl’ *Natural Resources & Environment*, 4 (2001), 244. J.J. Kroncke, ‘Disciplining Utopia’ *Environmental Law*, 49, 510 (2019)), and therefore specific measures must be taken to ensure that the instrument is indeed functional in making land accessible (S.C. Smith, ‘A Public Trust Argument for Public Access to Private Conservation Land’ *Duke Law Journal*, 52, 631 (2002)). This is not the case with public property, where dedication to the public interest is intrinsic, even without the explicit creation of a trust (K. Manahan, ‘The Constitutional Public Trust Doctrine’ *Environmental Law*, 49, 264-268 (2019)).

⁷⁷ T. Angotti, ‘Le lotte per la terra e le promesse del Fondo comunitario terriero’ *Scienze del territorio*, 90, 94 (2015).

scope lies in the possibility of literally opening spaces for practice, capable of building proposals, claims, and grassroots actions aimed at prompting a regulatory rethinking of property and a 'property of use' accessible even to the most marginalised groups.

De facto, the use of private law tools for anti-speculative ownership has shown various economic and organisational barriers in the Italian context.

The first exclusionary factor identified is the economic one, linked to the difficulty of acquiring and managing the asset, or even only of establishing certain private law forms. This holds, *a fortiori*, when the asset is of high value, as sometimes happens for specific political reasons in 'emerging Commons': suffice is to think of occupations that intend to safeguard and socially valorise assets of historical relevance such as *Cavallerizza Reale*,⁷⁸ or of large dimensions such as Macao and the island of Poveglia,⁷⁹ or again located in the most central areas, where gentrification is already advanced. This limitation can be a significant constraint for the community self-determination: the need for economic sustainability might not be fulfillable in the spaces and with the economic models chosen by the community. Hence, it can force the community to change their approach, for example, by accepting a smaller space, imposing economic barriers, entrusting their survival to private funders, etc. After all, at the current stage an intervention of the public actor seems indispensable, as it is the institution in charge of public interest, capable of ensuring substantial equality and avoiding private capture of civil experiences. When it is the public entity itself that disposes of the property, support could also translate simply into a discounted sale price in the case of collective purchases. For example, Macao sought an agreed-upon path with the Municipality, who was the owner of the property being sold.⁸⁰ However, the Municipality raised, among other issues, difficulties arising from the requirement of a public tender, which would have favoured the highest financial offers.⁸¹

The second exclusionary factor, emerging from the Italian experience, are the rigid rules imposed on certain private-law legal persons, not easily reconcilable with radically horizontal modes of governance. These constraints assert themselves even to organisations that are motivated to keep their horizontal functioning in practices. For example, regulations impose representative roles that inevitably change relationships, as they create delicate balances of responsibility.⁸²

⁷⁸ <https://cavallerizzareale.wordpress.com/dopo-due-anni/>.

⁷⁹ Poveglia per Tutti, 'Poveglia per Tutti. Una ricchezza da non perdere, Dossier' (September 2015), 32, available at <https://tinyurl.com/3z2pvkyy> (last visited 31 January 2026), 32.

⁸⁰ C. Ponzini, 'Macao vuol comprarsi l'ex borsa delle carni di Viale Molise. Un processo d'acquisto sperimentale e innovativo' *Arcipelagomilano.org*, 16 May 2017, available at <https://tinyurl.com/2jjhdbjj> (last visited 31 January 2026).

⁸¹ C. Zanella, 'Il collettivo artistico Macao chiede aiuto al Comune per restare in viale Molise' *MilanoRepubblica.it*, 24 May 2017, available at <https://tinyurl.com/35skzzua> (last visited 31 January 2026).

⁸² J.J. Kroncke, *Disciplining Utopia* n 68 above, 479. A. Di Robilant, 'Property and Democratic Deliberation: The "Numerus Clausus" Principle and Democratic Experimentalism in Property

Finally, another fundamental theme is the democratic challenge of territorial governance.⁸³ In the current phase, all territorial levels – but above all local authorities – are experiencing a difficult budgetary situation; therefore, the temptation is strong to sell or grant assets and services to private actors, with forms that leave them with broad freedom. In such a context, the presence of structured and not easily accessible organisations – as companies, trusts, and foundations – risks being distortive: even if they are non-profit entities, the danger is that they become privileged interlocutors in the relationship between the administration and civil society, clouding weaker interests. Therefore, it is fundamental that these private entities are capable of involving the city in the broadest and most heterogeneous sense possible, which is also a challenge in consolidated experiences of ‘use property’, such as CLTs.⁸⁴

Nevertheless, here too remain the intrinsic limits of civil and commercial law: the legal person owner remains responsible for the asset, and bears its risks. Therefore, the final decision will inevitably lie with the latter.

For all these reasons, it is illusory to think that private law tools for ‘use property’ are *per se* accessible to all community experiments. Such circumstance induces caution with respect to an uncritical use of the instrument, whose guarantees are today very far from those ensured by public property. At the same time, however, a wide range of cases – concerning properties for sale or already private – invites us to keep the research front open, with a constant tension toward those factors that structurally call property into question: openness and horizontality in decision-making processes, but above all equality understood in a substantive sense, with the necessary support of the public actor. A research that is, therefore, above all an action, aimed at calling into question the austerity logics that today discipline public finance, privileging economic rent over the satisfaction of social rights.

V. Conclusions

In conclusion, the analysis of Italian ‘emerging Commons’ reveals a potent form of grassroots legal innovation, forged in response to the intersecting crises of democratic representation and austerity governance. By creatively interpreting constitutional principles – substantive equality, the social function of property, and

Law’ *The American Journal of Comparative Law*, 62, 414-415 (2014).

⁸³ S.R. Miller, ‘Community Land Trusts: Why Now Is the Time to Integrate This Housing Activists’ Tool into Local Government Affordable Housing Policies’ *Journal of Affordable Housing & Community Development Law*, 23, 369 (2015). K. Liegel and G. Duvernoy, ‘Land Trusts: Shaping the Landscape of Our Nation’ *Natural Resources & Environment*, 7, 95 (2002).

⁸⁴ T. Moore and K. McKee, ‘Empowering Local Communities? An International Review of Community Land Trusts’ *Housing Studies*, 27, 2 (2012), 286-287. K. Liegel and G. Duvernoy, ‘Land Trusts’ n 72 above, 127-128. D. Festa, ‘Les Community Land Trust: vers l’émergence de communs de l’habitat?’ *Metropolitiques* (2023), available at <https://tinyurl.com/3kjbz9fs> (last visited 31 January 2026).

horizontal subsidiarity – these initiatives reclaim urban spaces to enact prefigurative models of self-regulation, mutual aid, and collective ownership. The Neapolitan experience of ‘urban civic and collective uses’ exemplifies this struggle, demonstrating how conflict can translate into recognised legal tools that prioritise civic profitability over economic rent and foster new institutions of participatory democracy.

However, this path is neither linear nor safe. As seen in the tensions surrounding EU conditionalities, recovery funds, and attempts to codify Commons through private-law instruments like foundations, the emancipatory potential of these practices is constantly challenged by neoliberal governance, privatisation pressures, and the risk of ‘Commons washing’. The enduring lesson is that the transformative power of ‘emerging Commons’ lies not in a fixed legal formula, but in an ongoing political and juridical conflict. This conflict aims to permanently re-embed property and public action within a framework of substantive equality, ensuring that the management of collective resources serves not the logic of the market, but the fundamental rights and democratic self-determination of the community. Ultimately, these experiences illuminate a contested yet vital frontier in the pursuit of spatial justice, where the creative use of law becomes a means to imagine and materialise a more democratic and inclusive city.