CONCERTED ACTION AND URBAN EQUALISATION

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1. The new urban reconversion scenarios

For a long time, urbanisation in the earliest developing European countries has been through a transformation process resembling the immediate post-war urban reconstruction period.

The influence of slack economic cycles and the existence of considerable financial capital siphoned off from productive investments into building construction and the third and fourth sector services, has mainly affected the large and medium-sized urban areas undergoing intense reconversion and the modernisation of mobility and free time and consumption infrastructure facilities.

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Urban systems undergoing a deep-seated visibility crisis, due to the exhaustion of their economies based on a mono-sectoral industrial system and the need to thoroughly rethink new forms of wealth accumulation and the recovery of endogenous development capacities, have focused on analysing their own needs and identifying the revival of the economic and social interests of the urban community, (Glasgow, Hamburg, Liverpool, Prague, Barcelona, Lyon, Marseille). Modern cities, cities that are attractive even without any more chimney stacks. Similarly, many cities are focusing on their cultural resources or their history in order to rediscover a new expansion capacity (Paris, Genoa, Rome, Bilbao, Berlin, Lisbon and Valencia). The European Union is also supporting these urban reconversion processes and locking them into the integrated development policies by providing Community financing for the drafting of what are called *"strategic plans"*.

These processes have brought about major changes in our towns and cities, particularly the central parts, made up of "*brown lands*", public assets that are no longer used for their original purposes

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(hospitals, military buildings, railway lands, harbours, etc) where huge private interests have put proposals to local governments for converting this real estate with different functions (services, commercial, building construction) modifying the original purposes for which they had been built according to the town and country master plans.

I would like to draw your attention to the fact that in many cases these are urban *voids* in strategic parts of the cities that are now being replaced by new *full* parts.

In addition to expansion which – as I have already said – has once again recovered on the margins of the urban areas through a new process of metropolitanisation, there are also the established parts of the towns which are being converted to be put to new uses and to occupy new central roles.

What is becoming very important once again is not only the income from landed property, but above all income from buildings, because of the possibility of reallocating to these areas a mix of different functions, and building volumes for which the sole constraint is the

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economic convenience of an urban project, and not constraints stemming from the town and country planning prescriptions.

In Italy we talk about *complex programmes or integrated programmes of action*, the substance of which is made up of agreements between the local authorities and private interests on the different urban organisation to be given to these areas, and whose approval procedure is adopted as a derogation to the current urban master plan. But why should local government authorities permit these large scale modifications? What is the general public interest underlying the public decisions to permit these private operations to take place there? In order to answer these objections, the municipal authorities – particularly Metropolitan Councils – make acceptance of the proposals conditional upon the public works being performed by private enterprise above the urban planning standards which we might call *"patronage works"*, thereby effecting a trade-off between public interests and private interests.

We are dealing with cases of *consensual urban planning* in which skewed exchanges, rather than fair exchanges, very often take place

due both to the weak bargaining power of the authorities, and because the private stakeholders – for the surplus public works – demand an increase in the volumes or the mix of functions, to secure for themselves ever grater profit margins.

It should also be borne in mind, at least in the Italian case, but I think it also applies to other European countries, that the serious central government tax crisis has sharply curtailed the public resources available to the local authorities, which resort to public-private partnership agreements precisely to cover their urbanisation works undertaken by the private sector.

2. The principle of legality and guaranteeing the public interest

In view of these social and economic processes what is changing in the urban planning system? We know that in all the European legal systems urban planning forms part of the primary interests of the state in order to guarantee and regulate the various economic activities in the territory, permit the harmonious development of the

places in which people live and work, and the conservation and renewability of natural resources. In order to attain these complex ends, the law gives the authorities (primarily municipal authorities) the power to establish the rules for buildings, and to issue town planning instruments to determine the use to which the land will be put and to order the various public and private interests within their jurisdiction using various planning techniques.

Planning must therefore regulate economic processes within the territory consistently with the general interests of the community, such that the urban development plans must establish urban growth within a given time frame, guaranteeing services, infrastructure and the quality of life.

In the Italian legal system urban planning is seen as the expression of the exercise of authority on the part of the government, subject to various forms of public participation in a purely collaborative capacity, and the determination of the organisation of the territory is the result of a unilateral decision on the part of the administration characterised by its mandatory nature. The activity under the plan is

therefore to lay down prescriptive measurers shaping property or the territory.

Market demands require flexible and rapid town planning solutions, but these clash not only with *zoning*, which is the earliest technique of rationalising planning, but also with the imperative nature of urban planning itself and determining the use to which the land will be put is a means of interpreting the future developments of the local economy.

Today the plan cannot regulate any longer, in the strict sense of the term, but must open up to co-determination jointly with private interests, taking on that degree of flexibility needed so that the best town planning solutions can be adopted when these solutions tangibly emerge.

But it is precisely the substance of this concerted action between the public and the private sectors that must be laid down in advance by the contract, for otherwise the plan is replaced by the contract. But where a legal order is necessary to protect the general interests, legal rules cannot be replaced by a contract. That would be contrary to the

principle of the rule of law and for the purposes of protecting the public interest which the authorities must pursue.

In Italy, too, a new type of municipal urban planning is being tested, taking up the British type of *structure plan* laying down the environmental invariables and the limits on the transformations of specific parts of the municipal territory, but for others that have been identified in advance (central or local) it lays down the conditions for such transformation (*mixité*, maximum volumes) but does not establish the siting of the public and private interventions. These are left to the *operational plan* with which the municipality opens up to urban bargaining on the basis of proposals made by private stakeholders. The *operational plan* is the place for all contracted urban planning, but the rules to be applied and the limitations are established in the *structure plan*. This is the only way to bring about urban changes as part of the general public planning policies, because otherwise – as is already happening in many large urban areas – the public decision-makers are held captive become by the people being regulated.

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The solutions proposed in these cases may vary, and all are linked to primarily meeting the general interests without jeopardising the interest of private stakeholders and the economic development of the town or city: solutions which presuppose, in the structure plan itself, an analysis of the return on buildings or the gains generated by the mix of the agreed transformations and the strategic position of the areas. It is on the basis of this prior data that the plan may make provision for a trade-off between public and private works for the city:

(a) the first solution is to set a minimum floor for the transformations in the areas concerned, to which there could be a bonus in terms of permitted volumes if the private parties undertake to provide their patronage to work on behalf of the municipality. The centrality of the area and the increase in the value that the buildings may eventually acquire will certainly lead private developers to accept the exchange proposals in the plan. The central point here is how to gear the volumes offered as a bonus to the cost of the public works.

(b) The second more radical solution is to provide that the areas set out in the plan are of such strategic importance that several developers are required to *compete* on the basis of a preliminary urban project designed by the municipality in order to guarantee the best urban layout for the area in terms of volumes and public services. The areas themselves may be public or private, and in the latter case the proprietors either take part in the tender or they are expropriated in the case of inertia.

3. The instruments for urban equalisation: the building construction sector for territorial ambits

What I have already described is one of the planning techniques adopted in the case of large-scale urban reconversion. But cities do not only have areas of great economic attraction. It is the task of the local authorities above all to guarantee a harmonious development of the urban fabric to meet different needs of private activities within the ambit of an adequate set of basic collective territorial

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services and facilities.

This is the problem of the *public city*, or rather the *public plan*, which makes provision to meet collective interests and services in the general interest. Italian law requires that a price be paid for a building permit, that is to say, the private party must pay the costs of urbanisation in terms of the permitted volumes and – if they do not already exist – to directly undertake what in Italian is called *"primary urbanisation work"* (namely the water mains, sewers, roads, power lines etc) connected with the development. These charges are not, however, sufficient because it leads to the public communal spaces of the city becoming inadequate. It follows from this that the municipalities have to take responsibility for this work, but they do not have the public financing they need for it.

In order to ensure at all events that there are spaces for the services – and I say spaces here, not the actual services themselves – Italy adopts a technique under which some proprietors are required, as proprietors, to comply with pre-existing constraints regarding expropriation in order to guarantee the standards required for

urbanisation works, while other proprietors who benefit from substantial increases in the value of their assets following the planning decisions that are taken in order to enable them to be built. The lack of public funding for expropriations and the reiteration of constraints, even over periods of 20 years, has created situations in which there is a great disparity of treatment between different proprietors, and Italy has several times been criticised by the European Court of Justice and the European Court of Human Rights on these very grounds.

In order to supersede the technique of imposing urban planning constraints, municipalities therefore adopt systems of urban equalisation, to create a situation in which all proprietors are treated exactly the same in terms of planning decisions for specific parts of municipal territory.

What is meant by *"equalisation"*? It means giving a uniform and standard building value to all the properties that can, together, transform the urban planning of one or more parts of the municipality, regardless of where the individual properties can be

specifically built and regardless of the areas in which building is prohibited, for the purposes of leaving spaces free to be set aside for the collective facilities.

This means that all the proprietors, indistinctly, play an equal part in the distribution of the values and the charges deriving from urban planning, for the purposes of urban transformation. The implementation of the measures is left to the proprietors, who form consortia and agree to hand over the areas to be used for services and build the urbanisation works, where necessary shifting their virtual volumes to building land. By so doing the local authorities can finally have access to a considerable amount of public real estate, without expropriation (and therefore without costs) as a direct consequence of implementing the "*equalisation plan*".

This planning technique, however, is not only intended to supersede the discriminatory character of the effects of zoning and to provide, free of charge, public areas for services but also to achieve what we call the "integration of building functions", that is to say, the possibility of having different forms of land use coexisting in the

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same areas.

Here again, the aim is to supersede a the rigid principle of division into multi-functional zones (agricultural, residential, manufacturing, etc) according to a general master plan under the urban planning law of 1942, which has often proven to be an element of planning rigidity, but to proceed to identifying mixed zones from the point of view of functions.

Town planners and valuers propose extremely complex common systems for achieving urbanisation equalisation, which can refer to the whole territory of a given municipality, by recognising building rights to categories of homogeneous areas based on the *de facto* and *de jure* state in which they exist before the new plan (*a priori equalisation*) or adopt a system of *partial and a posteriori equalisation*, such as the case described earlier, in which the municipality identifies specific areas to meet the needs of essential public services, and then proceeds with implementation through what we call "equalisation compartments".

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4. Conclusions

From the municipal planning models described above one can see that it is a myth that proprietors are indifferent regarding planning decisions, because everyone knows that in the planning system there is necessarily a certain degree of differentiation between the various proprietors, because the plan can always establish where to build and where to establish areas for environmental or agricultural conservation purposes.

They can only be indifferent with equalisation of parts of the town to be transformed, so that all the proprietors within the equalised areas are placed in the same conditions of benefiting from it.

But the principle of indifference does not apply to large areas undergoing transformation because the proprietors of those areas certainly have far higher economic benefits than those found in the equalised areas.

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