

THE SHAPE OF THE AGRARIAN REFORM: PALERMO 1960.

HOW LEGAL NORMS AND POLICIES CREATE CITIES*

Abstract

The constitutional agrarian reform in Italy, which took place in the 1950s, was accompanied by profound changes that affected not only the countryside, but cities as well. The reform was mainly addressed toward the south, il mezzogiorno, and Sicily in particular where the reform was intended to affect all cities in the region. On the one hand this was a social change dictated by the new constitutional principles, such as redistribution and employment increment in the agricultural sector. On the other hand, an economic boom complemented the redistribution, especially in the building sector. This combination was a main force in dictating the shape and the form of the cities during those years. Sicily's main city, Palermo, experienced a major "restyling" during the twenty years that followed the reform. The depopulation of the historic city centre, due to the WWII bombings, provided an opportunity to think about new urban areas. Contrary to what was expected, a dark chapter in the history of Italian urbanization unfolded: the so-called Sacco di Palermo. The city was "ravaged" by property speculation, illegal constructions, and it was aesthetically deprived of its identity by the demolition of entire art nouveau districts and 18th century buildings which were later replaced with tower blocks. These real and concrete consequences are part of a network of connections through which law creates space, connections that this paper aims to study by asking: how does law create space? and what does law wants to build? In giving a shape to the law, this paper aims to take into consideration urban spaces that will help to better understand how the idea and the definition of law relate to space, to cities and its main actors especially in terms of redistribution and property.

Keywords: Sicily, agrarian reforms, Italian legal history

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Résumé

La réforme foncière constitutionnelle en Italie, qui eut lieu au cours des années 1950, s'est accompagnée de changements profonds qui ont affecté les campagnes ainsi que les villes. La réforme s'intéressait particulièrement au Sud, au Mezzogiorno et à la Sicile, où la réforme devait toucher toutes les villes de la région. D'une part, il s'agissait d'un changement social dicté par de nouveaux principes constitutionnels comme la redistribution et l'augmentation de l'emploi dans le secteur agricole. D'autre part, un essor économique est venu compléter la redistribution, notamment dans le secteur de la construction. Cette combinaison de circonstances a redéfini la forme des villes au cours de ces années. La principale ville de Sicile, Palerme, a connu une « reconfiguration » majeure au cours des vingt années qui ont suivi la réforme. Le dépeuplement du centre historique de la ville en raison des bombardements de la Seconde Guerre mondiale a été l'occasion de réfléchir à la planification de nouvelles zones urbaines. Contrairement à ce qui avait été prévu, un chapitre sombre de l'histoire de l'urbanisation italienne s'est déroulé : le « Sacco di Palermo ». La ville a été ravagée par la spéculation immobilière et les constructions illégales. Elle fut également privée de son identité esthétique par la démolition de quartiers entiers d'art nouveau et de bâtiments du XVIIIe siècle qui ont été remplacés par de grandes tours. Ces conséquences réelles et concrètes font partie d'un réseau de connexions à travers lequel le droit crée l'espace, connexions que cet article étudie en posant les questions suivantes : comment l'espace crée-t-il le droit ? Comment l'architecture régule-t-elle la société ? Ce texte prend Palerme comme étude de cas afin d'analyser les espaces que la loi crée intentionnellement et involontairement. Cet article prend en considération les espaces urbains qui aideront à mieux comprendre comment l'esprit et la définition de la loi se rapportent à l'espace, aux villes et à leurs principaux acteurs, notamment en matière de redistribution et de propriété.

Mots-clés : Sicile, réformes agraires, histoire du droit italien

INTRODUCTION

The constitutional agrarian reform in Italy, which took place in the 1950s, was accompanied by profound changes that affected not only the countryside, but cities as well. The reform was mainly addressed towards the south, *il mezzogiorno*, and Sicily in particular where it was intended to affect all cities in the region. On the one hand, this was a social change dictated by the new constitutional principles, such as redistribution and employment increment in the agricultural sector. On the other hand, an economic boom complemented the redistribution, especially in the building sector. This combination was a main force in dictating the shape and the form of the cities during those years. Sicily's main city, Palermo, experienced a major "restyling" during the twenty years that followed the reform. The depopulation of the historic city centre, due to the WWII bombings, provided an opportunity to think about new urban areas. Contrary to what was expected, a dark chapter in the history of Italian urbanization unfolded: the so-called *Sacco di Palermo*.

The city was "ravaged" by property speculation and illegal constructions. It was furthermore aesthetically deprived of its identity by the demolition of entire art nouveau districts and 18th century buildings which were later replaced with tower blocks following the city's main extension plan toward the northern axis. I decided to study this phenomenon, which is not only an Italian peculiarity, within a historical-legal framework that revolves around property. Indeed, property is able to create different juridical situations, for example, situations of inclusion, or of exclusion; roles of power; discrimination. Property allowed me to concentrate on the agrarian reform in Italy, and on the transformation of the shape of the land and of cities that the reform brought. This can be seen first with the abolition of the *latifundium*, then through the peasants' struggles and the fascist land reclamation; finally,

with the Civil Code and Republican Constitution that introduced the principle of private property and the social function of property (art. 832 Civil Code and 42 of the Constitution). The private need for the recognition of property and consequently its redistribution was accompanied by the public need for innovation in the ways of production that led to agrarian reforms in many countries. The Agrarian Reform in Italy set new territorial boundaries and provided new powers, together with significant exoduses from the countryside to the cities, marking the definitive gap between north and south of Italy. Palermo, with its infamous *Sacco* demonstrates on the one hand how law is capable to create space (agrarian reform, master plans, urban laws), on the other hand how the space built by the law has a particular shape or form that most of the time generates peripheries, isolated blocks of buildings, abandoned neighborhoods or brutalist structures. Most of the time, these architectures have been called *mafia's architecture*¹ to mark their illegality and to underline the complicated relationship between the law and the urban speculation.

The Sicilian capital is the most emblematic example of this process of transformation from urban planning to a sack. The aim of this paper² is to present the case of Palermo to reconsider the legal city's space starting from the shape that the agrarian reform, and the redistribution of property, created. By answering the question *how does the law create space?* with this paper I will, in part one, give a review of the legal steps taken to arrive in the Palermo of the 1960s. This first part of the article will be followed by part two that will open the discussion on a philosophical level on the idea of space and form, underpinning the view that space is not just create by the law but also by a multitude of different policies and fields, such

¹ Lorenzo Tondo, "Buried in concrete: how the mafia made a killing from the destruction of Italy's south" *The Guardian* (London, 25 July 2021) <<https://www.theguardian.com/world/2021/jul/25/buried-in-concrete-how-the-mafia-made-a-killing-from-the-destruction-of-italys-south>> accessed 26 July 2021.

² This paper is part of my PhD project: "Law and Space. The Form of Cities and the form of the Law."

as cultural, economic, architectural, artistic policies. In conclusion from the questions: what are the laws that have created the space? And what are the other policies that have helped to create it? the paper proposes some considerations on the form of the law and on the role of this form in the urban spaces that we live.

PART 1. THE SPACE OF THE LAW: FROM THE CONSTITUTIONAL LAND REFORM TO THE URBANIZATION IN PALERMO

To frame the Italian agrarian reform, it is important to consider some historical factors. First, the political situation of the first twenty years of the 20th century was a succession of events, from the end of the Giolittian age³, to the First World War and the beginning of a totalitarian regime. In a world that was facing epochal changes, especially from the point of view of changing the means of production and the recognition of rights, the problems of redistribution of resources arose above all on a spatial level, such as the land, and as a struggle for it. At the beginning of last century, it was the *latifundium*, that is, a “large area of land belonging to a single owner, generally cultivated with non-intensive systems”, that characterized the division of space in the countryside. While at the European level this kind of property was challenged by the French Revolution and the Industrial Revolution in England, in Italy the *latifundium* remained the principal kind of property.

The first attempts to challenge the *latifundium* was the reform of the organization of the countryside at the beginning of the century. However, the fight against the *latifundium* was not carried out with real conviction in that period because the political power did not want to make the large landowners too hostile, trying not to undermine the respect of the right to

³ The Giolittiana age refers to the period from 1901 to 1914. It is named after the Italian President of the Council of Ministers, Giovanni Giolitti, who is considered the best Italian statesmen of the 20th century.

property. However, because the industrialization of the means of production was accompanied with a problem of redistribution of land and property, one of the strongest movements that could not accept the status quo and that led to the reform was the peasants struggles for land⁴.

The first concrete legal attempt for redistribution took place in 1923 when the Testo Unico⁵ of laws on land reclamation was approved, which, although it was still an operation of legislative coordination of the already existing rules, paved the way for what would be a general and incisive intervention on the regulation of rural activities⁶.

The regulation of the interventions by the State to reform the land situation began with the creation of the *Istituto Vittorio Emanuele III* for the drainage of Sicily. The Royal Legislative Decree no. 2110 of 19 November 1925, which created the institute, set as its main task that of "promoting, assisting and integrating in Sicily the activities of private individuals and associates, conditioning them with those of the State, for the purposes of land reclamation, with particular regard to the transformation of land, ".

The *Instituto* operated in various directions: the promotion of consortia, the drafting of land reclamation projects and management of the relevant works on behalf of consortia; subsidised financing; hydro-geological research; and dissemination of the most modern technologies.

Law No 1 of 2 January 1940, entitled 'Colonization of the Sicilian latifundium', established the *Ente di Colonizzazione del Latifondo Siciliano* (Sicilian latifundium

⁴ On the topic there is a large body of literature mainly conducted by Corrado Barberis, Antonio Gramsci, and Manlio Rossi Doria.

⁵ Testo Unico, or T.U., means a collection of laws on a given subject. In the conventional language of Italian jurisprudence, it is used by practitioners and theorists alike, but also by judges and the legislator. The T.U. aims to replace the multiplicity of previous regulatory texts with a single text.

⁶ Nevertheless, the first relevant law dedicated to the rationalization of the latifundium was the Decree-Law n. 753 1924 on land transformation in the public interest, which placed the problem of the latifundium at the centre of its intervention.

colonisation body), with legal personality under public law, attached to the Ministry of Agriculture and Forestry, with the task of assisting, technically and financially, the owners in the transformation of the productive agricultural system and of proceeding directly to the colonisation of the lands of which the body acquired ownership or temporary possession.

Although many of the legal instruments used in the implementation of the agrarian reform with the intention of redistributing property and implementing production were of a purely agricultural nature (such as sharecropping contracts) many were private and public law contracts applicable outside the land and inspired by the theories of property. In order to have a general picture of the functioning of these legal instruments, it is important to keep in mind the legal architecture that was being built at that time (1940-50s). In order to do this, we need to consider three legal texts: the civil code (1942), the constitution (1948) and the post-fascist political framework.

In the Italian civil code, private property is defined in art. 832 as "The owner has the right to enjoy and dispose of things fully and exclusively, within the limits and with the observance of the obligations established by the legal system". This orientation is confirmed by art. 42 of the Constitution: "Property is public or private. Economic goods belong to the State, to entities or to private individuals. Private property is recognised and guaranteed by the law, which determines the ways in which it is acquired, enjoyed and its limits in order to ensure its social function and to make it accessible to all", which provides a guarantee closely linked to the social function of private property. Looking at the land reform, instead, the fundamental law for agrarian reform in Sicily is Regional Law n.104 of 27 December 1950.

This classic hierarchy of sources, with a closer look to spatial effects, suggest not only a debate on the social function of property, but also that property is capable to shape private and public interests with the same instruments.

In theory, the laws, as well as the reform were a success. The goal of the redistribution of properties was achieved, mostly in the center and in the North of the country. However, by shifting the attention to the consequences of this new design, it can be noticed that, together with the transformation of the land and of the production, there was also an exodus from the countryside to the city caused by the lack of attention that the reform had for the redistribution of the lands. Indeed, a reality that the reform had ignored, was the differences in the characteristics of the lands, with the results that many peasants had to leave because it was impossible to cultivate the piece of land they received. This exodus, due to a rupture between the law and reality of the space, happened towards the cities. These latter were also living the economic boom of the 1950s 1960s and they were facing the first modern urbanization.

It's in this scenario that the Sicilian capital of Palermo started its transformation towards what will later be called "the sack". These juridical acts were followed by economic, political and cultural policies that changed the face of the city. The brutalist buildings, together with the abandonment of the city center started to become the symbols of poverty, criminality, segregation and speculation. The next paragraph will demonstrate the effects of the agrarian reform on the city and the following urban laws and historical facts that contributed to change the design of Palermo.

Palermo 1960: il Sacco It is important, when we talk about Palermo, to have in mind the complicated beauty that lays between the truth of the misery of the street, the sociability of the aristocracy, and the individualism of the bourgeois. These three social classes are represented in the architecture of the city: the squares, the garages, the garbage, and the criminality of the street; the great ancient *palazzi* or *villas*; and the modern town blocks. They are just as far apart as they are tangled together. The art critic Cesare Brandi wrote this invitation to future

travelers: “Go to Palermo by sea, and you will realise whether you have arrived in an ordinary town. The mountains that crown the city look splendid, like agate stone, and Monte Pellegrino like a wonderful natural fortress. Of course, you will also have to digest several kilometres of bad architecture and wonder if this is the city of the emirs, of the delights of Frederick II; if this is the oriental Palermo that amazed the Arab writers. But then you will find it, with its mosaics brighter than in Venice, and with Arab architecture that shines in the Zisa like not even in Marrakesh”. The Sicilian writer Leonardo Sciascia, instead wrote: “Contradiction defines Palermo. Ancient punishment and new pain, the stones of the phalansteries stained with blood, but also with honest sweat. The mafia equally distributes work and death, oppression and protection.”

History revolved around politics, powers and beauty in Palermo. The many foreign dominations contributed to the accumulation of property and favored the urbanistic expansion of the city. In an admirable and clear reconstruction of the city’s post war history and literature, Fabrizio Pedone⁷ points out the most important moments in Palermo’s stratification. Until the 18th century, Palermo was contained within the city’s walls, with two principal axes, *Via Toledo* and *Via Maqueda*. At the time of Italy’s unification (1861), the population was about 194.463 citizens⁸. After the unification, Palermo experienced a happy moment, that it was literary called “*Palermo Felicissima*”. This definition can be explained following Pedone’s reconstruction: in 1891 the city hosted the world’s fair and attracted the rise of certain dynasties of English entrepreneurs such as the shipowners Ingham and Whitaker and local families such as the Riso, the Chiaramonte Bordonaro, the Tagliavia and,

⁷ Fabrizio Pedone, “Palermo nel secondo dopoguerra. Le due città”(2013) *Rivista di Storia delle idee* 2 (1)1 pp. <10.4474/DPS/02/01/RCR64/34>.

⁸ O.Cancila, “*Palermo*”(Bari, Laterza 2009).

above all, the Florio. The population increased to 336.148 citizens. This was the moment when the *art nouveau* arrived in town just in the wake of the World's Expo.

The year 1891 marked the end of the correspondence between the historic centre and the geographical centre of the city. From that year on the population of the four historic districts, began to decline inexorably. The upper classes moved from the old historical centre to the new area, causing a *de facto* shift from the city centre, confirmed by the further extension of *Via Libertà* towards the *Piana dei Colli*, as far as *Piazza Vittoria* (now *Piazza Vittorio Veneto*)⁹. But it was with the World Wars that Palermo was forced to the reality of the reconstruction. Pedone reports: "On 22 July 1943, when Colonel Charles Poletti, Commissioner for Civil Affairs of the American Military Government, took office, Palermo was a devastated city. The bombing raids, which had already begun in 1940, had intensified in view of the Allied landings. Between January and July 1943, about 7000 bombs were dropped on Palermo". The peasant class, at this point, had disappeared. The effects of an unbalanced distribution of land had led to the great exodus, which led to the urbanization. People's first needs were housing, work and therefore a reconstruction of the city was needed.

On 1 March 1945, a law was passed that included the city of Palermo among those obliged to prepare a Reconstruction Plan because of the heavy bombing. Approved by the President of the Sicilian Region, the Reconstruction Plan provided for the rehabilitation and reconstruction of the historic centre. The plan provided for the construction of two major arteries, one upstream, the ring road, and one parallel to the port (today's *Via Crispi*), which would ensure that the entire city could be crossed¹⁰.

⁹ Pedone (n 23) 147.

¹⁰ Giulia De Spuches, Vincenzo Guarrasi, Marco Picone, *La città Incompleta* (Palermo, Palumbo ed. 2002).

The years between the end of the war and the approval of the definitive plan in 1959 were years of intense building activity, often the result of speculation, partly due to the failure of the Reconstruction Plan to impose lasting restrictions on private property¹¹. Palermo experienced a major “restyling” during the twenty years that followed the reform. The city expanded mainly toward the northern axis through a massive edification with the result of the creation of the “other Palermo” through the destruction of some of the most precious and beautiful districts of the city.

This development was also part of a legal process. The legal instrument that was used to create the space of the “new Palermo” or “the other Palermo” – a term used to highlight the rapture caused by these buildings and speculations - was the Piano Regolatore, the Master Plan of the city, adopted in that years. Palermo’s town planning scheme was drafted quickly after the war and was approved in 1956. But what followed was a difficult process. The several appeals and objections postponed the final adoption in 1963.

It is interesting to notice some numbers that Pedone provides related projections. The Master Plan anticipated the urbanization of four thousand and seven hundred of the municipality's total ten thousand hectares and an estimated increase in population from five hundred thousand in 1951 to eight hundred thousand during the next three decades. Both projections were later dismantled by the facts: in 1994 the urbanized area was about seven hundred thousand hectares while the population did not reach seven hundred thousand. Another legal example of the complexity of the relations of powers on spaces, and of the “unhealthy” atmosphere of those years is given by law no. 1089/1939. This law would have

¹¹ Gaetano Blandi, *Storia dello sviluppo urbanistico della città dalle origini ai giorni nostri* (Palermo, AXON Sicilia 1998).

transformed some areas and villas as assets of historical interest and for this reason they would had been protected.

Thus, the hurry to have a new master plan was dictated also to circumvent law no. 1089/1939, which would obviously have made speculation on those areas impossible. It should also be added, following Pedone's reasoning, that the citizens, especially in the poorest and most disadvantaged districts, saw housing and buildings as an opportunity for work and life, perhaps the only one. For this reason, there wasn't a great movement of public opinion against this speculation, which instead supported construction and urbanization. The stratifications of dominations and powers, the accumulations of property, the speculation and the transformation of space dictated by industrialization and capitalism production, led thus to a legal architecture that continues to shape the space of the city.

The case of Palermo is an example of how economic and political policies during last century, pushed for a redistribution of space and property. These cultural changes were endorsed, as I said before, by legal acts that not always were used in a legal way. On the contrary, they permitted *il Sacco*. I mostly focused on the shape (brutalist buildings, concrete, tower blocks) of the city because it is the most impressive element that can be seen in Palermo today. It is a tangible fact of this process I showed above where the law aims to protect rights by creating dysfunctionality. However, this is not just an aesthetical discussion. The design of a city it is also the identity of the citizens. It also represents what the laws, that design a city, want. The fragmentation of the city of Palermo, represented a fragmentation of the society, of the space, and of the law itself. Thus, to turn to space in legal theory, also means to turn to design, not only the design of a city, but also the design of the law. This is why in the next part I will open a reflection on the form of the law starting from a turn to space.

PART 2. THE QUESTION OF SPACE AND THE QUESTION OF THE FORM¹²

As I said in the first part, the architecture of the “sack of Palermo” is also called *mafia’s architecture*. This last title indirectly means an architecture outside of the law of the state, that is an illegal construction. This demonstrates a contradiction I’ve already explained above, between the intention of the law, that is *what does the law want to create?* and what the law builds. We saw Palermo as a symbol of this discrepancy. In this second part I will argue that the attention to space and spatial issues such as the form of architecture and art, it is not just a *detour* from the law. Instead, they suggest a form for the law. They are part of the question *what the law wants to create? and how does the law create space?* and they are part of that contradiction that the case of Palermo represents. That is why, in the next two paragraphs, I will present the questions of space and form related to the law, to architecture and to the city of Palermo.

Space Regarding the space, the apogee of the modernism was brought by working out a new logic in the conception and in the organization of space and motion¹³. “The organization of space has become the primary aesthetic problem of mid-twentieth century culture as the problem of time was the primary problem of the first decades of this century” argues the sociologist, Daniel Bell.¹⁴ In architecture, this issue has mainly revolved around the idea of plasticity, often opposed to formalism and pure functionalism. In some of his reflections, the architect Oscar Niemeyer wrote: “In architecture, the plasticity of the form has been able to evolve thanks to new techniques and new materials that give it different and innovative aspects. [...] Faced with this continuous and inevitable evolution and the new programs

¹² The use that I do here of the word *form* when related to law recalls a “plasticity” of the law.

¹³ David Harvey, *The Condition of Postmodernity* (Blackwell Publishers 1989).

¹⁴ Daniel Bell, *The Cultural Contradictions of Capitalism* (New York, Heineman Basic Books 1978).

required by life and progress, the architect conceives his project over time: cold and monotonous or beautiful and creative, depending on his temperament and sensitivity. For some, it is function that counts; for others, it is that beauty, that fantasy, that architectural unexpectedness that must be combined, which constitutes, for me too, true architecture¹⁵ .

The debate on the form of architecture could be seen as similar to the one on the form of law. As for architecture, over the last two centuries, the debate on the form of law has seen a succession of different theories. From natural law, to positivism, to realism. Law and architecture, although belonging to two different fields, contribute to building the reality we live in. We saw the transformation of Palermo during the centuries, made by architects. If, on the one hand, law builds the container of space, with its master plans, ordinances and regulations; on the other hand architecture, with its plasticity, fills and delimits the spaces within these rules.

Niemeyer, again, says that architecture's duty is to be ahead of its time by taking the debate on form as a starting point for the various eras. Form in architecture is an invariable and permanent problem, like beauty, proportion, and imagination. Therefore, a debate must always remain open. In law, this debate on form, by which I mean the ability of law to penetrate the space it has created, is addressed by legal realism and the new legal realism. "The new legal realism revives the legal realism of the early twentieth century, but, as I see it, has the potential to incorporate new methodologies, a greater focus on international law, and attention to new domains of law"¹⁶, says Sally Engle Merry in her inquiry about the use of new methodologies in law.

¹⁵ Oscar Niemeyer, *La Forma nell'architettura* (Milano, Mondadori 1978, 18).

¹⁶ Sally Engle Merry, "New Legal Realism and the Ethnography of Transnational Law" (2006) 31 *Law & Social Inquiry* 975 <<https://doi.org/10.1111/j.1747-4469.2006.00042.x>>.

Together with the law, architecture is one of the field that helps to create space and to change society, ordering reality according to the evolution of social paradigms. In the first part we saw how the economic input of capitalism was endorsed by the law especially through the agrarian reform. In David Harvey's argumentations, there is the intention to challenge the idea of a single and objective sense of time and space to measure the diversity of human conceptions and perceptions. He argues that concepts of time-space have been marked in physics by strong epistemological breaks and reconstruction and that "the conclusion we should draw is simply that neither time nor space can be assigned objective meanings independently of material processes, and that it is only through investigation of the latter that we can properly ground our concepts of the former"¹⁷.

If we take capitalism as the revolutionary mode of production in which the material practices and processes of social reproduction are always changing, we can start to enter in the merit of an understanding of the organization of space made possible by the land reforms during last century. Palermo showed that many times, the law, within these changes of paradigm, is implicated in relationships that produce inequality and precariousness, despite the fact that the starting point is to create redistribution and equality. The next paragraph focuses on spaces that most of time were not planned, which were instead unintentional and accidental. Providing these spaces I'm trying to exit from a linear arguing about the ways law create space, and instead I'm giving attention to forms that were unexpected and toward which I think is important to pay attention for a complete discussion on the shape of cities and their relation with legal problems within urban spaces.

¹⁷ Harvey (n 3) 204.

Unintentional Spaces. Accidental Circumstances. The form of cities The form of the city, Pier Paolo Pasolini said, is something to fight for, not because it is necessary to defend ancient walls or works of art, but because the form is the testimony of those who live there, regardless of the urban and architectural order that has been given to it. This, he argues, is demonstrated by Sabaudia, a city built according to the criteria of the fascist regime, which appeared to him as a peaceful town “somewhere between the metaphysical and the realistic.” Metaphysical is its architecture, while realistic is the life that is lived within the urban spaces, which has not -said Pasolini- at all, been affected by those rationalist principles and order that fascism, with its forms, would have liked to impose. While extreme in his analysis, Pasolini identifies a problem that is also present in the law. What I mean is that the law orders, the law creates space, it builds centres, suburbs, gated communities, boundaries.

Indeed, despite the normativity aspects, continuous revolts and struggles arise in the cities in order to give space to that realistic form which, as Pasolini suggested, should be protected, namely the spontaneity of city life. From the point of view of law, some scholars of urban theories see today's cities as the starting point of the great social revolutions in the recognition of rights¹⁸, precisely because they represent social stratifications.

Although the debate on the relationship between space and law exploded in the 1990s¹⁹, urban space was a subject of study for other disciplines, such as sociology and anthropology, as early as the middle of the last century. The shape of cities is also a theme dear to the literature and writers of the 1970s, who witnessed the revolution of space set in motion by the social changes of the late 19th and early 20th centuries. Italo Calvino dedicates pages of

¹⁸ Yishai Blank, “City Speech” (2019) 54 (2) Harv. C.R.-C.L.L. Rev. < <https://harvardcrcl.org/wp-content/uploads/sites/10/2019/07/54.2-Blank.pdf>> accessed 15 July 2021.

¹⁹ See Yishai Blank and Rosen-Zvi Issi, “The Spatial Turn in Legal Theory” (2010) Hagar: Studies in Culture, Polity and Identity < <https://ssrn.com/abstract=2937221>> accessed 25 June 2021.

his literature to the observation of cities. One of his famous protagonists, Palomar, one day looks out from his terrace to see the “true shape of the city,” an infinite succession of architecture: roofs, balconies, bell towers, pinnacles and television antennas.

This simple observation also contains some of the extremes of the debates on urban governance of the last century, and on the production of power and knowledge within urban centres. If, descriptively, a city looks like chimneys, bell towers, roofs and antennas, legally speaking, and from a governance point of view, could also look like property rights, concessions, speculation, power.

In the first part of this article, I tried to give some description of Palermo, as Pasolini and Calvino were trying to do with their cities. I did that because investigating the space just from a legal point with the intention to study the spatiality of the law it's not sufficient in researching that discrepancy between the intention of the law and the law that I showed with the case of Palermo. Asking the law question starting from the assumption that space is not only created by legal policies is complex, but it allows us to see aspects of legality that could be lost if I take only the law as a starting point. In the next paragraph I will talk about accidental circumstances and how they, as well as for the form of cities above, open to a discussion about the contradiction of the law in cities.

Accidental Circumstances At the end of the 18th century the writer J.W. von Goethe, went for what was the custom at that time, a grand tour of Italian beauties, which was commonly called *le grand tour*. He spent almost two years travelling the country, from North to South. On March 1787, Goethe left Naples for the main Italian island, Sicily. He later wrote in his diary that, to have been to Italy without having seen Sicily is not to have seen Italy at all, because

Sicily is the clue to everything ²⁰. When in Palermo, he confronted the architectures to the perfection of Rome and Naples and he wrote: “The architecture is similar to that of Naples, but the public monuments- the fountains, for instance- are even further removed from canons of good taste. There is no instinctive feeling for the art here, as there is in Rome, to set a standard. The monuments owe their existence and their form to accidental circumstances”.

In the poetic language, we are often used to these visual panoramas, where, in this case, we can imagine the possibility that the form of monuments could derive their form because of “accidental circumstances”. While in the legal language, it is difficult to determine and understand these “circumstances”, from a more critical point of view we can try to define them as social interactions or historical changes that created an aesthetical canon through laws and legal rules.

It is unintentional and informal in a way. The legal literature that took into consideration a similar phenomenon is legal informality. The definition of informality is not unanimous²¹. It refers to law, sociology, and economics with different meanings. When considered in legal theory, it can be related to housing, tolerated areas of legal non-enforcement, or a discrepancy between social norms and official law²². In the case of Palermo, legal informality exists in this last sense. However, it can be considered as an effect of the shape of the city after the agrarian reform and after the speculations. This is why informality answers to another problem that I won't consider here, that is *how does space create law*, but

²⁰ J.W. Goethe, *Italian Journey* (North Point Press, San Francisco 1982).

²¹ See Jorge L. Esquirol, “Titling and Untitled Housing in Panama City” (2008) 4 *Tenn. J.L. & Pol’y* 243 <http://ecollections.law.fiu.edu/faculty_publications/327> accessed 15 July 2021.

Saskia Sassen, “The Informal Economy: Between New Developments and Old Regulations” (1994) 103 *Yale LJ* <<https://digitalcommons.law.yale.edu/ylj/vol103/iss8/8>> accessed 15 July 2021

Jane E. Larson, “Informality, Illegality, and Inequality” (2002) 20 *Yale L. & Pol’y Rev.* <<https://digitalcommons.law.yale.edu/ylpr/vol20/iss1/4/>> accessed 15 July 2021.

²² Esquirol (n 14) 4.

it doesn't answer to the questions I'm considering in this article: *what are the laws that create space and what does the law want to create?*

Referring to these questions is interesting to report that for Boaventura de Sousa Santos, the relations between law and social reality are similar to those between maps and spatial reality²³. In his view, written laws are cartographic maps, whereas customary, informal laws are mental maps. Law is not only just about normativity but also imagination and representation. But what if the reality doesn't match with the representation? What if we have a discrepancy between the law and the normativity of the law in the spatial reality? Finally, what if the law, like certain maps, becomes misleading?

In another article, Luis Eslava²⁴ shares his memories of landing in Bogotá. On the plane, looking at a map of the city and peeking through the window to see the real geography, he realizes that maps are not simply misleading, instead, they are aspirational or re-creational. The parallel space that emerges from maps is the consequence of "the disappearance of the boundary between fiction and non-fiction, between reality versus fantasy".

These two quotes underpin those contradictions that we saw with Palermo's case. They explain, from a more philosophical point of view, that in "designing" a city, providing urban planning laws, architects, politicians, and lawyers, must confront a gap between the idea of the spaces to build and the reality of the space that would be lived. A gap appears between what the law designs and wants, most of the time through models such as maps or maquette, and what the reality is. In other words, a rupture between a *de iure* situation and a *de facto* situation.

²³ Boaventura de Sousa Santos, "Law: a Map of Misreading. Toward a Postmodern Conception of Law" (1987) Vol. 14 (3) *Journal of Law and Society* <<https://doi.org/10.2307/1410186>>.

²⁴ Luis Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge University Press 2015).

In the making of an urban space, there could be different powers that lead to these gaps. For example, pressure from the international community, pressure from domestic politics, or the course of history that forces a restyle, or a rupture that prompts a reform. Such gaps addressed many spatial problems that cities confront today. The problem of gentrification that affect the cost of private property; the problem of abandoned areas and new areas that create vacuums and barriers; speculation; the definition of public spaces versus private spaces and the value of property in cities today. The intention of this article to give a tangible shape to these problems, to give a form in the sense of the mentioned *mafia's architecture*, has shown the vulnerability of the law in space, thus within the city. What is the form that the law should have in order to answer to the existing and future form of cities to protect the citizen from the creation of gated community and peripheries?

CONCLUSIONS

The main objective of this paper was to present different points of view of the space that the law is able create and order. In the relationship that the law has with the city, I demonstrated the importance of exploring not only the legal aspects. Reconstructing the urban history of a city is not just an exercise in knowledge. Doing so from a legal point of view means trying to study certain dynamics that the law has in its empirical behavior. The problem of property is emblematic because it makes possible to address issues such as: the concept of public space, the housing question, and the question of access to water or electricity, to mention a few.

Addressing the problem with legal categories alone is not enough, because the law often gets lost in the webs of politics and power. Therefore what I did here is to add elements outside the law, such as architecture, literature and sociology. The intention is to momentarily overturn the point of view by widening it on some elements, that are policies that contribute

to construct the space within those legislative directives. Having an overview of these different components, helped to identify some forms or shapes of legal problems. This identification can be useful, for example, to mapping an architecture of illegality and speculation that could serve to study what I previous called discrepancy between what the law wants to create and what it really creates.

And finally it will serve to achieve a more extensive research on specific legal problem, such as the function and value of property in cities today.