The City, Between *Innen* and *Aussen*: the Revolution of the Horizontal Subsidiarity Principle in Italy

ENRICA ROCCA*

From its roots, the city has been overwhelmingly regulated by external entities: the legal norms which shape the city and define our conceptions of how it should be governed are created by an external body. The dichotomy of *Innen* and *Aussen*, which here retain the native German meaning of 'inside' and 'outside' and as applied in the field of architecture, represents the juxtaposition between the private dimension—one's home—and the public one—the city, perceived as the 'other'. When dealing with the effectiveness of rules, adopting a focus on private, self-interest— 'think of yourself'—is more effective for increasing the level of behavioural compliance. It confirms the need to involve oneself when trying to instigate self-regulatory action, but which self-surveillance cues are more effective than cues implying external surveillance? What if, with a diametrically opposed approach, from a limiting tool from outside to inside, we start to shape the city from inside to outside using the concept of *Innen* in relation to our city? This article focuses on the potential of this shift of perspectives by considering the cracks between law and social behavioural studies, including the discipline of nudges. The impact of everyday citizens' decisions are considered with particular focus on environmental issues. Finally, Labsus (the Laboratory for Subsidiarity), a phenomenon which is taking place in the entire Italian peninsula which promotes horizontal subsidiarity, social awareness and a kind of *re-appropriation* of the city, will also be analysed.

Introduction

Few things can give a more significant description of the evolution of human society better than the city. The city mirrors social stratifications, identities and communities, as well as the image that inhabitants and governors have always wanted to give themselves, including the contradictions of our society.[1]

Before narrowing the focus of research, consideration must be given to the broader concept of the city that lies at the heart of concern. As the world-renowned sociologist Saskia Sassen famously pointed out, while the twentieth century has been dubbed as the age of 'nation states', the twenty-first century can be considered an urban era in the sense that the centre of global policies and governance has shifted from the national territory to the urban city environment.[2] By 2030, urban areas are expected to house 60 per cent of the global population and one in every three people will live in cities with at least half a million inhabitants.[3] For this reason, the study of the dynamics between citizens[4] and the public authority—and its effectiveness—is presented in this work taking into account the urban dimension as the ideal case study.

As a start of the research, the puzzling question of 'whether the city has shaped its own rules or, rather, whether rules have given shape to what we consider to be a city' shall be considered. Every citizen facing this kind of challenge may believe it to be a nonsense query, but it is firmly at the heart of contemporary urban-legal dilemma. Different answers lead to different conclusions, and, if the right answer is the first one, then the scenario consists in a city,[5] which has

---

[1] David Smith, 'The Urban Sociology Meets the Old: Re-reading Some Classical Human Ecology' (1995) Urban Aff Rev 432.

[2] Saskia Sassen, *The Global City: New York, London, Tokyo*, (Princeton UP 1991); Saskia Sassen, 'The Global City: Introducing a Concept' (2005) 2 BJWA 27.

[3] United Nations, *The World's Cities in 2016* (United Nations Data Booklet 2016). <http://www.un.org/en/development/desa/population/publications/pdf/urbanization/the_worlds_cities_in_2016_data_booklet.pdf> accessed 30 October 2017.

[4] Since the dynamics of power in administrative law are historically between citizens and the public authority, the use of the term 'citizen' in this article will be improperly adopted in a wider sense, including all the people who inhabit, represent and are the city.

[5] Here the word 'city' meaning a group of people; its 'citizens'.

given itself a name, an image and an order, by defining what disorder means—that is what is prohibited within its perimeter. Conversely, if the right answer is the second proposed, then the city becomes a mix of rules which permit and prohibit; a box built by something (or someone) else—and often *undefined* in the collective imagination. The inevitable consequence is that this box of rules starts to include roads, buildings and initiatives which impoverish the city and its people.

This dichotomy is well represented by the juxtaposition between *Innen* and *Aussen*, a polarity borrowed from the architectural field.[6] On the one hand, the *Innen* is to be understood as the interior part of a building, the private dimension of a person, usually described as *a home*, a place to stay comfortable at. On the other hand, *Aussen* refers to the external part of a building, the contact with *what is out*. These words will probably make the reader's mind link to the simple original dichotomy *in-out,* but it also conveys something more subtle. Upon a first read of this dichotomy, one may immediately consider how the two ideas may work in relation to the concept of city, and an obvious question that arises is: 'If you think of the city you live in, would you put it in the category of *Innen* or *Aussen*?'. Most people, or at least many of them, would probably respond *Aussen,* because our mind normally connects the private dimension to a comfort zone such as our home (something we live every day in, we know very well, we care of and we feel at ease in). What is out of this comfort zone perimeter is too often considered someone else's interest, and the city, by and large, is too often perceived as the 'interest of another'. This research is an attempt to invert this trend, firstly by looking at the city with a diametrically opposed viewpoint. It is the author's view that legal scholarship must move away from an outside-to-inside approach, which is itself limiting, toward the possibility of an inside-to-outside using the concept of *Innen*. The following image could help to grasp my idea. The *Aussen* of the city can be compared to the entire picture, considered as a whole, delimited by its boundaries. Upon a closer look, we notice each piece. How differently would the picture look if an *Innen* approach were taken, and the amount of energy, ideas, needs, rights, and the like, of every citizen within the city were taken into

---

[6] For an interesting analysis of this duality, see Gillo Dorfles, *L'intervallo perduto* (Skira 2006) < http://www.skira.net/books/l-intervallo-perduto> accessed 30 October 2017.

consideration? Citizens should consider the opportunity to put the city in the best dress possible.
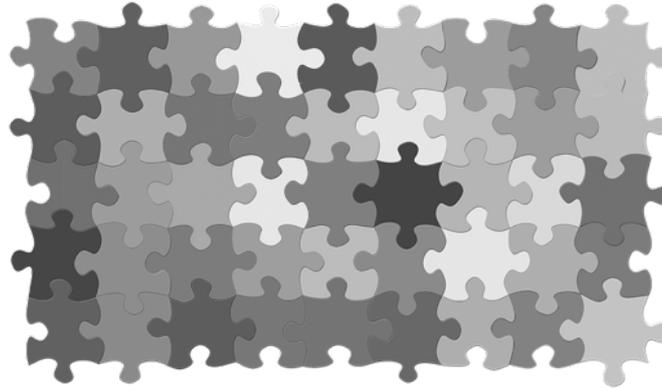
(Image from Pixabay)

The case of Canterbury, between surveillance and self-surveillance

To better explain this duality of aspects, and how it can be used as a tool to better understand the city as a complex product made by the outside (the *Aussen*), but which must be improved by the contribution of citizens (understood as the sum of *Innen*), let us approach this issue from a slightly different perspective.

An interesting study in Canterbury[7] has analysed the role surveillance plays in everyday actions. A team of researchers decided to take as a case *study* a busy level crossing of the city where the city council had put a signal asking drivers to switch off the engine of their car while waiting for their turn to move in order to reduce emissions.[8] But this signal did not positively influence drivers' behaviour, so the team put in place two experiments. The first experiment was based on

---

[7] Rose Meleady et al, 'Surveillance or Self-Surveillance? Behavioral Cues Can Increase the Rate of Drivers' Pro-Environmental Behavior at a Long Wait Stop' (2017) Environ Behav 1.

[8] ibid

the concept of surveillance in its traditional sense: an external person watching over in a paternalistic and judgemental way. A black and white picture of a pair of eyes on the approach to the railway level crossing was even added.[9] The second experiment, on the other hand, was focused on the idea of self-surveillance. Here the researchers added a signal stating: 'Think of yourself: when barriers are down switch off your engine'. When facing a behavioural decision, a person will usually default to past habits, and the only way to escape from this mechanic decision is by directing their attention towards the new, required behaviour and assessing whether they are complying as instructed. A tactic to get a person's attention is by involving them in the process. If a person takes part in this decision, with the possibility of directly being affected by it, the goal will be obtained. The case of Canterbury demonstrated that drivers were only 1.83 times more likely to switch their engine off in the surveillance experiment compared to 4.82 times more likely in the private self-focus scenario.[10] Furthermore, the 'watching eyes' tool seems to invoke an implicit reputational cue[11] which is less impacting than the inclusive one.

These experiments are clearly linked to the concept of nudges, defined by Thaler and Sunstein as 'any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options or significantly changing their economic incentives'.[12] Even if unaware of their presence, nudges are everywhere and they have massive effects on one's behaviour. As pointed out by Thaler and Sunstein, the strategy of nudges lies in the insistence that people should remain free to decide what they want to do; in other words, being 'free to choose', as the famous phrase by Friedman and Friedman stresses.[13] But a certain level of conditioning is always concealed in their decisions. In *Nudge: Improving Decisions about Health, Wealth and Happiness*, a well-known book that addresses this

---

[9] (n 7)

[10] (n 7)

[11] Ernst Fehr and Frédéric Schneider, 'Eyes Are on Us, but Nobody Cares: Are Eye Cues Relevant for Strong Reciprocity?' (2010) Proc R Soc B 1315.

[12] Richard Thaler and Cass Sunstein, *Nudge: Improving Decisions About Health, Wealth and Happiness* (YUP 2008) 6.

[13] Milton Friedman and Rose Friedman, *Free to Choose: A Personal Statement* (HBJ 1980).

topic, the authors aim to draw a policy model which maintains freedom of choice in what they call a 'libertarian paternalistic way'.[14] According to this model of policy shaping, choice architects should attempt to influence people's decisions to make their lives better, as judged by themselves.[15] Looking at the presented case of Canterbury, it seems clear that involving a self-surveillance mechanism represents an emblematic example of the libertarian paternalism as defined by Sunstein and Thaler. The decision to conduct the two experiments not only sought to track people's choices, but also to move their decisions towards a better situation for the environment and, consequently, everyone. This aspect of the study reflects the following step of the analysis conducted by Sunstein, according to which there are two kinds of nudges: System 1 nudges and System 2 nudges. The first group is not educative (i.e. it does not mean to teach anything), and simply benefits from automatic processing (for example a graphic warning), while the second one is educative and benefits from automatic processing, too (consider, for example, the use of statistical information). It has to be considered that educative nudges tend to increase people's own powers, enabling them to choose for their own benefit in a more aware way, while non-educative nudges preserve freedom of choice without necessarily increasing individual agency, requesting few time and/or attention. Professor Sunstein conducted a survey in the United States regarding different topic of daily routine. Consideration is given to a selection which links to the case of Canterbury. The first question was focused on energy. People were asked to select whether they would prefer 'an automatic enrolment of customers in slightly more expensive "green" (environmentally friendly) energy, subject to "opt out" if customers want another, slightly less expensive energy source or educational campaigns so that consumers can learn the advantages of green (environmentally friendly) energy'.[16] The second question dealt with water consumption, asking to choose between two scenarios. In the first one 'the government requires hotels to select a default policy of "environment-friendly rooms" in which towels left on the racks are not washed. If people want their towels washed, they can tell the front desk, and their towels

---

[14] (n 12)

[15] For a similar definition, see Donald Van De Veer, *Paternalistic Intervention: The Moral Bounds on Benevolence* (PUP 1986).

[16] Cass Sunstein, 'People Prefer System 2 Nudges (Kind Of)' (2016) Duke LJ 121.

will be washed daily' while in the second case 'the government requires hotels to provide guests with information about an "environment-friendly" policy in which towels left on the racks are not washed.' People are encouraged to choose to take this information. What emerged from the results of these two questions asked in the neutral condition—that in which no further information regarding the effectiveness of the two systems is provided—is that the majority prefers System 2 nudges. Whilst many factors influenced the results of these findings, the most prominent appears to be human nature and the desire to maintain a certain level of autonomy. The words of the legal theorist Jeremy Waldron, in relation to the aforementioned book, well convey this idea, adding a touch of positivity: 'I wish, though, that I could be made a better chooser rather than having someone on high take advantage (even for my own benefit) of my current thoughtlessness and my shabby intuitions.' [17] Waldron's words strongly reflect the the essence of being a citizen in the modern day. Moving from the outside-inside perspective in which we—as inhabitants—have often the feeling to be guests within our city, the analysis now turns to look at the city as something built and shaped through personal experiences, needs and capabilities—the *Innen*, in other words.

A new concept of city

The idea of a re-appropriation of the city is not new. Henri Lefebvre's project, for instance, was based on the assumption of a critique of the existing society, and advocated opening up to a new kind of system beyond capitalism, the state and consumerism. At this point it becomes necessary to interpret his concept of rights. Rights, as understood by Lefebvre, are the outcome of political struggle, the results of which reached are enjoyed collectively. Since they originate from struggle, they are in a perpetual state of fluidity, meaning that collective needs constantly change and, as a consequence, rights and the legal framework should be ready to keep the pace. Among the set

---

[17] Jeremy Waldron, 'It's All for Your Own Good', *New York Review of Books* <http://www.nybooks.com/articles/archives/2014/oct/09/cass-sunstein-its-all-your-own-good> accessed 30 October 2017.

of rights which, in his view, derive from a contract between the state and the citizenry, the rights of information, to difference, to self-management and a right to the city are included.[18] What he called the right to the city is intrinsically linked to a claim for self-government in which inhabitants manage the production and shape of urban spaces.

He wrote that 'any revolutionary project today, whether utopian or realistic, must, if it is to avoid hopeless banality, make the re-appropriation of the body, in association with the re-appropriation of space, into a non-negotiable part of its agenda.'[19] It is an image of citizens who experience a sort of awakening, starting to make the city their own again. This is, among other things, the basis of the revolutionary principle of horizontal subsidiarity, which shall be considered later on, with the difference that here the state (and government) still has a fundamental role within society. It opens up to a revolution within the traditional scheme of the state. It should be made clear at this point that turning to a new concept of city based on the idea of subsidiarity does not mean every aspect of the traditional model of power has to be criticised. Nevertheless, the *Aussen*, external bodies such as local government, remain a fundamental component of society. Instead, focus should be diverted to what the people, the inhabitants of these spaces, can do; making them aware of their capabilities, which, consequently enrich the city and its wider community. A necessarily consequent step is considering that such awareness requires a certain space which plays a symbolic role of unity and good citizenship. An image which evokes this idea is that offered by Italo Calvino, the greatest Italian writer:

> The inferno of the living is not something that will be. If there is one, it is that which is already here, the inferno that we inhabit every day, that we create by being together. There are two ways to escape suffering it. The first is easy for most: accept the inferno and become such a complete part of it that you no longer know it is there. The second is risky and requires vigilance and continuous attention: seek and learn to recognize who and what, in the midst of

---

[18] The right to the city is a complex concept that lies between the *city* and the *urban* in Lefebvre's studies. See, on this point, Mark Purcell, 'Possible Worlds: Henri Lefebvre and the Right to the City' (2013) 36 Urban Aff Rev 141.

[19] Henri Lefebvre, *La production de l'espace* (Anthropos 1974).

inferno, are not inferno, and help them endure, give them space.[20]

Yet, the idea of a space for cohabitation must be carefully considered. Historically speaking, human beings coexisted firstly with the environment and later with one another. The modern city, it may be said, is the emblematic image of this coexistence over time. The difference is the fact that if the environment is something outside human-beings, which has been modified given that primordial interaction, with all the species but for sure with more substantial and alarming consequences deriving from the human kind, then the city as an *Aussen* has been created by people, not always aware of their privilege and responsibilities. The city, in this sense, is a human product[21] which is too regarded as something separate from human interaction and community. Issues like inequalities, injustice and gentrification have unfortunately arisen as a product of this.[22] The awakening of citizens may result in a new model of society.

Labsus, the Laboratory for Subsidiarity

The phenomenon of active citizenship is taking place in many areas of the world. The example from Italy presented here demonstrates how the legal framework has changed and how citizens are reacting to this change. Since the Constitutional Reform Act of 2001, the importance of 'active citizenship' has been recognised at a constitutional level through the so-called principle of subsidiarity. Article 118, para. 4, of the Italian Constitution reads that:

> The State, regions, metropolitan cities, provinces and municipalities shall promote the autonomous initiatives of citizens, both as individuals and as members of associations,

---

[20] Italo Calvino, *Le citta invisibili* (Einaudi 1972) 164.

[21] Recalling the idea of an ideal city by Lefebvre seems to be appropriate. See Henry Lefebvre, *Le droit à la ville* (Editions Anthropos 1968).

[22] Keith Aoki, 'Race, Space, and Place: the Relation Between Architectural Modernism, Postmodernism, Urban Planning and Gentrification' (1992) 20 Fordham Urb LJ 699.

in carrying out activities of general interest, on the basis of the principle of subsidiarity.[23]

From a more general perspective, it is worth noting that the principle of subsidiarity has a dualistic nature: it can be considered both in a *vertical* sense[24] as well as in a *horizontal* sense.

Horizontal subsidiarity is at the centre of the revolution the Laboratory for Subsidiarity (Labsus)[25] is trying to spread around the Italian peninsula, and beyond. In 1997, in a well-known essay on the need for a shared system of administrative governance, Professor Gregorio Arena wrote that the Italian system of public administration seemed to be evolving towards a new model based on the principle of cooperation rather than on the conflict between citizens and the public power.[26] Synergy, not antagonism, between the public and private spheres should be the new lens through which to look at the power relationships of society. What was a mere theoretical idea in 1997, which had the backing of some case law,[27] has today become a day-to-day phenomenon. The goal of Labsus is making people aware of the fact that they not only have needs but also capabilities which they can offer to the community and contribute to finding solutions to issues of common interest in alliance with the government. This

---

[23] Constitution of Italy, article 118, para 4, 22 December 1947 <http://www.refworld.org/docid/3ae6b59cc.html> accessed 19 November 2017.

[24] The general aim of the principle of vertical subsidiarity starts from a situation of sharing of powers between several levels of authority. In the case of Italy, this sharing is among the state, regions, metropolitan cities, provinces and municipalities. According to the principle, power should be exercised at the closest level as long as there are economic effectiveness and efficiency.

[25] Labsus is a research center on horizontal subsidiarity created in 2005 by a group of professors, scholars and civil society representatives. All the members work on a voluntary basis, spending time for values they truly believe in.

[26] Gregorio Arena, 'Introduzione all'amministrazione condivisa' (1997) Studi Parlamentari e di Politica Costituzionale 117.

[27] Professor Arena pointed out the case of rubbish, highlighting how the public administration in those years was not able to manage such a problematic issue without a strong cooperation of citizens. For this reason, the administration started to focus on communication. The involvement of citizens was essential. See Gregorio Arena, 'Che cosa è la sussidiarietà', in Lucio Franzese (ed), *Il principio di sussidiarietà tra politica e amministrazione* (Atti del Convegno, Trieste 18 gennaio 2007).

laboratory, which has an online journal, [28] constantly adds to knowledge with its scholarship on cases of active citizenship, care of common goods and bottom-up initiatives, aimed at giving notice of what is going on in Italy. Participation is a key principle of the Italian legal framework.[29] Breaking down the barriers that hinder effective participation is a key mission of Labsus. Indeed, for the citizens to effectively get involved it is necessary to have a certain level of knowledge regarding, for instance, the capabilities they have, what can be possibly done, and what cannot. The emphasis is therefore of citizenship education for better civic participation. Th\e collective years of experience at Labsus have demonstrated the common tendency according to which people with an idea about their city are often afraid of starting to realise it because they do not know how to do it in accordance with public administration rules, how to engage and what is permitted. To help cities and municipalities to make the principle of horizontal subsidiarity effective, Labsus has written a *Regulation on Cooperation Between Citizens and the Public Administration for the Care, Renewal and Management of Common Urban Goods* [30] in cooperation with the City of Bologna. This regulation, which is quite simple and brief, has been drafted by a team of professors, officers, scholars and citizens, with the aim of functioning as a model for all the cities and municipalities interested in adopting a set of rules to foster subsidiarity and active citizenship. It is a flexible instrument that every city may adapt to its own particular characteristics and features. For this reason, after the endorsement by the city of Bologna, it has been shared with the community. Everyone interested can freely download it at the Labsus website. Around 200 Italian cities, including, Pavia, Perugia, Siena, Trento, Torino and Verona, have adopted a similar regulation starting

---

[28] <www.labsus.org>

[29] The importance of the principle of participation, among others, is included in the well-known Italian law *Nuove norme in materia di procedimento amministrativo e di diritto di accesso ai documenti amministrativi,* N° 241, 1990.

[30] Labsus, 'Regolamento sulla collaborazione tra cittadini e la pubblica amministrazioni per la cura, la rigenerazione e la gestione condivisa dei bene comuni urbani' (Labsus 2016) <http://www.labsus.org/wp-content/uploads/2016/04/Prototipo-di-Regolamento-Labsus.pdf> accessed 30 October 2017.

from this inspirational proposal and many others are working to adopt it soon.

Meetings with citizens, officers and people from different backgrounds have been organised; initiatives and projects[31] regarding the care of common goods have been supported and promoted by Labsus: a revolution appears to be occurring in earnest. That being said, many aspects of this aforementioned revolution require further study. The path has not been and many difficulties and challenging legal questions about horizontal subsidiarity still require attention; most notably the provision relating to insurances for active citizens.

Conclusion

This brief analysis of the Italian experience reveals how a civic awakening brings two inherent risks which must be taken into consideration for every city around the world. The first risk, and probably the most complex, is the tendency to normatively regulate every aspect of a spontaneous activity, such as active citizenship initiatives, with the unexpected and unintended result of being caught in the net of rules and bureaucracy. Why should we create a top-down knotty net of rules and norms which try to define, or even to trap, and render formal initiatives *ex ante*, rather than a bottom-up approach which is intrinsically and inherently informal? The strength of the regulation proposed by Labsus lies indeed in its flexibility. Put differently, a tailored dress created by people, for people would yield more positive results. A phenomenon of overregulation, indeed, may result in a second form of regulation from the outside making, once again, the city fall into the trap of *Aussen*. A second risk, highlighted by Professor Maria Rosaria Marella,[32] is linked to active citizenship activities. Paradoxically, these spontaneous activities may lead to another kind of *enclosure* [33] within the urban space, favouring

---

[31] Among the projects, a School on the Care of Common Goods (SIBEC, Scuola Italiana Beni Comuni) has been created by Labsus in cooperation with Euricse and the University of Trento. See more at <http://sibec.eu>.

[32] Maria Rosaria Marella, 'L'uso dello spazio urbano fra questione proprietaria e accesso alla giustizia' (2017) 2 Questione Giustizia 79.

[33] Nicholas Blomley, 'Enclosure, Common Right and the Property of the Poor' [2008] 17 Soc Leg Stud 311.

homogeneity only inside the community and discouraging the mobility and plasticity of these realities. In other worlds, the process of involvement of people within the power of shaping the city is twofold: if, on the one hand, it is done to improve the entire community, on the other, it is somehow linked to the human characteristics of self-seeking and autonomy, which is commonly criticised. As long as it does not overexpress itself, this self-seeking, in this ideal revolution, has a positive nuance. Every step of life, every decision, every revolution, after all, may be considered as a risk. The key point is not allowing fear distracting from acting, feeling responsible in advance, taking this risk. What Hans Jonas calls the *courage of responsibility* should be the guideline towards a balance between this progress and its inherent danger.[34]

---

[34] Hans Jonas, *The Imperative of Responsibility: In Search of an Ethics for the Technological Age* (UCP 1985).