

University of California, Hastings College of Law

From the Selected Works of Ugo Mattei

Spring 2013

The Commons Movement in Italy

Ugo Mattei



SELECTEDWORKS™

Available at: http://works.bepress.com/ugo_mattei/51/

The Commons Movement in Italy

Saki Bailey, Editor

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

2

3

4 **Ugo Mattei**

5

6

7 Protecting the Commons: Water, Culture, and
8 Nature: The Commons Movement in the Italian
9 Struggle against Neoliberal Governance

10

11

12

13

14

15 In Italy, political occupations have a pedigree dating back to the earlier part
16 of the twentieth century. If we consider the US Occupy movement as the
17 people's reaction against the crisis of 2008, the Italian version would be the
18 "*beni comuni*" (common goods or commons) social movement, which, in
19 comparison to Occupy, has demonstrated a more potent and articulated
20 political strategy. This Against the Day section explores the many dimen-
21 sions of the political transformation of the commons social movement in
22 relation to three different types of "common" resources: water (Fattori), cul-
23 ture (Bailey and Marcucci), and the environment (Zucchetti).

24 What we present as the "Italian Occupy movement" gained significant
25 force and political viability even before the better-known Spanish (M15) or US
26 counterpart on Wall Street. For example, already in April of the occupants of
27 the Cinema Palazzo, a theater in the core of the San Lorenzo neighborhood
28 in Rome, successfully resisted eviction. At the time of the occupation, the
29 Cinema Palazzo was privately owned and rented to a company attempting to
30 build a casino. After more than one year, the theater is still in the hands of its
31 occupants, and several other more or less well-known occupations of public
32 spaces in Italy are occurring as well. The commons movement has similar
33 features to Occupy—namely, the strategy of occupation as well as adoption of
34 the "general assembly" method of decision making—but it also deploys
35 other political strategies to resist the neoliberal authoritarian order.

36

37

38 *The South Atlantic Quarterly* 112:1, Spring 2013

39 DOI 10.1215/00382876-2020244 © 2013 Duke University Press

40

One such strategy, which has proved very important to the movement, is the use of direct constitutional democratic means, such as the referendum. The referendum held in Italy on June 13, 2011, was the climax of a long struggle to limit the apparently irresistible process of neoliberal commodification and privatization, which began long before the crisis of 2008. In Italy, the very simple platform of water as a common good mobilized tens of thousands of activists from its proposal in December 2010 when it was admitted by the Constitutional Court as a legitimate popular referendum on the abrogation of the Ronchi decree, which mandated the privatization of water, to its triumph in June 2011 when more than 27 million Italians voted, despite the sustained neoliberal effort to undermine the referendum both through the courts and the media. Fifty-six percent of Italians showed up at the polls and almost unanimously (more than 90 percent) voted against privatizing water. June 2011 will be remembered as the first time in Italian history when an absolute majority of the voters expressly abolished a series of statutes. Some of these neoliberal statutes obtained parliamentary approval less than two years before the popular vote, elaborating the complete disconnect in Italy between the will of the people and that of their representatives. After the referendum, as discussed below and in the following articles, the concept of the “commons” became a widespread strategy to protect the cultural and environmental commons from the threat of privatization. In Italy, the notion of the commons has proven to be capable of quite successfully connecting a variety of revolutionary efforts by providing a unifying theory for the praxis of struggle.

The Italian Water Referendum

In June 2011, Italians were called on to vote on three referenda aimed at challenging some fundamentals of neoliberalism; only one of the referenda was technically devoted to water. The objective of the first referendum was to cancel a 2009 statute that introduced a compulsory program of privatization of all public services, which included public transportation, garbage collection, and nursery schools.¹ The second referendum, the only referendum specifically devoted to water, was aimed at abolishing a legal provision guaranteeing the “remuneration of invested capital” as part of the final cost to the user of the water supply system. The referendum aimed to preclude the profit motive from the water service, thus canceling the incentives to private companies for selling water. The third referendum was aimed at abolishing

1 the law that reestablished an Italian nuclear program (already rejected by referendum in 1986 in the aftermath of the Chernobyl accident), which complemented the alternative vision of society (and the sustainable use of resources) that the commons movement embraced and proposed to Italian voters.

2 Two points are crucial to understanding the political relevance of the commons movement and its contagious force in linking apparently distinct and distant struggles. First, as I said, water was not the only issue on which these referenda were based. Second, these referenda were only one tool in a broader effort to challenge the neoliberal logic of privatization. In Italy, resistance to neoliberalism had been alive and well since the late 1990s, memorably highlighted by the dramatic events around the G8 summit in Genoa in July 2001. This type of resistance continued, though in a less visible form, and was reorganized around 2005. In order to explain the unexpected success of the 2011 campaign (no referendum reached the quorum in the last sixteen years), one must consider that a national network of local water committees had been in place since 2006 (active in different parts of the country since the aftermath of the Genoa G8 summit), and that since 2005, a systematic scholarly effort was in place to rethink and criticize the legal basis, which facilitates easy privatization in Italy. I was the principal investigator in this scholarly effort, undertaken by the Accademia Nazionale dei Lincei, the most prestigious scholarly institution in Italy.

3 The study was motivated by the observation that between 1992 and 2000 Italy was the leading country in the world in privatized assets (roughly 140 billion Euros), which makes it only second worldwide (after Great Britain) in the value of privatizations between 1979 and 2008. Furthermore in 2009, the water network Forum Italiano dei Movimenti per l'Acqua (the Italian Forum of Water Movements), well described here by Tommaso Fattori, had already organized a citizen's initiative for a water reform statute, collecting more than 400,000 signatures (only 50,000 of which are actually necessary for such initiatives). The popular water bill that was proposed was never discussed by the neoliberal Parliament. These precursors to the commons movement suggested that the Italian people were sensitive, as had been their successful Bolivian counterparts, to the need to defend water from privatization.

4 Meanwhile, under Romano Prodi's government in 2007, the scholarly effort at the Accademia dei Lincei and sustained academic lobbying resulted in the creation of a special commission, the Rodotà commission, at the Ministry of Justice. The commission was chaired by the distinguished legal scholar and former MP, Stefano Rodotà. The task of the commission

was to propose a reform of the provision on public property, contained in the Italian Civil Code, in order to establish some principles governing the conditions and limits for the privatization of public assets. After the fall of the Prodi government in February 2008, the Rodotà commission produced a reform proposal, which contained the first legal definition of the commons as a form of property distinct from both private and public ownership and deserving of special protection at the constitutional level. In the Rodotà commission's definition, the commons are "goods, which provide utilities essential to the satisfaction of fundamental rights of the person." Access to such goods is guaranteed regardless of public or private ownership and in all cases must be protected in the "interest of future generations" (Italian Parliament 2010). Water was the first item in the open list of the commons suggested by the commission.

On November 26, 2009, the same day that the Rodotà Commission Bill was to be presented in the Senate by the Piedmont region, the lower chamber of the Parliament instead passed without discussion the "Ronchi decree," "which introduced a compulsory scheme of privatization of all local services" (Italian Parliament 2009). The law was clearly aimed at transferring control of public resources to the private sector. According to Article 113-bis of the decree, by December 31, 2011, all local services controlled by the public sector, including the water supply system, were to be placed on the market by public auction. Article 1 of the decree declared that the release of public control was mandated by European law. The blatant manipulation by the sitting Parliament of this provision generated indignation, and within a few days six law professors, four of whom were already members of the Rodotà commission—Stefano Rodotà, myself, Alberto Lucarelli, Luca Nivarra, Gaetano Azzariti, and Gianni Ferrara—drafted three referendum questions, created a referendum committee, and posted a document on the web calling for the beginning of a referendum procedure articulated on these three questions, challenging the compulsory privatization scheme. Two of the three questions were eventually admitted by the Constitutional Court and placed on the ballot.

The scholars at the Lincei, the lawyers who wrote the referendum questions, and the Forum Italiano dei Movimenti per l'Acqua led a major organizational effort to put together a broad coalition of civil society organizations, which eventually included trade unions and environmental and consumer groups, and purposefully excluded the direct participation of political parties. With the support of the coalition, the referendum questions were finally deposited at the Supreme Court in Rome, and the coalition began to

1 gather signatures on April 22, 2010. Gathering the signatures at this time
2 would permit the referendum to take place in the spring of 2011 in order to
3 prevent the compulsory auction of the water supply system dictated by the
4 Ronchi decree. According to Italian law, the half million signatures must be
5 collected within three months, in person, and officially certified individually
6 by a notary or another public official of the municipality in which the signa-
7 tures were collected. The collection process proved to be an incredible sign of
8 the vitality of the commons movement, which mobilized tens of thousands of
9 volunteers collecting signatures nationwide, even in the most remote corners
10 of the country. People, usually skeptical about the collection of signatures,
11 actually lined up, sometimes for hours, to sign and by mid-July of 2010, more
12 than 1.4 million certified signatures were transported in huge boxes in front
13 of a crowd of media reporters to the doors of the Supreme Court.

14 The strategy of the bipartisan neoliberals sitting in Parliament to
15 oppose the referendum emerged from the very beginning. The Parliament,
16 without opposition after the 2008 political elections, completely silenced the
17 so-called “radical left” parties. Furthermore, it ensured that the referendum
18 was to be ignored by the media. This was easy to accomplish since Prime
19 Minister Silvio Berlusconi himself had widespread control over national
20 newspapers and television channels. Additionally, the leadership of the cen-
21 ter-left Democratic Party, which was in power in many regions and munici-
22 palities, was extremely lukewarm to the movement, as many were clearly
23 politically and personally invested in the possibility of profiting from the
24 privatization scheme. Cognizant of the high threshold required by Article 75
25 of the Constitution requiring a 50 percent voter turnout, the oppositional
26 forces deployed a silencing strategy aimed at ensuring a lack of sufficient
27 voter turnout at the polls. In addition to this strategy, the neoliberals deployed
28 a legal strategy at the constitutional level to prevent the referendum from
29 taking place, based on the theory that the liberalization of the local public
30 services was a requirement of European law. In Italy, according to Article 75
31 of the Constitution, a referendum cannot abolish a statute that is mandated
32 by international law, which is technically the nature of European legislation.
33 On January 12, 2011, the Constitutional Court gave a genuine lesson of con-
34 stitutional and European law by admitting two of the questions presented by
35 the water coalition and the nuclear referendum.² The court clearly stated that
36 European law does not mandate liberalization or privatization of public ser-
37 vices and that it is up to member states to decide whether to use the private
38 or public sector. According to the court, the Ronchi decree was a discretion-
39 ary act of the Italian state and as such could be abolished should a referen-

dum be successful. No one could anticipate the historic success of the water referendum, in which voters almost unanimously voted against the mandated privatization, without the support and even facing the opposition of the media and political parties.

Water as a Common Good: A Challenge to the Neoliberal Order

The success of the water referendum was a blow to the neoliberal establishment. The reaction did not take long: in the week following the referendum, lawyers and experts representing corporate interests quickly attempted to reduce the impact of the vote. Acea SpA, a large partially privately owned water corporation in Rome, acquired the expert opinion of Giulio Napolitano, the son of the sitting president of the republic and a well-known law and economics expert at the University of Rome. Napolitano argued that no legal obligations followed from the referendum results and that business as usual was still possible. International speculation targeted Italy just weeks after the referendum, and the European Central Bank, in a move without constitutional precedent, sent a letter to Berlusconi asking him to implement a variety of measures, including the dismissal of public services. As a consequence, on August 13, 2011, just weeks after the referendum, the Berlusconi government passed a law ironically labeled “dispositions to adjust the law to the referendum results and to European law” (Italian Parliament 2011), which in fact was used to revive the abolished Ronchi decree in every respect except on water, thus attempting to limit the results of the popular vote.

This token of unconstitutional obedience to the supranational neoliberal order was deemed insufficient. Financial speculation kept Italy under pressure, despite being the Organisation for Economic Co-operation and Development country for which public debt has increased the least since the 2008 crisis. Finally, Berlusconi was forced to resign in a maneuver orchestrated by President Giorgio Napolitano, a former Communist and recently converted neoliberal. President Napolitano then appointed a conservative economist and former European Commissioner on Internal Market, Services, Customs, and Taxation Markets and more recently for Competition, Mario Monti, as the new prime minister, after bestowing upon him the honor of becoming a lifetime senator. This constitutionally unprecedented move did the exact opposite of what the president, as the supreme guardian of the Constitution, should do in facing a looming failure of democracy. A “technical government” was installed to resolve the “economic emergency”

1 and supported by a massive neoliberal propaganda campaign and a very
 2 large parliamentary majority. The Parliament, defeated by the people in June
 3 rather than being dissolved, was confirmed in office as long as it would sup-
 4 port the suspension of democracy in the form of the technical government.
 5 The new government confirmed Berlusconi's decision to continue a policy of
 6 privatization as business as usual, despite the referendum results, and it
 7 passed a series of statutes further restricting the possibility of running pub-
 8 lic services within a public law model.

9 In reaction, a constitutional challenge to these "business as usual"
 10 laws, obliging municipalities and local governments to privatize public utili-
 11 ties, was launched by me and Lucarelli, representing the Puglia region. The
 12 case in front of the Constitutional Court was argued on July 16, 2012, just
 13 hours after the party for the one-year anniversary of the occupation of the
 14 Teatro Valle, and almost exactly a year after the referendum victory. On July
 15 17, 2012, in what certainly will be a landmark decision, the Italian Constitu-
 16 tional Court held Article 4 of the so-called "Ferragosto decree" as unconsti-
 17 tutional as amended by the Monti government.³ The court declared, for the
 18 first time in Italian history, that the will of the people expressed in the form
 19 of direct democracy by the referendum could not be overturned by means of
 20 representative democracy (i.e., by the Parliament) at least for a reasonable
 21 period of time. The commons movement celebrated a very significant victory,
 22 having saved from compulsory privatization not only water, but all public
 23 services.

25 **Theater as a Cultural Common Good**

26
 27 On June 14, 2011, the day after the referendum victory, a group of precarious
 28 workers of the entertainment industry—actors, directors, technicians, musi-
 29 cians, and independent producers—occupied the Teatro Valle in Rome (see
 30 the article here by Bailey and Marcucci; see also *Teatro Valle Occupato* 2012).
 31 The group's motto was "Like water and like air, let's recapture culture." The
 32 claim of the Teatro Valle was that theater, as part of the cultural sector, pro-
 33 vides essential public services, and just as in the case of water, its workers
 34 and users should be legally granted the power to access and manage the
 35 resource. In large part, as a result of the strong connection with the fresh
 36 political strength of the referendum, the municipality of Rome proved politi-
 37 cally incapable of suppressing the occupation. As a result, the workers of the
 38 Valle have been successfully running the theater for more than one year,
 39 keeping it open to the public and pursuing an extraordinary example of

commoning (the act of producing and maintaining the commons). The call to convert public or private property of significant cultural meaning into a common has been answered not only in Rome but also in Venice (Teatro Marinoni), Catania (Teatro Coppola), Naples (Asilo della creatività), and Palermo (Teatro Garibaldi).

The only place in which the “culture as a commons” movement was entirely repressed was in Milan, where an abandoned thirty-one-story building, belonging to a privately owned company gone bankrupt, was occupied on May 5, 2012, by a group of artists known as the Macao. The Macao was brutally evacuated within a few days by the police. Today the Macao is creatively continuing its struggle, floating from one place to another to avoid police assault. Ironically, Macao is the object of repeated police repression in a municipality whose left-wing mayor is a well-known former Communist lawyer and was considered an “Italian spring” success story in 2011, only to become an agent of neoliberalism just one year later (Argentieri and Cruccu 2012).

Nature as a Common Good

While the water campaign deployed constitutional means and the theater occupations have used tools of private law such as the foundation, in Italy the hard face of neoliberal repression and its analogy to neofascist brutality is staged in the Susa Valley, where the confrontation has reached its peak both physically (in the form of extreme police brutality) and economically, as a multibillion dollar megaproject (see the article in this issue by Zucchetti). While resistance against the high-speed train has been going on for almost twenty years, it is in the aftermath of the referendum that the “commons” emerged as a subjectivity capable of defending the valley. The NOTAV movement in the last twenty years has resisted a gigantic project involving the construction of a new 56-kilometer tunnel through the Alps, accomplished by an exploitative and substantially illegal decision making process.

In the last few years, activists occupied a small portion of territory adjacent to the area where the first perforations for the tunnel were supposed to be made. This was declared a free republic, *Libera Repubblica della Maddalena*. In the days of the *Libera Repubblica della Maddalena*, during a large assembly, the idea of NOTAV emerged as a commons movement to oppose the same logic of economic and political concentration and centralization challenged by the water movement. For more than a month, in June 2011, this area experienced a community economy based on gift and cooperation,

1 before being brutally expelled by police and the military deploying war
2 equipment and even veterans of the recent war in Afghanistan (della Porta
3 and Piazza 2008).

4 While the people have obtained important political victories, there still
5 are no great results from the legal standpoint, and activists continue to suffer
6 incarcerations and other repressive measures on a regular basis. Suffice it to
7 say that the Susa Valley population is still systematically accused (by media
8 in a blatant conflict of interest) as a violent NIMBY (not in my backyard)
9 approach, and bipartisan neoliberal politicians compete among themselves
10 about who is tougher on the movement. The Maddalena was violently termi-
11 nated on the morning of June 26, 2011, but the motto “NOTAV bene comune”
12 has taken over the movement (see Zuchetti in this issue). In July 2011 the
13 motto printed on a banner was carried in Turin at the head of a demonstra-
14 tion of more than twenty thousand participants, which for the first time
15 brought the NOTAV movement outside of the perimeters of the Susa Valley.
16 NOTAV flags and delegations of Valsusa people are now present in practi-
17 cally every protest against neoliberal brutality, and the struggle is perceived
18 within the commons movement as the Italian Cochabamba.

19 The idea of the *commons*, which the referendum gave national visibil-
20 ity, has been able to conquer a much broader political space than could the
21 single issue on water. In Italy, the commons is today the recognized symbol
22 of an alternative vision, theoretically articulated in a manifesto I published
23 in September 2011 and in Michael Hardt and Antonio Negri’s (2009) *Com-
24 monwealth*, both of which have generated a large political and legal body of
25 literature, inspiring many local and less visible struggles, and most recently
26 produced a new political party, Alleanza Lavoro Beni Comuni Ambiente
27 (ALBA). ALBA stems from a crucial effort to present an alternative to the
28 neoliberal government of Mario Monti at the next political elections.

29 In Naples, a new mayor elected as a complete outsider just weeks
30 before the June 2011 referendum, in great part due to the strong endorse-
31 ment of commons activists, appointed Alberto Lucarelli, one of the draft-
32 ers of the water referendum and a member of the Rodotà commission, to a
33 newly established post of ombudsman of the commons (*assessore ai beni
34 comuni*). This key political role is aimed at experimenting with new forms
35 of local participatory democracy in the third largest city in Italy. Among the
36 tasks of the new ombudsman was the creation of a new participatory institu-
37 tional system of public governance for the local water corporation. The new
38 company, Acqua Bene Comune Napoli (ABC Napoli), was created, despite
39 tremendous political and legal resistance from the neoliberal headquarters

in Rome and Naples, on July 31, 2012, to establish a public utility company involving direct user participation. In the conditions of the corporate charter of ABC Napoli, there is a mandate for the noncommercial operation of the water system, applying a social and ecological philosophy that prioritizes users and the environment. The smooth operation of this first Italian pilot project will be of tremendous importance for the commons movement, as it offers an opportunity to demonstrate in practice the benefits of the new logic of the commons (Lucarelli 2012).

Naples has become a hub for commons activism by launching a variety of campaigns, including one for a European Charter of the Commons, to be proposed as a citizen's initiative to the European Commission according to Article 11 of the Lisbon Treaty. This charter follows in the footsteps of an analogous initiative for a Europe-wide protection of water as a commons and was launched during an international conference in Naples. A proposed draft of the charter, created during a high-level academic conference in December 2011, was presented at an international conference at the Teatro Valle in Rome and is now in the process of being discussed across Europe.

This vision of the commons movement, articulated both through political and legal activism, fully grasps the current decline of state sovereignty not only in the periphery but at the very center of the capitalist system. Liberal constitutionalism fails to provide a shield against private interests without the active constituent role of the people to enforce constitutional public purpose guarantees. Maintaining (and expanding at the global level) this liberal constitutional model, absent a direct constituent role for the people, simply creates conditions for continuous accumulation of power and wealth through what can only be understood as a process of the continuous enclosure of popular sovereignty (Bailey and Mattei forthcoming). This is why the commons movement considers constituent the practice of occupation aimed at "opening up" public and private spaces by a formally "illegal" action. These actions are forms of peoples' *drittwirkung* (direct application of the constitutional values), whose legitimacy is justified by the actual capacity to resist an illegal rule of law by subverting the very meaning of legality. It is, however, a true Sisyphian action because as soon as one battle against enclosure is won, capital strikes back. There can be no constituent effort, nor liberation from corporate greed, outside of a radical critique of property rights, which is capable of going beyond the public-private dichotomy and of elaborating a genuine institutional structure for collective agency outside of parliamentary democracy.

1 The commons movement stands for the progressive transfer from the
 2 private to the commons, the mirror opposite of which, ongoing since moder-
 3 nity, is the progressive transfer from the commons to the private. Both these
 4 processes are constitutionally transformative, and they are at play on local,
 5 national, and global levels, differing much in form but little in substance.
 6 The continuing struggle for the commons must interrupt this path of neo-
 7 liberal constitutional transformation and must produce a new common
 8 sense by exposing the contradictions of the state-private property dualism,
 9 which has colonized the modern imagination.

11 Notes

- 12 1 Italian Constitutional Court, no. 23/2011.
 13 2 Italian Constitutional Court, no. 23/2011 and 24/2011.
 14 3 Italian Constitutional Court, no. 199/2012.

16 References

- 17 Argentieri, Benedetta, and Matteo Cruccu. 2012. "Sgomberato Macao, dal web critiche a
 18 Pisapia Lui promette: 'Vi daremo l'ex Ansaldo.'" *Corriere della Sera*, May 15. [http://
 19 milano.corriere.it/milano/notizie/cronaca/12_maggio_15/polizia-sgombera-macao-
 20 -ligresti-201181982839.shtml](http://milano.corriere.it/milano/notizie/cronaca/12_maggio_15/polizia-sgombera-macao-ligresti-201181982839.shtml).
 21 Bailey, Saki, and Ugo Mattei. (Forthcoming). "Social Movements as Constituent Power: The
 22 Italian Struggle for the Commons." *Indiana Journal of Global Legal Studies*.
 23 della Porta, Donatella, and Gianni Piazza. 2008. *Voices of the Valley, Voices of the Straits: How
 24 Protest Creates Community*. New York: Berghahn.
 25 Hardt, Michael, and Antonio Negri. 2009. *Commonwealth*. Cambridge, MA: Harvard Uni-
 26 versity Press.
 27 Italian Parliament. 2009. "Disposizioni urgenti per l'attuazione di obblighi comunitari e per
 28 l'esecuzione di sentenze della Corte di giustizia delle Comunità europee (09G0145)." Decreto legge, testo coordinato, September 25, 2009, no. 135, G.U. 24.11.2009. [www.
 29 .parlamento.it/parlam/leggi/decreti/09135d.htm](http://www.parlamento.it/parlam/leggi/decreti/09135d.htm).
 30 Italian Parliament. 2010. Rodotà Commission Bill. "Delegated Legislation to Reform the
 31 Civil Code Articles Concerning Public Property." Atto Senato no. 2031. XVI Legisla-
 32 tura. [www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Ddlpres&leg=16&id=004
 33 62665&part=doc_dc&parse=no](http://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Ddlpres&leg=16&id=00462665&part=doc_dc&parse=no).
 34 Italian Parliament. 2011. Manovra di Ferragosto. Atto Senato no. 2887, XVI Legislatura.
 35 www.parlamento.it/leg/16/BGT/Schede_v3/Ddliter/37308.htm.
 36 Lucarelli, Alberto. 2012. *Beni Comuni. Dalla Teoria all' Azione Politica*. Viareggio, Italy: Dissensi.
 37 Mattei, Ugo. 2011. *Beni Comuni: Un Manifesto*. Bari, Italy: Laterza.
 38 Mattei, Ugo, and Laura Nader. 2008. *Plunder: When the Rule of Law Is Illegal*. Oxford: Blackwell.
 39 Teatro Valle Occupato. 2012. *Teatro Valle Occupato. La rivolta Culturale dei Beni Comuni*. Rome: Derive Approdi.