

# Rules, Transgressions and Nomotropism: The Complex Relationship between Planning and Italian *Abusivismo*

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“It is only after you have come to know the surface of things,” he concludes, “that you can venture to seek what is underneath. But the surface of things is inexhaustible”  
Italo Calvino, *Palomar*, 1986, 55

*Referring to the Italian context, where unauthorized building is a quite common phenomenon, this article critically interrogates the relationship between planning rules and transgressions. Particularly, I focus on rules as defined by urban plans on the one hand and housing and planning “abuso” – literally infringement – on the other. The way this term is used in Italian urbanism is the issue that inspired the research leading to this article. Indeed, “abusivismo” refers very generally to any sort of non-compliance with urban regulations. And yet, what kind of practices are supposed to transgress what kind of rules and what consequences follow? Drawing on Conte’s concept of nomotropism, I show that there is a (at least) twofold relationship between these two dimensions, including the transgressions “in light of” the law and the rules “following from” the transgression. By taking nomotropism seriously, it is finally possible to formulate a modest, responsible planning approach to transgressions.*

*Keywords: Abusivismo, rules, transgressions, nomotropism, planning, responsibility, Italy*

## BETWEEN RULES AND TRANSGRESSIONS<sup>1</sup>

Is there a connection between unauthorized building and planning, i.e. the public regulatory activity that governs the behaviors of individuals in relation to the use and transformation of physical space (Moroni, 1997; 1999)? If, as I argue, there is a relationship, the task is to understand the nature of this relationship and its repercussions for planning. Without rules, transgressions would not exist. This apparently obvious remark is the focus of my critical interrogation in this article: rules

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and transgressions are neither contradictory phenomena nor the expressions of alternative ways of building and transforming places. On the contrary, they are mutually entwined, bound together by complex relationships that call into question the interdependence between the formality of planning and the informality of building and settling practices.

The context under investigation is Italian urbanism and planning. I thus focus specifically on rules and transgressions concerning properties, i.e. buildings and land: rules as defined by urban plans and codes on the one hand, and housing and planning *abuso*, literally *infringement*, on the other hand. The term *abusivismo* designates the practices that violate regulations governing the use and transformation of land and the buildings on it (Cremaschi, 1994). The way it is used and interpreted in Italian urbanism inspired the research underlying this article. Indeed, as Guttenberg explains, “illegal construction of whatever type is called *abusivismo*” (Guttenberg, 1988, 259). And yet, what kind of practices are supposed to transgress what kind of rules? *Abusivismo* remains a blurry category that fails to provide any information about individuals’ agency or the effects of transgressions. The result is a slippery and one-dimensional phenomenon that is reduced to little more than a formal issue despite its significant spatial, social, economic and political repercussions. What does all of this have to do with planning? Very little, some would say, arguing that it is instead a matter of effective inspections, monitoring and sanctions. That is definitely part of the picture, but not all of it. I would argue that we can go further in articulating the link between *abusivismo* and planning, a link that I will explain in terms of (a modest) planning responsibility and analyze from the relationship between rules and transgressions. In so doing, I show that there is a (at least) twofold relationship between these two terms that includes the transgressions *in light of* the law and the rules *following from* the transgression.

The theoretical framework of this article is grounded in the work of Conte, a philosopher of law who developed the notion of nomotropism, i.e. agency *in light of* the law (Conte 2000; 2002; 2003). After presenting the most relevant issues surrounding Italian *abusivismo* (second section), in the third and fourth sections of the article I use the lens of nomotropism to propose a framework for distinguishing among types of housing and planning transgressions. I then focus on the rules following from the transgression, that is to say, rules that have been developed to deal with the effects of transgressive practices (fifth section). Finally, in the last section, I explore the relationship between rules and transgressions in terms of a modest degree of responsibility on the part of planning.

## APPARENT DICHOTOMIES: *ABUSIVISMO* AND ITS NEGLECTED LINK WITH PLANNING

In Italy, unauthorized building is a very common phenomenon. According to the main statistical analysis, in 2014 17.6 buildings out of 100 were illegal (Istat, 2015). This is nothing new: between 1971 and 1984 2,723,000 unauthorized houses were built (data from Censis: Cremaschi, 1990) and between 1990 and 2003 the number of illegal constructions reached 402,676 (data from Legambiente-Cresme, 2004). As for geographical distribution, although Italy's southern regions are the most heavily affected, significant numbers can be found in northern regions and cities as well (Legambiente, 2014). This brief outline accounts for the quantitative scope of this phenomenon and its lengthy history, but these numbers only reflect the total number of constructions built entirely outside of urban regulations and thus do not capture "minor" transgressions such as the unauthorized transformation of existing buildings. It is also worth noting that unauthorized construction occurs not only in the residential sphere but in industrial and commercial spheres as well. In view of this, qualitative characterizations and attempts at explanation merit further development.

Since the 1970s, Italian academic literature on this subject has delineated two divergent interpretations: *abusivismo* as transgression and *abusivismo* as a quest for autonomy (Coppo and Cremaschi, 1994; Lanzani, 2003). In the former case, transgression may originate from a need for housing that is not being met by the state or market, or from the pursuit of individual economic advantage (Cederna, 1956; Insolera, 1962; Ferracuti and Merzelloni, 1982; De Lucia, 2006). Scholars began to develop the idea of *abusivismo* as the pursuit of autonomy, on the other hand, in their first studies of informal settlements in the Global South (Turner, 1963; Turner and Fichter, 1972). When these publications began to circulate in Italy, they gave rise to sociological (Tosi, 1984) and architectural (Rudofski, 1964; Orlandoni, 1977) studies celebrating autonomy and self-help as alternatives to official planning. More recently, this second analytical thread has produced work on the aestheticization of poverty (De Rubertis, 2000; Clemente, 2005) or the defense and institutionalization of self-help, trends that often conceal institutional indifference towards the needs of the poorest (Roy, 2005).

The phenomenon of *abusivismo* has changed and become increasingly complex over time, as a result of both shifts in the way people build and inhabit the city and, perhaps even more so, the effects of the three Italian amnesty laws (1985, 1994, 2003) that established a mechanism for implicitly accepting illegal urbanization (see below). Some contemporary scholars recognize a sort of temporal progression in successive generations of *abusivismo*: building for necessity, for financial advantage and for speculative ends, all fostered by lenient penalties and institutional tolerance (Cellamare, 2013). Although these different forms actually tend to commingle, it is true that, from the 1980s onward, urban and sociological analyses have gradu-

ally distanced themselves from depicting *abusivismo* as a way for poor people to meet their housing needs. The legal-formal interpretation that has instead gained ground condemns *abusivismo* as the expression of a culture of illegality shared by speculating citizens and inefficient local administrations alike (Elster, 1995; Sgroi, 1996; Donolo, 1999). By taking on this idea that *abusivismo* represents the predictable alternative to planning, planning has – apparently – evaded responsibility for certain modes of urbanization<sup>2</sup>. These approaches demand our attention, however, not only in view of the quantitative magnitude of the phenomenon but also because unauthorized buildings become progressively integrated into the planned city (Fera and Ginatempo, 1985). Authorized and unauthorized components are not contrasting categories, nor are planned and unplanned; rather, one does not exist without the other. *Abusivismo* can therefore be treated as a mode of urbanization that is not alternative to planning (Cremaschi, 1990).

Many authors have contributed to the international debate over the relationship between the formal and informal city from multiple points of view. Of these, I am most interested in interpretations that not only reject the idea of the formal and informal as alternatives, but also argue that public authorities themselves contribute to producing informality through their power to define what is included in the plan and what is left out (Roy, 2009; Yiftachel, 2009). This critical perspective on planning, exemplified for instance by Porter's (2011, 119) question, "In what ways does informality challenge the practice and theory of planning in your context?" has been largely overlooked when investigating *abusivismo* in Italy.

Building on a recent article by Chiodelli and Moroni (2014), I would argue that, to seriously address the issue of unauthorized settlements, the relationship between rules and transgressions must be reconsidered from a critical-normative standpoint. Convinced by the considerations these two authors present, I therefore understand *abusivismo* to mean unauthorized buildings and settlements, where the label 'unauthorized' specifically captures "their lack of public authorization to be what they are (no permit to occupy a given plot of land, to build on it, to build in a certain way, to divide up either land or housing, etc.)" (Chiodelli and Moroni, 2014, 162). Their analysis goes on to focus specifically on the Global South and settlements housing the urban poor, distinguished by low quality housing and lack of adequate infrastructure. In this article I instead address settlements and buildings that are not characterized by residential poverty or a lack of primary urbanization and basic infrastructure. In Italy (but also elsewhere: Yiftachel, 2009; Porter, 2011), regulatory non-compliance is not the sole prerogative of individuals who violate the rules due to a lack of resources or the inability to access authorized housing. Indeed, by setting aside this category I am able to expand on the relationship between rules and transgressions and call into question the prevailing interpretation of *abusivismo* outlined above.

## PLANNING, REGULATION AND NOMOTROPISM

The underlying premise for conducting an analysis of the relationship between planning and transgression through regulation is that the primary character of planning is in fact normativity (Moroni, 1999). Indeed, planning constitutes a public normative activity focused on defining the regulation of land use, that is to say, the regulation of individuals' activities in terms of using and transforming physical space and the built structures located in it (Mengoli, 2009). Specifically, the rules of conduct governing citizens' behavior are found in various regulations and urban planning tools that prohibit, require or permit certain actions (Moroni, 1999). These *regulative rules* establish a deontic-type duty<sup>3</sup> and guide, govern or modify the behavior of individuals, behaviors that existed before the rules were created and are thus logically independent of them (Hart, 1983; Rawls, 1955; Searle, 1995). Alongside these regulative rules, urban planning also comprises rules that define a non-deontic form of duty<sup>4</sup> (Searle, 1995; Azzoni, 1998), namely the rules that establish local zoning. These *constitutive rules* bring into being the very state of affairs they are designed to govern, that is, they *create* specific zones (residential, commercial, agricultural, industrial, etc.) by assigning them specific properties. Regulative rules then refers to these assigned properties to define what can and cannot be done in each zone (Roversi, 2012). Derived from the philosophy of law and already applied in planning theory (Moroni, 1999), this distinction paves the way for a critical-normative perspective and demarcates the conceptual framework in question. For the purposes of this article I explore this perspective in light of *nomotropism*.

Conte (2000) constructed his neologism *nomotropism* from *nomos*, rule or law, and *trépō*, a morpheme that also appears in adjectives such as heliotropism and phototropism meaning to *turn towards* (sunflowers are a kind of heliotropic plant, for example). Conte thus uses nomotropism to refer to the tendency to act *in light of* the law, "an acting which is in some way turned towards rules and implies ontological dependence on rules, but which does not necessarily conform to rules" (De Vecchi, 2012, 118). In some cases, nomotropic action may actually be non-compliant with rules. Conte provides many examples to clarify the concept, such as the case of a person driving across a pedestrian-only area in a car (Conte, 2002). Observing the pedestrian-only area in front of the University of Pavia where he used to teach, Conte noticed that people who drove through the area despite the prohibition quite often tended to modify their behaviour. Indeed, transgressors might speed up in order to pass through as quickly as possible and thus limit their chances of being caught and sanctioned. Alternatively, they might slow down in order to reduce the impact of the transgression. In both cases, they acted in light of the law that forbids cars to cross the area.

This perspective highlights that non-compliance with rules does not mean or necessarily imply that these rules or the system to which they belong are not recognized. In many cases, even when violated, the rules and the actions of the transgressor maintain a cause-and-effect relationship.

With this in mind, I seek to re-interpret several features of the urban planning transgressions included in the proposed categorization. Although not exhaustive, this categorization does aid in uncovering previously overlooked, under-investigated and at times paradoxical aspects of the relationship between rules and transgressions<sup>5</sup>.

## SEVEN POSSIBLE TYPES OF URBAN PLANNING NON-COMPLIANCE

### *The Dissembler*

Transgressors' action can be considered nomotropic when they hide the building not to be discovered and thus incurring a penalty. They seek to conceal construction by making the building impossible or more difficult to see, usually with the help of vegetation, deliberately positioned reeds, or tall, gigantic walls. This strategy also involves building in poorly visible, (apparently) forgotten or abandoned sites or areas in which public institutions provide only minimal levels of attention.

Like Weber's thief (Weber, 1978) who hides his stolen goods out of fear of being caught and therefore punished, in this case what conditions the transgressor's action is not the rule prohibiting unauthorized building but the rule that establishes a penalty for *abuso* (Conte, 2003). In other words, the transgressor acts based on the probability of the rule being enforced, not based on the rule itself.

### *The Night Owl*

Those who build the load-bearing structure of a building in one night, working from the evening until the next morning, act nomotropically in relation to the rule specifying that "a completed building is eligible for amnesty" (Act 47/85, art. 31).<sup>6</sup> Darkness decreases the probability of being caught and the transgressor is able to complete the building without interruption. It is important to note that, in this case, the non-compliance might also involve the technical regulations governing construction (for instance, the requirement that concrete be allowed to cure 28 days for load-bearing structures).

Examples of building overnight can also be found outside the domain of *abusivismo*, as for instance Ward notes when he asserts that "scattered around the world there is a belief that if you can build a house between sunset and sunrise, then the owner of the land cannot evict you" (Ward, 2002, 5). The term used in Turkey to indicate squatter settlements has the same meaning: *gecekondu*, to find housing in one night (Home, 2004).

### *The Non-finisher*

This type of behavior, in some ways contrary to the previous one, involves continuing construction indefinitely, never truly finishing the building, gradually modifying it according to the family's changing needs and when economic resources become available (Bellicini and Ingersoll, 2001). These transgressors violate the rule that prohibits or limits (in terms of function or size) building in a certain area; however, they adapt their behavior to the rule in question. Slowing down construction work in this case serves to mitigate potential punishment in that the specific penalties are calculated based on the proportions of the structures being built. The most visible result of this practice are the many examples of unfinished buildings with rebar spouting from pillars of reinforced concrete, unfinished facades and balconies without railings.

### *The Brazen Offender*

Those who build in areas subject to planning constraints are breaking a rule according to which "building is prohibited." This is not a case of nomotropic behavior because the action is not – apparently – carried out in light of the rule being violated. Houses built on sea shores subject to landscape constraints (covering the coastal area up to 300 meters from the shoreline) are examples of this kind of violation. The most plausible hypothesis in this case is that transgressors do not acknowledge the regulation. However, even those who seem not to recognize the rules actually act nomotropically to avoid incurring penalties, for example by trying to hide the building.

### *The Illusionist*

There are paradoxical aspects to the behavior of those who initially create the illusion of following the rules by filing an application and getting approval from regulatory agencies but then change the building in the actual construction phase. In these cases, transgressors proceed by following – formally, that is – every component of the regulations in force. The non-conformity occurs subsequently, when they go on to build a structure that differs partially or entirely from the approved design. The violated rules vary from case to case and the form of infringement may concern the building's intended use of (for example, building a housing development in an agricultural area), size (including greater cubic footage), or the materials or specific construction techniques used (issues of alignment, distance or openings). In each of these cases, as well as other possible cases not listed here, the transgression has different consequences on people and space; it is therefore important to further differentiate among sub-types within this category. The most striking aspect, however, is that, on a formal level, the transgression does not exist.

### *The Cheapskate*

The opposite of the above-mentioned case involves individuals who build in compliance with urban planning regulations but without following the established procedures, i.e. without applying for the necessary permits and authorizations. These transgressors fail to follow a component of the rules while actually acting in a way that respects the entirety of urban planning regulations for that particular area. By doing so, they are able on the one hand to avoid hiring a professional specialized in managing urban planning and building permitting procedures, a service that is usually quite expensive. On the other hand, they are able to save on the fees individuals must pay public administrations to cover the cost of primary infrastructure (roads, car parks, sewers, water distribution networks, electricity, natural gas, public lighting, telecommunications conduits, equipped public parks) and secondary infrastructure (kindergartens, schools, sports facilities, green areas, social and cultural centers). In this case the lack of authorization is not solely a formal matter; it also has broader implications in terms of the role and distributive function of planning.

### *Praxis am Phantasma*

Conte specifically mentions the case of those who build with the expectation of obtaining amnesty as an example of nomotropism: “it is possible to act in-light-of rules that are merely potential, virtual, non-present: in particular, in light of rules that are not yet in force. Example: a builder builds a building illegally in view of a possible building amnesty” (Conte, 2003, 297). This is a fairly widespread behavior, in many cases performed alongside the other types outlined here. The fact that there is an exponential increase in unauthorized building in the periods immediately prior to amnesty laws gaining parliamentary approval provides quantitative evidence of the proportions of this phenomenon. For example, when the first amnesty (approved in 1985) was being discussed, the number of illegal buildings exceeded 105,000 in 1983 and 125,000 in 1984, to then drop by almost half (to 60,000) in 1985 (data from Legambiente-Cresme, 2004).

In all of these cases, in violating a rule or set of rules, the overall behavior of the transgressor is in light of the rules.

## INTERPRETING RULES FOLLOWING FROM THE TRANSGRESSION

Faced with the *fait accompli*<sup>7</sup> in the transgression of rules, what is the range of possible reactions on the part of planning regulation? These reactions are here examined, employing the same point of view I used to analyze the transgressions, but from the opposite perspective: at this point I focus on the rules *following from* the transgression.

In Italian law, the response to transgression is guided by the rules regarding penalties: the offender is required to cease construction work, pay a fine, demolish the structure he has built and restore the premises to their original condition. There are also minor transgressions which are not required to be demolished and can instead be legalized by paying a penalty. In any case, the reaction to the transgression seems to be deontic-factual: the offender is punished<sup>8</sup>. In reality, however, matters are more complex for at least two specific reasons. First, because the authorities entrusted with enforcing the penalty do not always carry out their responsibilities; secondly, because the transgressor is not always penalized. Amnesty constitutes a peculiar element of Italian urban planning in that it introduces the possibility of exonerating the offender (Renard, 2001; Silvi, 2004). The rationale behind amnesty is that the action carried out in violating the law is not considered serious enough to warrant penalization. Once subject to amnesty, the unauthorized building is re-integrated into a new system of rules that tends to nullify, eliminate and (sometimes) compensate for the consequences of the act. Unlike rules concerning penalties, which are defined a priori the transgression, in the case of amnesty the rules are developed a posteriori, which in my opinion represents a peculiarity of the urban planning regulatory system: new rules are defined following from the (pardoned) transgression and, as a result, the transgression is legalized.

On the basis of this premise we can describe and group the rules following from the transgression, with an important distinction between *re-constitutive rules* and *re-regulatory rules*. These two types can be considered subsets of constitutive and regulatory rules respectively (see third section). What differentiates these subsets from the larger categories is that both re-constitutive and re-regulatory rules are *the consequence of* and *conditioned by* a fact that existed before they were created. The categories presented here reflect some of the different possible ways these rules might combine. In this case as well, my efforts at categorization are not meant to be exhaustive and deserve to be developed in further detail.

### *Re-constitutive Rules of What Does Not Yet Exist*

This type of rule is developed in the broader context of revising planning tools, such as the process of creating a new land use plan. Such a plan governs the entire municipal area regardless of whether the transformations conform to or diverge from the rules in place before the reform. According to the new system of rules, the transgression is not re-constituted as is; what is re-constituted is something that does not yet exist but which planning would like to create.

An interesting example of this can be seen in Pianura, a neighborhood in Naples that was built during the 1970s in violation of urban planning regulations that designated the place in question as farmland and natural areas. The most recent planning tool approved at the municipal level (2004) includes instances of unauthorized urbanization in Pianura, re-constituting them as *Housing in the park*. The local development plan of Quartu Sant'Elena (2000) is equally exemplary. Through

this plan, the unauthorized settlement Flumini, the largest and most densely built, is re-constituted as a *Garden suburb*.

There is a certain degree of paradox in the way the new sets of rules act similarly to transgressors in continuing to conceal and disguise the instances of violation. This act of concealment serves to reposition the violation within the normal domain of the rules, thus restoring the authorities' power and legitimacy.

### *Reiterative Rules*

When faced with infringement, reiterative rules reaffirm the content previously set forth by the rules that have been violated (planning restrictions, land-use regulations, space limitations etc.), and the authorities proceed by sanctioning the transgressor. Although this type of response seems strictly deontic in reality it implies a value judgment, positive in relation to the area subject to protection and negative in relation to the transgression. An interesting example of this is the Sterpaia forest in Piombino. In the first land use plan (1967) it was classified as a restricted-use green area subject to a landscape constraint. Between the 1970s and 80s, 180 hectares of forest were illegally partitioned and 1,800 residential unauthorized lots created, with a population of as many as 10,000 inhabitants during the summer months. Successive land use plans reiterated the landscape constraint, however. At the same time, during the subsequent ten years, the municipality initiated proceedings to expropriate land and restore the forest's natural character by demolishing the more than 2,000 unauthorized structures.

### *Re-constitutive Rules of the fait accompli as is*

This type of rule can be seen when ad hoc land use plans are developed to address unauthorized settlements, specifically defining their rules in response to the transgression. These are usually Recovery plans<sup>9</sup> designed to integrate unauthorized urbanization as they are in terms of land-use and size, and identify measures to allocate standards and infrastructures.

An interesting example of this is the case of Cisterna di Latina. Like many municipalities in Lazio Region, this town is subject to a regional law<sup>10</sup> governing the recovery of spontaneous settlements. It requires all towns concerned by illicit buildings to adopt Special Modifications for Unauthorized Settlements. As for Cisterna di Latina, unauthorized settlements are residential but constructed in an agricultural area; in the new regulation (dating to 2008) they are re-constituted as residential areas, with resultant changes to the zoning.

In the case of Viareggio, in contrast, the Recovery plan (2007) applies to a settlement that was built in accordance with planning regulations. Over time, however, the buildings were transformed, enlarged and later additions were created, all carried out without permits. The Recovery plan required buildings renovation and open spaces reorganization.

*Pro-active Rules*

There are also rules that, in addition to incorporating and re-constituting the *fait accompli* as is, respond to transgressions by appraising them in terms of a value judgment. After the first deontic distinction between what is and what is not eligible for amnesty, there is a second assessment that appraises the effects of the transgression in terms of their real or potential impacts on place and people (implications for the landscape and environment, privatization of resources, hydrogeological or static risk, etc.). Based on this assessment, the authorities may decide to carry out more demolitions or to implement compensatory, mitigative or value-improvement measures. These rules appraise the *fait accompli* while simultaneously playing an active role in relation to the territorial context. The Territorial recovery plans of the Apulia Region instituted in 2000, which apply to multiple municipalities including Porto Cesareo, Lizzano and Lesina, are an example of this type of rules.

#### IN PERSPECTIVE: ASSIGNING PLANNING A MODEST DEGREE OF RESPONSIBILITY AND THE ISSUES THIS RAISES

In this article I have explored what occurs when *abusivismo* and planning intersect, focusing on how *abusivismo* puts planning “to the test” and how planning deals with the various issues that arise as a result. In conclusion, I would argue that taking nomotropism seriously means acknowledging this relationship and its complexity, which stems from the complexity of the relationship between rules and transgressions. First of all, this involves the need to approach the murky universe of *abusivismo* in a way that recognizes and differentiates among the various behaviors. Secondly, this relationship is at the foundation of the hypothesis, which I support, that planning has some responsibility for transgression. Indeed, responsibility is linked to rules and the way they are defined and followed (Garzón Valdés, 2005). Taking nomotropism seriously means taking this responsibility seriously, a responsibility that I have termed *modest* because it is not my intention to suggest that planning is the direct cause of transgression or that urban planning or construction regulations are the solution in and of themselves (Chiodelli and Moroni, 2014). However, I do believe that it is essential to maintain an awareness of this responsibility in order to address the issue of unauthorized construction in a new way and to reflect on the role rules play in planning.

Two lines of potential inquiry arise from planning’s responsibility. Indeed, this responsibility has to do with both the way in which the outcome of the transgression is recognized and handled, what I call *retrospective* or *ex post* responsibility, as well as the type of rules defined and formulated in urban planning, what I call *pro-active* or *ex ante* responsibility.

In relation to retrospective responsibility, the way I have proposed to categorize the rules following from the transgression demonstrates that planning's response goes far beyond the deontic dichotomy of demolition vs. amnesty. Indeed, deontic and value-based dimensions intersect and appraise transgressions in terms of varying degrees of seriousness. Depending on how the authorities respond to the transgression and how it fits with the regulations in the plan, (at least) three different cases can be identified. The first case, in which the authority recognizes the offense, assesses it and assigns a penalty (including demolition), involves assuming responsibility. This recognition of the *fait accompli* is reflected in the plan's regulations, which are then expressed in a more or less mitigative and forward-looking way. The second case involves masking or concealing the transgression within the plan itself, thus taking on a lesser degree of responsibility. The authorities in this case do not perform their function of meting out punishment, but they do re-assert their power through the new urban plan. Finally, the third case is one of completely failing to take the transgression into account and thus avoiding responsibility altogether.

Pro-active responsibility, on the other hand, appears rather more difficult to assume. Indeed, it relates to events and actions that have not yet occurred (Garzón Valdés, 2005) and is not associated with a transgression but rather with the likelihood of the action being carried out. The difficulty characterizing this form of responsibility is closely related to the difficulty of making predictions, governing future developments and reconciling rules and actions within the framework of an urban plan.

On the basis of these points, I propose three considerations that correspond to three specific lines of future research that deserve to be pursued. The first of these involves legalization., that is to say the process of integrating the transgression into the urban plan. The objective and result of legalization is that authorities are able to re-establish their power and control over the local area, bring buildings back into the formal market and restructure relations of ownership. Amnesty, retroactive inclusion, the provision of *ex post* infrastructure: how do these practices undermine the legitimacy and efficacy of planning as a governmental tool? What issues of social and spatial justice do they raise?

The second consideration concerns demolition. This response likewise represents a means of re-asserting power, but it is a means that proves largely unfeasible given the large numbers of transgressions because of the high economic and social costs involved in addressing them. Just to give an idea, there are 70,000 outstanding demolition orders that have yet to be carried out in the Campania Region alone (source: Legambiente, 2014), cases which involve the violation of absolute bans on construction (due to landscape preservation, geological, seismic regulations, etc.) and thus cannot be resolved. In this case, I agree with Alexander that "better informed future discussion may be less about ... meta-theories of planning, and more about exploring their implication at the micro-level of applied planning practices" (2012, 44). And yet the aim of my reflection is not to identify solutions which must

inevitably be adapted to each context in specific and precise ways; rather, I seek to highlight the complexity of this phenomenon and provide insights for interpreting things differently and taking into account their overall complexity.

The third consideration concerns the role and position of regulations in planning – which regulations and how many of them? – and, conversely, the role of planning governing land use and transformation. Indeed, the question of how we can “regulate land use in our contemporary cities in a manner that is both effective and legitimate?” (Moroni, 2011, 343) remains to be answered.

## NOTES

1. This work has been realized in the framework of the Laboratoire d'excellence LabexMed – Les sciences humaines et sociales au cœur de l'interdisciplinarité pour la Méditerranée, with the reference number 10-LABX-0090. This work has received financial support from the State managed by the Agence Nationale de la recherche, Investissement d'Avenir project A\*MIDEX, with the reference number ANR-11-IDEX-0001-02.
2. More recent approaches focus on “what to do after”, i.e. how to mitigate the environmental impact of unauthorized settlements and manage them according to a sustainable approach (Zanfi, 2013; Forte, 2015).
3. A deontic duty is for instance the duty expressed in the sentence “taxes ought to be paid”. Deontic rules can be transgressed: noncompliance is a sufficient condition to render an act illegal.
4. An example of a non-deontic duty is the anankastic duty expressed in the sentence “candidates ought to be over 35”. In this case noncompliance is a sufficient condition to invalidate an act (Moroni 1999).
5. The cases I present here are drawn from a multi-sited study conducted between 2010 and 2011 as part of my PhD thesis: Pianura, a neighborhood in the western outskirts of Naples; Porto Cesareo (Lecce); Cisterna di Latina (Latina); Quartu Sant'Elena (Cagliari); Piombino (Grosseto); Viareggio (Lucca); and Ventimiglia (Imperia).
6. According to article 31 of Law no. 47/1985, Regulation Governing Urban Planning and Buildings, Sanctions, Recovery and the Regularization of Illegal Structures, “completed buildings are those for which the basic structure and roof have been completed.” This article was reiterated in successive laws no. 724/1994 and 326/2003.
7. This phrase comes from the juridical concept of *fait accompli* and the principle of non-retroactivity of law (Roubier, 1960; Caponi, 2006). According to this principle, laws do not apply to past events, that is, events that occurred before the laws in question entered into force. In light of this theory, amnesty displays all of its contradictions: it seems to refute or almost seek to nullify the

consequences of a completed action that violated the laws already in force at the moment the action was carried out.

8. According to a deontic perspective, “if X is, then Y ought to be”: a violation (X) is met with a penalty (Y) (Kelsen, 2009).
9. A kind of planning tool introduced by Law no. 47/1985.
10. Lazio Regional Law no. 28/1980.

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