



## In defence of a free market

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### ABSTRACT

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In a dusty square of an ancient neighborhood of Palermo, there is a miserable second-hand market called *mercato dell'Albergheria*. Merchandise sold is mainly stuff collected from garbage. Those who sell and buy are some of the poorest and most marginalized among the urban population, so none of the sellers has a license or pays any tax. Nevertheless, *Albergheria* market had existed undisturbed for about twenty years. It, therefore, seems to be an actualization of the *free market* ideal. The State is not there: neither to give nor to require. In the main square, where the market is, an odd coincidence occurs: one of the buildings, an ex-cinema, is now a lecture hall of the Law Department of the University of Palermo. So, where everything is illegal, youth is trained in the legal professions. This



DOI: 10.54103/milanlawreview/24205

MILAN LAW REVIEW, Vol. 5, No. 1, 2024

ISSN 2724 - 3273

paradoxical circumstance was the occasion of a legal education experiment and action research, configurable in terms of “street law upside-down”.

**Keywords:** Free Market, Anarcho-capitalism, Informal economy, Marginalized groups, Participative Democracy, Clinical Legal Education.

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This paper has been subjected to double-blind peer review

## In defence of a free market<sup>1</sup>

SUMMARY: 1. The context – 1.1. Albergheria Market – 1.2. A paradoxical square – 2. Free by force – 2.1 Voices from the state of nature – 2.2 Law seen from outside ('extra-legality') – 3. The Wall – 4. From the freedom of the moderns to the freedom of the ancients (how to free the *free market*?) – 5. Clinical-legal education – 5.1 Turning street law upside down – 5.2 The crumbling of the wall – 5.3 Being part of a constituent process – 5.4 The role of the teacher

### 1. The context

#### 1.1 Albergheria market

Albergheria district is part of the historical centre of Palermo and existed since the Arabs ruled Sicily. When the Normans took power, they enrolled Islamic architects and workers to build churches, monasteries, and palaces. Several sites of the "Arab-Norman route", recognised as UNESCO World Heritage, are therefore located there.

The historical and artistic value of the place and its location at the city's core might suggest that it is a prized area that only the notables can afford to live. Far from it. Poor locals and migrants are the bulk of the population. Streets and houses are mainly in a bad state, both the modest apartment blocks and the aged and once lavish buildings that, lacking maintenance, have become ruins, unhealthy hovels, or shoddily patched-up dwellings. Crossing the area, one can often encounter buildings gutted by World War II bombings. These empty spaces frozen in time are counterbalanced by shacks, warehouses, improvised constructions of uncertain identity, votive shrines, and altars for the family dead, all built without public planning or authorization. It is the antithesis of urban rationalism: a picturesque, decaying masonry jungle of almost organic concretions, overflowing plaster, and inexplicable cavities.

Albergheria is, first and foremost, a market district. It is home to the famous *Ballarò* food market, founded by the Arabs about a millennium ago. Not far away is another market, much less ancient (born about the early 2000s), less picturesque, and with a less strong identity, so much so that it has no definite name. As folkly as *Ballarò*, its younger sibling is even poorer: many vendors do not have a table to

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\* Translation by Clelia Bartoli. Original Italian version: C. Bartoli e B. Celano, *Apologia del libero mercato*, in *Rivista di filosofia del diritto*, VIII, 2/2019, p. 297-326.

<sup>1</sup> In complying with a rule, whose point we do not fully understand, we declare that sections 1, 4, and 5 are by Bartoli; and sections 2, 3, and 6 are by Celano.

store their wares but use sheets set on the ground and sometimes not even those<sup>2</sup>. Second-hand objects are sold there: clothes, old shoes, furniture, everyday objects, work tools, small and large household appliances, books, telephones, and computers, as well as things seemingly without a definite form, neither a use easy to imagine.

It is certainly illegal: not one of the vendors is authorised to sell and occupy public soil, and nobody issues any receipts or pays the required social security tax. Anyway, the turnover is very trivial: the average daily profit per retailer is between 5 and 15 euros, and on weekends, it goes up a little. The amount of fees that sellers are supposed to remit to the State far exceeds what they earn in a year.

The goods have three possible origins: donation, collection, and theft. An ancient trade, still widely in use among the urban underclass, is the so-called “sbarazzo”. Who makes this job has got a Piaggio Ape and uses the small three-wheeled vehicle to transport, removal, and clear houses and cellars of the objects to get rid of. The reward for the *sbarazzo* service is the items from which one is relieved. The stuff gathered in this way is then sold right at Albergheria market.

Most of the goods, however, are collected from the rubbish bins. The hawkers stock up in areas of the city where there is still no separate waste collection, rummage through the bins, and extract whatever may have some vague chance of being used again.

Many Palermo inhabitants identify this market as the “stolen goods market” but this name is exaggerated and ungenerous: the vendors specialised in this field are few.

On weekdays, there are around 300 vendors. On Sundays, up to 500. A 2017 study surveyed 177 marketers. Of these, about half are Italian, 30% Romanians; the remaining are non-Europeans, mainly Maghrebians and lesser Sub-Saharan. More than 70 percent of the vendors surveyed are between 26 and 55 years old, that means at full working age.

The market provides an income, albeit very small, for a considerable number of families in distress and offers very cheap commodities for other poor, as Saro explains:

There are people who cannot go and buy a pair of shoes in a shop, while here you can buy a pair of shoes for 2 or 3 euros and a T-shirt for 50 cents. We go to the bins fishing for the goods, so we help those who can't get dressed. Here, you can get fully dressed for only 4 euros. All the poor come here to buy<sup>3</sup>.

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<sup>2</sup> Florian: “Yes, I have my stuff on the floor because I can't afford the table. I can't buy it, and then it's hard to bring it home daily. I had a car in Romania, but I can't afford it here. I come with all the goods on foot” (C. Bartoli, *Inchiesta a Ballarò. Il diritto visto dal margine*, Navarra, Palermo, 2019, p. 160).

<sup>3</sup> *Ivi*, p. 163.

The market, however, causes quite a few troubles for residents. Amidst the hubbub and noise, people start assembling around 5 a.m., but many stay in the area even earlier to secure their places. The merchandise occupies streets and pavements, obstructs traffic, prevents parking, and sometimes even impedes access to homes. One self-critic seller denounces the situation:

It's a mess, you can't sleep at night... It's not fair for the people who live here, for the tourists who pass by and think "what a pigsty!" It's a pigsty: stench and filth everywhere<sup>4</sup>.

Albergheria market gathers those whom S. Latouche calls the "castaways of progress"<sup>5</sup>: those who have fallen into poverty because their trade has disappeared, those who find themselves unemployed because of illness, those who have been repeatedly cheated and exploited by dishonest employers, those who have been made redundant as a result of the economic crisis, without the education, knowledge or age to get by, those who were born into a ragged family and have only learned to survive with difficulty by making do, those who have fled wars and misery. David:

I've been working at Albergheria market for two years because I've lost my job and don't know how to make a living. I sell things found in the rubbish. At night, I use to collect the goods in the bins. In the morning, at 4 am, I set up the stall. Otherwise, somebody can occupy my place. I manage to scrape together three to five euros a day<sup>6</sup>

### 1.2 A paradoxical square

The former cinema Edison stands on the square named after Napoleone Colajanni, where many Albergheria vendors gather. Acquired by the University of Palermo and renamed "Bernardo Albanese complex", it has been given new life as a lecture hall for the Department of Law. Therefore, recruits are being trained in the legal professions in a district where illegality permeates places, activities, and people. Inside the walls of the former cinema, people talk about law, legality, democracy, and equality; outside, reality makes a mockery of those words<sup>7</sup>.

Many teachers and students experienced the market literally as a hindrance. To gain entry to the "Albanese" complex, one is forced to make a gap

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<sup>4</sup> *Ivi*, p. 118.

<sup>5</sup> S. Latouche, *La Planète des naufragés: Essai sur l'après-développement*, La Découverte, Paris, 1991.

<sup>6</sup> C. Bartoli, *Inchiesta a Ballarò*, cit., p. 96.

<sup>7</sup> Aldo Schiavello (2016) was the first to note this paradoxical circumstance and foreshadow a collaboration among the university, municipality, and grassroots organizations. He is the director of the Law Department of the University of Palermo [at the time of the article publication].

between sellers and buyers and work a way through the merchandise laid out on the floor, even on the pavement next to the classroom entrance. Voices, shouting, and loud music can overlap with the scholars' speeches.

To lecture in Piazza Colajanni is considered by many to be an unfortunate exile in barbarian lands. However, the prevailing attitude between academia and the market is mutual indifference. The two worlds tend to ignore each other, insisting on co-pret and parallel dimensions (we will return to this later, *infra*, par. 3).

## 2. Free by force

### 2.1 Voices from the state of Nature

Albergheria market has deep affinities with the *free market*, as portrayed by libertarians, anarcho-capitalists, and in general by the coryphaeus of neoliberalism – those who see in the market a web of reciprocally gainful voluntary exchanges, *the mechanism* (at the same time, the only possible and, in the long term, the only just) of production and allocation of goods and services.

In a nutshell: the *mercatori* (the local expression for the sellers of the Albergheria market) are, almost literally, in the (Lockean) state of Nature. Everyone is free (not subject to others' rule and jurisdiction<sup>8</sup>) masters himself, and owns the fruits of his industry, and can, if he wishes, exchange with anyone else what is his own, pursuing his self-interest (not necessarily selfish) as the other party. If he wants, he can undertake a series of voluntary transactions, reaching an outcome beneficial to all through the action of a sort of invisible hand. There is no intrusive visible hand forcing them into non-voluntary performances, enslaving them; in fact, what they do, or even whether they are alive or dead, hardly matters<sup>9</sup>.

To be precise, the similarities between the Albergheria market and the *free market* are as follows:

(1) *Mercatori* (loyal to the imperative "be competitive!" of global capitalism, of most academic economists, of Confindustria, of advertising and television) are *entrepreneurs*, as defined by the Austrian school of economics.

Entrepreneurship is never-ending research and discovery (*entrepreneurial discovery*): the ability to spot and promptly seize new – unexpected and surprising, hitherto non-existent or wrongly overlooked – profit opportunities where others cannot see anything interesting<sup>10</sup>.

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<sup>8</sup> J. Locke (1689), *The Second Treatise*, in P. Laslett (ed.), *Two Treatises of Government*, Cambridge University Press, Cambridge, 2009, p. 269.

<sup>9</sup> P.P. Pasolini, *La terra vista dalla luna* (1967).

<sup>10</sup> The entrepreneur's talents are (1) alertness: always staying alert, receptive, and ready to discover new opportunities; (2) imagination: sees things that others cannot even imagine;

Therefore, in this sense, the entrepreneur is one who sees profit opportunities where others see nothing useful. It's a matter of acumen, cleverness, and creativity. The Albergheria *mercatori* have the skill to grab, in what that others perceive just as rubbish or stuff to get rid of, a good for which there may be a demand and which may, therefore, be offered as item of a mutually advantageous exchange (*the driving force of the market*: "perhaps someone might be interested in this piece of the used heel")<sup>11</sup>. It is even possible to find traces of Protestant ethics in some *mercatori*'s statements. For example (Grazia):

I, I hardly ever rest ... We work all the time. We work on every holiday: Christmas, New Year, Easter. We are always here!<sup>12</sup>.

(2) Specifically, as free owners of themselves and their work, *mercatori* are first and foremost *entrepreneurs of themselves*. See, for instance, how Mohamed is aware of that:

I found a job with a carpenter, but he paid me too little. I looked again and found work as a bricklayer. I did everything: pillars, beams, tiles. But they didn't pay me. So, I went to Germany. I couldn't find a place to sleep there and it was too cold. So, I came back here. I went to stay in the hostel of Biagio Conte (a dormitory for homeless). I discovered open-air markets there. I used to sell in Viale Michelangelo or Zen markets. But my employer told me he wasn't earning enough and fired me. So, I came here to work for myself. You cannot stay without doing anything<sup>13</sup>.

(3) The principle of justice in original appropriation (Locke, Nozick) is almost entirely respected (not quite, as we shall see in a moment). The three Albergheria sellers' sources of supply are dumpster fishing, emptying houses of wasteful items, and booty; the last, it is true, is not compatible with the *free market*, but the first two closely resemble the (Lockean) image of the acquisition of what belongs to no one, *res nullius*. Locke writes: "In the beginning all the world was Americ"<sup>14</sup>, thinking of the original appropriation by European settlers of American territories (of course, it was a blunder: someone was already there). In the same way, *mercatori* find themselves at the origin, freed from the heavy bonds of political society: as if they were born a second time, a palingenesis, naked but already adults, free from any interference by so-called public institutions (although they

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(3) boldness: the courage to take the risk to accomplish what one has in mind (I. Meir Kirzner, *The Driving Force of the Market. Essays in Austrian economics*, Routledge, London, New York, 2000, p. 15-20).

<sup>11</sup> Mohamed: "At night, I cycle around the bins with my bike to see if there is anything good, for example, shoes. It's not so easy ... It's a matter of luck: once you get the good thing, once you don't!" (C. Bartoli, *Inchiesta a Ballarò*, cit., p. 95)

<sup>12</sup> *Ivi*, p. 91.

<sup>13</sup> *Ivi*, p. 94.

<sup>14</sup> J. Locke (1689), *The Second Treatise*, cit., par. 49.

are newborns, there is no Leviathan to paternalistically or maternalistically feed or clothe them); and they have in front of them endless piles of rubbish and waste: an enormous and apparently undifferentiated mass of products of social entropy, on which they can legitimately draw, at will, without a limit (the myth of the frontier: *Go West*).

To fix the ideas, we can imagine *mercatori* as shipwrecked by the waves on the shore of an unknown island, with no other resource but themselves exposed to an unknown environment. This mental experiment applies very well, presumably, to the case of many migrant *mercatori*. We thus recognise a kinship of the *mercatoro* figure with Robinson Crusoe, an old acquaintance of political economy. Furthermore, the impression of a profound affinity between Albergheria market and the *free market* is confirmed by what M. Rothbard says about *Crusoe Economics*: "Thus, the abstraction of analyzing a few persons interacting on an island enables a clear perception of the basic truths of interpersonal relations"<sup>15</sup>.

What inescapable facts does Crusoe confront? (Note how accurately Rothbard describes the *mercatori's* lived experience – *Erlebnis* – particularly of the migrant *mercatoro* who has just landed). He finds, for one thing, himself, with the primordial fact of his own consciousness and his own body. He finds, second, the natural world around him, the nature-given habitat and resources which economists sum up in the term "land" (footnote omitted). Crusoe ... has manifold wants which he tries to satisfy, ends that he strives to attain. Some of these ends may be attained with minimal effort on his part... But for almost all of his wants, Crusoe finds that the natural world about him does not satisfy them immediately and instantaneously; he is not, in short, in a Garden of Eden. To achieve his ends, he must, as quickly and productively as he can, take the nature-given resources (in the case of the Albergheria *mercatori*, as we have seen, rubbish and stuff that people want to get rid of) and transform them into useful objects ... In short, he must (a) choose his goals; (b) learn how to achieve them by using nature-given resources; and then (c) exert his labor energy to transform these resources... This process of transformation of land resources constitutes his "production". In short, Crusoe must produce before he can consume, and so that he may consume<sup>16</sup>.

Rothbard goes on:

The individual man (*mercatoro*-Crusoe), in introspecting the fact of his own consciousness, also discovers the primordial natural fact of his freedom: his freedom to choose, his freedom to use or not use his reason about any given subject. In short, the natural fact of his "free will." He also discovers the natural fact of his mind's command over his body and its actions: that is, of his natural ownership over his self ... (But) that not only is production essential to man's

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<sup>15</sup> M.N. Rothbard, *The Ethics of Liberty*, New York University Press, New York, London, 1998, p. 29.

<sup>16</sup> M.N. Rothbard, *The Ethics of Liberty*, cit., p. 29, 30.



prosperity and survival, but so also is exchange (...) ownership rights are acquired in two ways and two ways only: (a) by finding and transforming resources ('producing'), and (b) by exchanging one's produce for someone else's product (...). And it is clear that method (b) reduces logically to (a) (...) Thus, all ownership on the free market reduces ultimately back to: (a) ownership by each man of his own person and his own labor; (b) ownership by each man of land which he finds unused and transforms by his own labor; and (c) the exchange of the products of this mixture of (a) and (b) with the similarly-produced output of other persons on the market. (...) The society (...) of free and voluntary exchanges-may be called the 'free society' or the society of 'pure liberty'. (...) this means that *absolute freedom*, in the social sense, can be enjoyed, not only by an isolated Crusoe but by every man in any society, no matter how complex or advanced<sup>17</sup>.

Indeed, as we have seen, *mercatori* draw on this condition of 'pure freedom' even in an advanced and complex society like ours, where others generally do not enjoy this freedom. Some of them are fully aware of how much the intervention of a visible public hand can jeopardise their freedom. Saro: "Recycling collection troubles us because, when we go to get the goods in the bins, we no longer find anything"<sup>18</sup>.

(4) The Lockean *proviso* is respected in the original appropriation: each man by nature can legitimately take possession of what does not belong to others «where there is enough, and as good left in common for other» (Locke 1689, para. 27). In their appropriation actions, each *mercatoro* leaves as much rubbish and 'junk' for others.

(5) One of the cardinal principles of neoliberalism and anarcho-capitalism idea of justice seems to be respected by the Albergheria market system: *first come, first served* – a principle that stimulates competitiveness and guarantees competition. Franco: «On Sundays, we come early to get places, at 3 or 4 in the morning. On Sundays, there's a mess. People squeeze in like rats. I, then, try to wake up earlier so I get the best seat and avoid arguing»<sup>19</sup>.

(6) In Albergheria market, the state is *minimal* indeed: the public hand refrains from intervening. It does not disturb the free play of supply and demand. A policeman who patrols the area says:

They are poor people making do. We, the police officers, are also human. What shall I do? Shall I go there and seize their property or fine them? They have nothing. Living the street changes you a bit because you know that laws exist, and you should enforce them. But the street is something else. The street changes you. So, we are allowed to understand. We are allowed to look at the situation, to take

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<sup>17</sup> M.N. Rothbard, cit., p. 31-42.

<sup>18</sup> C. Bartoli, *Inchiesta a Ballardò*, cit., p. 161.

<sup>19</sup> *Ivi*, p. 104-105.

into consideration the condition of these people and maybe not always intervening<sup>20</sup>.

Therefore, the sellers are full owners of themselves, their bodies, and their labor. They are not subject to the constraint imposed by an intrusive visible hand. Albergheria market is, to the letter, outside legality (we will say that it enjoys a regime of “extra-legality”; we will clarify this notion more after, section 2.2).

Unfortunately, however, many *mercatori* turn out to be unaware of the value of the freedom that their extra-legal status grants them and end up claiming a visible hand intervention (Giuseppe: “We would need to have here all the German policemen”<sup>21</sup>). They thus show that they do not live up to their vocation (they are afraid of freedom) and, like so many others, demand welfare measures:

- Marco: “If I had the chance to talk to someone who matters, I would ask him: ‘Give me a nice job, one of those where I can sit down all the tim’”<sup>22</sup>.
- Giovanni: “If I were mayor, first I would have given shelter to all the homeless: no matter if they are Palermitans, foreigners or gypsies. I will give a home to everybody”<sup>23</sup>.
- Vincenzo: “Politicians do nothing. They do not take money away to give it to those most in need”<sup>24</sup>.
- Lia: “Ah, if the State would open the building sites!”<sup>25</sup>.
- Nicola: “The municipality doesn't help me! It never helped me, never ... If they don't give me an opportunity to work, how can they expect me to pay taxes? ... Who guarantees me survival? Do they give me a chance to feed my children?”<sup>26</sup>.

*Mercatori* are indeed free owners of themselves, but they are free owners by force (they are liberalists for lack of alternatives). The point can be illustrated by means of an imaginary dialogue between *Mercatori* and free-market apologists – e.g., Milton and Rose Friedman. The Friedmans (*FF*), we imagine, are trying to

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<sup>20</sup> *Ivi*, p. 151. Felice: “The police used to come often before. ... They came with the truck and took all we had to make us move... They threatened us: if they saw us still here, they would arrest us. So, I approached them saying: Behaving like this, you are mafia mobsters! Tell me: how can I get something to eat? A man was even about to set himself on fire with gasoline. ‘Ah, stop, stop!’, they all shouted. Only when they saw him almost burning himself, they stop threatening us and leave” (*Ivi*, p. 123). Florian: “The police come sometimes, but they do nothing” (*Ivi*, p. 161).

<sup>21</sup> *Ivi*, p. 145,

<sup>22</sup> *Ivi*, p. 114.

<sup>23</sup> *Ivi*, p. 100.

<sup>24</sup> *Ivi*, p. 136.

<sup>25</sup> *Ivi*, p. 164.

<sup>26</sup> *Ivi*, p. 150.

explain to a *mercataro* (*M*) – one of those who invoke public intervention to get a house or a job – what and how much freedom he enjoys.

First, they reveal to the *mercataro* that those very people whose help he naively invokes are the source of the real, insidious danger to which he is exposed.

- *M*: If I were mayor, the first thing I did would be giving all the homeless shelter.
- *FF*: Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficial. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greater dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding<sup>27</sup>.
- *M*: (the *mercataro* is not convinced. He needs help and thinks – thus showing a mentality deeply flawed by the tare of state welfarism – that the recipient of his request for help should be public institutions).

The Friedmans insist, describing to the *mercataro* the severe limitations to which his freedom would be subjected outside the free market, at the hands of Leviathan.

- *FF*: Today (i.e., in the 1970s United States; but the Friedmans are referring here, in general, to the claims of the state in the countries of the contemporary West) you are not free... go into the taxicab business, or the business of selling electricity or telephone service, or running a railroad, busline, or airline, without first receiving permission from a government official. You are not free to raise funds on the capital markets unless you fill out the numerous pages of forms the SEC requires<sup>28</sup>.

In short: you do not realise how enviable your situation is. Outside of here (outside of the *free market*, outside of this square), if one wants to build or run a railroad or set up a bank, one must apply for authorizations and permits, pay taxes and levies, and fill out a form after form. For you, on the other hand, the problem does not exist<sup>29</sup>.

- *M*: (the merchant stares at them interdicted. His perplexity can be explained as follows: on the one hand, he realizes that it must be very obnoxious, unbearable, for a person who wants to build or manage a railroad, or set up a bank, to ask for authorizations and permits, pay taxes and levies, and fill out form after form, and he knows – he is certain – that

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<sup>27</sup> This text from U.S. Supreme Court Justice Brandeis (Supreme Court of the United States, *Olmstead v. United States*, 1928, 277 U.S. 479) is the Friedmans' book exergue (M. Friedman, R. Friedman, *Free to Choose: A Personal Statement*, Hartcourt Brace Jovanovich, New York and London, 1980).

<sup>28</sup> *Ivi*, p. 66.

<sup>29</sup> To be honest, the Friedmans also mention in these pages more ordinary activities than building or operating a railroad, such as starting a business as a barber, a plumber, or a taxi driver. Nevertheless, it seems to us the overall tone of their discourse remains very eloquent.

he will never find himself in this unenviable position. On the other hand, however, he is not sure that this – that he will indeed never find himself applying for authorizations, permits, and paying taxes or levies to build or operate a railroad or set up a bank – is good news for him)<sup>30</sup>.

The freedom of the citizen in a democracy is nothing compared to the freedom of actors in the *free market*.

– *FF*: Majority rule is a necessary and desirable expedient. It is, however, very different from the kind of freedom you have when you shop at a supermarket. When you enter the voting booth once a year, you almost always vote for a package rather than for specific items. If you are in the majority, you will at best get both the items you favored and the ones you opposed but regarded as on balance less important. Generally, you end up with something different from what you thought you voted for. If you are in the minority, you must conform to the majority vote and wait for your turn to come. When you vote daily in the supermarket, you get precisely what you voted for, and so does everyone else<sup>31</sup>.

- *M*: yes, that's fine, but I never go to the shopping mall, because everything there is too expensive for me<sup>32</sup>.

Since he obstinately refuses to accept the value of the freedom he enjoys, the Friedmans try to overcome his stubbornness by explaining to him – addressing, first and foremost, the migrant *mercataro* – that the public interventions he advocates (housing, work...), and in general, state interference in the free play of the market for welfare purposes, would result in a fatal weakening of his moral character, and the ethical disintegration of the whole society.

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<sup>30</sup> Rothbard is even rougher (M.N. Rothbard, cit., p. 162); *mercatari*, as we have seen (supra, para. 1), do not pay taxes, nor do they pay social security; and this means enjoying their natural, original freedom. In fact, «taxation is theft, purely and simply». Again, the *mercataro* is puzzled. On the one hand, it is a relief to learn that he will not suffer this harassment. On the other hand, he is not sure that not paying taxes or contributions to carry out his activities in the market is a sign of a happy condition. All in all, it would be better to pay taxes and contributions if it would allow one to have his own business.

<sup>31</sup> M. Friedman, R. Friedman, *Free to Choose*, cit., p. 65-66.

<sup>32</sup> “When you enter a store, no one forces you to buy. You are free to do so or go elsewhere. That is the basic difference between the market and a political agency. You are free to choose. There is no policeman to take the money out of your pocket to pay for something you do not want or to make you do something you do not want to do”. (*Ivi*, p. 222-223). Even this statement causes in the marketer a cognitive dissonance. On one side, he is delighted knowing that if he enters a store, there will be no intrusive public hand taking money from his wallet, forcing him to buy something he does not want. On the other side, however, he knows that this cannot happen to him because his wallet is empty. So much so that he does not even enter in the store, not because he fears being forced to buy something he does not want, but because he knows that he will not be able to buy what he wants.

- *FF*: “With the progressive expansion of state powers and, in particular, as a consequence of employment legislation (minimum wage, maximum working day, security...) emphasis on the responsibility of the individual for his own fate was replaced by emphasis on the individual as a pawn buffeted by forces beyond his control<sup>33</sup>. In the heyday of the *free market*, on the other hand] the millions of immigrants from all over the world [the Friedmans refer to the history of the United States, but their discourse, as noted above, encompasses, in general, the affairs of the state between the 19th and 20th centuries were free to work for themselves, as independent farmers or businessmen, or to work for others, at terms mutually agreed. They were free to experiment with new techniques – at their risk if the experiment failed, and to their profit if it succeeded. They got little assistance from the government. Even more important, they encountered little interference from the government”<sup>34</sup>. Welfare, on the other hand, “tends ... to corrupt the people involved. All such programs put some people in a position to decide what is good for other people. The effect is to instill in the one group a feeling of almost God-like power; in the other, a feeling of childlike dependence. The capacity of the beneficiaries for independence, for making their own decisions, atrophies through disuse... the result is to rot the moral fabric that holds a decent society together”<sup>35</sup>.
- *M* (in particular, the migrant *mercataro*): So, I, unlike those who pay taxes, can freely choose whether to be a farmer or a businessman, or instead work for others, in exchange for a nice little monthly, or weekly, or hourly nest egg. In this way, I will be able to exercise my ability to make autonomous choices, keep my sense of responsibility for the course of my life intact, and avoid finding myself in the condition of childish dependency in which those who pay taxes and contributions and who benefit from public schools and hospitals, find themselves<sup>36</sup>.

We imagine one of the *mercatori's* complaints is that it is unjust and unfair that some have a lot, and others almost nothing. But this, according to the Friedmans, is a deeply flawed way of thinking too.

First, they try to show the *mercataro* that beauty lies precisely within what appears unjust or unfair in the eyes of ordinary people. It's the spice of life, what makes it compelling, taking us away from boredom. To do this, they use an analogy.

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<sup>33</sup> *Ivi*, p. 5.

<sup>34</sup> *Ivi*, p. 4.

<sup>35</sup> *Ivi*, p. 119.

<sup>36</sup> Again, in fairness, the Friedmans accept that extraordinary measures can be used in truly serious cases (*Ivi*, p. 115). However, these public charity measures are exceptions, justified only by exceptional circumstances.

- *FF*: Still another facet of this complex issue of fairness can be illustrated by considering a game of chance, for example, an evening at baccarat. The people who choose to play may start the evening with equal piles of chips, but as the play progresses, those piles will become unequal. By the end of the evening, some will be big winners, others big losers. In the name of the ideal of equality, should the winners be required to repay the losers? That would take all the fun out of the game. Not even the losers would like that. They might like it for the one evening, but would they come back again to play if they knew that whatever happened, they'd end up exactly where they started?<sup>37</sup>.
- *M*: (again, he looks at them interdicted. What does that have to do with his inability to feed himself and his family? He finds nothing funny or compelling in that. Besides, when the game started, he didn't have a stack of chips equal to the others).

The Friedmans are aware that, given the context, the analogy may appear incongruous, and they explain to the *mercataro* why this impression is misleading.

- *FF*: This example has much more to do with the real world than one might at first suppose. Every day, each of us makes decisions that involve taking a chance. Occasionally it's a big chance... More often it's a small chance... Each time the question is, who is to decide what chances we take? That in turn depends on who bears the consequences of the decision. If we bear the consequences, we can make the decision. The system under which people make their own choices — and bear most of the consequences of their decisions — is the system ... that gave Henry Ford, Thomas Alva Edison, George Eastman, John D. Rockefeller, James Cash Penney the incentive to transform our society over the past two centuries. It is the system that gave other people an incentive to furnish venture capital to finance the risky enterprises that these ambitious inventors and captains of industry undertook. Of course, there were many losers along the way — probably more losers than winners. We don't remember their names. But for the most part they went in with their eyes open. They knew they were taking chances<sup>38</sup>.

But the *mercataro* still need to be convinced. He feels that in that square, an injustice occurs daily. Some merchants even seem to have read Rawls<sup>39</sup>. Two finds feed this hypothesis.

(1) The statements of some of them seem to rest on the assumption that justice is defined by those principles that would be chosen by the members of society in an original position of equality, under a veil of ignorance.

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<sup>37</sup> *Ivi*, p. 137.

<sup>38</sup> *Ivi*, p. 137-138.

<sup>39</sup> J. Rawls, *A theory of Justice*, Harvard University Press, Cambridge (Mass.), 1971.

- Roberta: We are all in the same boat<sup>40</sup>.

- Luigi: We must also put ourselves in the shoes of the residents (Bartoli 2019, 118).

- Grazia: ...because we are all the same, we are just the same!<sup>41</sup>.

(2) Second finding:

- Dorina: We are smart girls. We could do anything<sup>42</sup>. Emphasis added: After all, it is only by chance that I was born on this side or on the other side of the Romanian borders, or of the Sicilian channel – this is just the outcome of a lottery, the “natural lottery”, and it is not right that social and political institutions trace, or even corroborate the inequalities due to the accidental of birth by rewarding those who have been luckier and penalising those who have had bad luck<sup>43</sup>.

The dialogue ends badly:

- M: In short, it's not fair, it's unjust, that some people have many things and I have almost nothing. (Vincenzo: There are people driving a big car and people starving)<sup>44</sup>.

- FF: (with the disenchanted realism and ruthless lucidity of one who can count on a good heating system and a fat bank account): *Life is not fair*<sup>45</sup>.

## 2.2 Law seen from outside (“extra-legality”)

We said (above, para. 2.1) that *mercatori* are outside the law, in a condition of “extra-legality” (literally “outlaws”). In this paragraph, we explain what we mean by this term. We quote here voices that will guide us in this analysis:

- Vincenzo: Do you still believe that the law is for everyone?<sup>46</sup>.

- Santino: I know nothing about the law. Can you ask me another question?<sup>47</sup>.

- Vittorio: The law exists, of course it exists! But not for us<sup>48</sup>.

In which sense are *mercatori* in a condition of “extra-legality”?

First of all, the activity carried out by them is trivially illegal. We have seen this (above, para. 1): *mercatori* should pay taxes and contributions, and they do not. But things are not so simple.

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<sup>40</sup> C. Bartoli, *Inchiesta a Ballardò*, cit., p. 122.

<sup>41</sup> *Ivi*, p. 92.

<sup>42</sup> *Ivi*, p. 153.

<sup>43</sup> On the role of the “natural lottery” argument in Rawls’ theory, see B. Celano, *Giustizia e sorte. Alle radici della giustizia come equità*, in A. Punzi (a cura di), *Omaggio a John Rawls (1921-2002)*, in *Quaderni della Rivista internazionale di filosofia del diritto*, 2004, n. 4, p. 211-235.

<sup>44</sup> C. Bartoli, *Inchiesta a Ballardò*, cit., p. 137.

<sup>45</sup> M. Friedman, R. Friedman, *Free to Choose*, cit., p. 137, *italics is ours*.

<sup>46</sup> C. Bartoli, *Inchiesta a Ballardò*, cit., p. 136.

<sup>47</sup> *Ivi*, p. 71.

<sup>48</sup> *Ivi*, p. 135.

(1) One of the requirements that legal theorists consider essential to the “rule of law” idea (or, more precisely, “rule *per leges*”<sup>49</sup>) is norms should be feasible to observe, respect, and obey for the people to whom they are addressed, or, in short, the law should not prescribe the impossible. Well, in the case of *mercatari*, this principle is not satisfied. They do not observe the rules that should regulate their behavior as sellers because they cannot do so. We invite the reader to meditate on this point: they do not observe the rules because *they cannot*<sup>50</sup>.

The law is not properly addressing them, approaching them as humans with a minimum of respect. In some cases, the law deals with *mercatari* only through punishment: “dog law”<sup>51</sup>.

Of course, our state cannot be taken for granted as a rule of law. Therefore, this first consideration is insufficient to justify the conclusion that *mercatari* are “out of the law”.

(2) In the case of the Albergheria *mercatari*, illegality is *chronic* illegality: not so much a continuous succession of illicit acts, but rather a personal and social condition (to use an expression from the Italian Constitution, art. 3, first paragraph), a status. The law is making a gesture of exclusion toward them.

(3) The reaction of the law machinery towards *mercatari*'s activity confirms that their illegality is a condition or a status, and that the gesture of the law towards them is one of exclusion. As we have seen, this reaction is null and void: *mercatari* are not even punished (with a few exceptions). The law machinery does not even register their offenses – thus confirming their position as entrepreneurs in a *free market*.

(4) The law – as H.L.A. Hart argues<sup>52</sup> – does not only include norms that prescribe, under penalty, the adoption of a certain course of action (imperative norms: obligation, prohibition), but also power-conferring laws – in particular, norms that enable people to carry out on private transactions (private autonomy: the power to make contracts, donations, etc.). These norms “provide individuals with *facilities* for realizing their wishes, by conferring legal powers upon them to create, by certain specified procedures and subject to certain conditions, structures of rights and duties within the coercive framework of the law”. Hart makes clear that the power-conferring laws address people by saying: “If you wish to do this,

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<sup>49</sup> B. Celano, *Stato di diritto*, in G. Pino, A. Schiavello, V. Villa (a cura di), *Filosofia del diritto. Introduzione critica al pensiero giuridico e al diritto positivo*, Giappichelli, Torino, 2013a, p. 401-430.

<sup>50</sup> Someone may argue that they can stop being *mercatari* and find another job. We don't feel like giving them this exhortation; if they are there, it means that the alternatives have not been successful.

<sup>51</sup> J. Bentham, *Of Laws in General*, edited by H.L.A. Hart, The Athlone Press, London, 1970, p. 184; see also B. Celano, *Stato di diritto*, cit.

<sup>52</sup> H.L.A Hart [1961], *Il concetto di diritto*, Einaudi, Torino, 1965.



here is the way to do it". In contrast, imperative norms order: "Do this whether you like it or not"<sup>53</sup>.

Well, even concerning power-conferring norms, *mercatori* cannot be said to be addressees of the law. In this respect, too, there are no material conditions for entering the sphere of legality. Many institutions of private autonomy are, relative to the condition in which they find themselves, luxury goods. Imagine asking a *mercatoro* the seemingly innocent question: "Who is your notary? Who do you turn to when you need to draw up a contract, sell or buy a property, or make a donation?". In this regard, too, we observe how the law's gesture toward *mercatori* is one of exclusion, and in this case, the mockery is added: "if you want to become Scrooge McDuck, hold your breath for two hours".

This set of considerations leads us to say *mercatori* are out of the law. Illicit and acts of private autonomy (many, not all) are beyond their reach: they cannot afford them. Therefore, rather than *illegality*, it is *extra-legality*.

### 3. The Wall

In the Albergheria market square, legality (*sacerdotium iuris*) and illegality or extra-legality are juxtaposed (above, paras. 1, 2). Students and teachers of the Palermitan Law School are divided from *mercatori* by a sort of invisible wall: the lives of these two groups, it has been said (above, par. 1), occupy different dimensions, coexisting and parallel.

What is this wall made of? We believe that on the students' side, it is made primarily of fear, disgust, and shame. Students look away. Not seeing is a way of protecting themselves, not being caught up in something that tends to make them uncomfortable. We guess that for the students, *mercatori* are foreign and threatening figures, as they come from an alien planet to them, eager to seize their belongings (they have nothing to lose, sooner or later they will come and take our things). They are also the target of disgust because what they sell are not proper goods, and their behavior is out of the standards to which they are accustomed. Moreover, if they observe what is occurring in front of their eyes, they are ashamed, as one can be ashamed of someone else's behavior.

Probably, the wall on the students' side – in addition to functioning as a defense mechanism against the sight of something frightening or repugnant – is also made of sheer indifference. It triggers a mental pattern that confines those not considered worthy into a fuzzy background.

And, on the *mercatori's* side, what is the wall made of? We should ask whether Albergheria market, or other socially marginal realities, are a world apart in which other values apply. According to this hypothesis, the marginality is a relative concept and those who receive this stigma would feel themselves central into their social sphere. According to another supposition, that marginality and exclusion are felt as such, generating shame, anger, and suffering.

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<sup>53</sup> *Ivi*, p. 35-36.

In our opinion, the second hypothesis is very plausible. The wall, we believe, is also, and mainly, made of a sense of inadequacy and shame. Sometimes, a sense of guilt also creeps in, stemming from the awareness of not being respectable, of not appearing of equal dignity and value to those who set the social standard, the level of aspiration that constitutes normality.

According to J. Waldron<sup>54</sup>, an essential aspect of the ideal of a “well-ordered society” is the provision of a particular public good: the mutual, visible, “general and widespread” assurance, as a matter of course, of everyone’s equal “dignity”. This term should be understood as “to be regarded as a *member of society in good standing*, whose membership does not disqualify him or her from ordinary social interaction”. The wall, we believe, is mainly constituted by the lack of this public good. Students do not perceive *mercatari*, and *mercatari* perceive that they are not perceived by students, as “members of society in good standing”.

It is also true that there is probably a difference between those who have had more exposure and those who have had less exposure to what is outside the narrow horizon of their milieu: the “outside” world of those who set the standards or otherwise live up to them. Those who have known more prosperous times, and have experienced less precarious and neglected lifestyles are likely to feel a stronger sense of exclusion, lack, shame, or having suffered injustice. Meanwhile, those who are used to having very little, barely surviving, and hanging around with people with similar existences feel less frustrated over their harsh lives<sup>55</sup>. By this, we do not mean that they do not suffer the cold and dampness of rainy nights, but cold is cold and not also frustration and shyness is not shame or guilt.

In addition to shame, there is a sense of predestination. “I am Mary, Mary forever”<sup>56</sup>: this is my condition; it cannot change and perhaps it is fitting that it should so<sup>57</sup>. This is easily explained:

Human beings who are forced to live under ghetto conditions and whose daily experience tells them that almost nowhere in society are they respected and granted the ordinary dignity and courtesy accorded to others will, as a matter of course, begin to doubt their own worth... children who are consistently rejected understandably begin to question and doubt whether they, their family, and their group really deserve no more respect from the larger society than they receive. These doubts become the seeds of a pernicious self- and group-hatred<sup>58</sup>.

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<sup>54</sup> J. Waldron, *The harm in hate speech*, Harvard University Press, Cambridge (Mass.), 2012, p. 105.

<sup>55</sup> A Romanian seller states: “I like here, I have no other dreams” (C. Bartoli, *Inchiesta a Ballardò*, cit., p. 120).

<sup>56</sup> [It is a quote from *Mery per sempre*, a 1989 cult movie directed by Marco Risi. The film is about the destiny of underclass youth in Palermo and their life in the city juvenile prison].

<sup>57</sup> A. Sen, *Reason Before Identity. The Romanes Lecture for 1998*, Oxford University Press, Oxford, 1999.

<sup>58</sup> K.B. Clark, *Dark Ghetto. Dilemmas of social power*, Gollancz, London, 1965, p. 63-64.

Capitalism appears, at first glance, as “an immense collection of commodities”<sup>59</sup>. Consequently, the *cogito* of the individual in capitalist society is: *As I consume, I am; I am a consuming thing*. We conjecture, *mercatori* feel structurally inadequate with respect to the subjectivity is requested to perform. Advertising also addresses them, but they are not up to the advertising: they cannot buy the advertised goods. They are not full subjects: theirs is a reduced, diminished, unfulfilled subjectivity<sup>60</sup>.

#### **4. From the freedom of the moderns to the freedom of the ancients (how to free the *free market*?)**

As we have seen (above, par. 2.1), Albergheria market is the parody and revealing image, the residue and Hegel would have said: “the truth” of capitalism, or better of global capitalism, given the mixed composition and multiple nationalities of *mercatori* (“Proletarians of all countries, unite!”). Does a way of emancipation from the freedom that *mercatori* hold as actors in the state of nature exist?

At the turn of 2014 and 2015, the municipality had decided to dismantle the paltry souk, urged by residents' grievances and the imminent nomination of the Arab-Norman Palermo as Unesco World Heritage. In pursuing this goal, they spared no expense: 600,000 euros in overtime to provide «consistent and constant controls». All security forces (city agents, state police, Carabinieri, and Guardia di finanza) were supposed to persuade the *mercatori* to dismantle the market or, at the very least, to restrict its extension through fines, clearances, and seizures.

The operation was a resounding flop. The market resisted and even expanded further, almost doubling its area. What had not been understood by the legitimate holders of the force is that those who are forced into extra-legality and near-total destitution are, on the one hand, extremely vulnerable but, on the other hand, refractory to the threat of sanction: fines have no effect on who owns nothing, the seizure of items collected from the rubbish is no big loss, and even the social reprobation given to those who suffer a criminal conviction certainly does not frighten one those who are used to receiving little consideration and knows from experience that prison is a necessary step in the ‘career’ (E. Goffman) of a true underclass member.

At the end of 2015, however, an unprecedented process began. S.O.S. *Ballarò* was constituted. It is a public assembly composed by associations that

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<sup>59</sup> *Ivi*, p. 107.

<sup>60</sup> According to Rawls (J. Rawls, *A theory of Justice*, cit., p. 440), one of the primary social goods, perhaps the most important, the distribution of which must be in accordance with principles of justice, is “self-respect”: “without self-respect nothing may seem worth doing or if some things have value for us, we lack the will to strive for them. All desire and activity become empty and vain, and we sink into apathy and cynicism”.

approach the neighborhood as a laboratory to test inclusive forms of coexistence and development. On March 13 2017, in the Church of San Saverio all'Albergheria, S.O.S. Ballarò organised a meeting with the mayor Leoluca Orlando, part of the Council, the head of the Municipal Police, representatives of the municipal waste agency, and some of the residents (on behalf of *mercantari*, only one was present). The topic debated was what to do with the market. Among the guests, there was Ilda Curti, a former alderman of the City of Turin and an expert in urban regeneration. Curti initiated the process that, after years of engagement, led to the regularization of the once-abusive Balôn market, located in Turin's Porta Palazzo district. The Turin experience seemed to point the way: combining the sellers' demands with those of residents, the needs of the poor with decorum and legality. The strategy envisaged was not to ban those who, because of extreme poverty, live outside the law but to accompany the market towards a "formalization" and to fix the rules so that their observance would also become accessible to those in need.

About a month after this meeting, on April 21 2017, the city council approved resolution No. 81, which started the process for the formalization of the "second-hand market and free-trade area" in the Albergheria district. The intention is "to balance the different interests of the community (situation of extreme need and poverty of the sellers, wellbeing of the residents, public hygiene, public order)". It is then declared to draw inspiration from the "fruitful experience of the City of Turin, born in the early 2000s, to give dignity and recognition to the 'invisible vendors' of Porta Palazzo/Balôn" and it is promised to readapt it to the local context. A technical-political group was thus set up. Its task is to collaborate with S.O.S. Ballarò thorough research on the phenomenon of Albergheria market; identify the area for free second-hand trade; set up ways and times to listen to and confront the vendors; propose experimental rules to regulate the market; and design policies to ensure a good quality of life.

The resolution text introduces the figure of the "irregular seller out of need", for whom being an «outlaw» is not a deliberate act but the result of a state of necessity. On the contrary, the choice to sell secondhand stuff, both donated or collected, is read as an effort of honesty.

In the subsequent resolution to regulate the market (No. 38, March 28, 2018), a further step is taken: Albergheria market is not only framed as an irregular way of making do to which the wretched are forced, but it is given credit. While reiterating the many serious problems (the inconvenience caused to residents, underworld infiltration, and, in some cases, fencing), the document states that the market performs two valuable functions: it is a sort of welfare program from below and has an ecological value.

First virtue: the market is a collective subject and an opportunity for participation. It is a self-managed form of welfare community to address the shortcomings of the welfare state. The poor organised themselves, invented a trade by extracting value from waste, providing cheap goods for other poor, and giving the people in distress a chance to create a job to bring home the bread. Ninni:

When a newcomer arrives, we find a space and make him fit in... We let everyone work. If one comes here, it's because he is in trouble. So we must work together to solve his problem, and to prevent he goes astray<sup>61</sup>.

*Mercatari* are aware that they are replacing institutional functions. Vittorio: The State has forgotten about us. The State does not think about us. It is we who give ourselves rules, and who help each other<sup>62</sup>.

Second virtue: the market is a “form of waste prevention”. It is an example of a circular economy: products destined for landfill or expensive recycling treatment are put back into use.

Thus, over the alternative between restoring legality and decency at the expense of the poor who find their meagre sustenance in the market and tolerating illegality because it is brought about by a state of necessity, a third possibility is emerging that we will call “participative regeneration”.

The process of formalising Albergheria market aspires to be a means of emancipation because it addresses the *mercataro* not simply as a person requiring assistance or an irregular to be punished (although he is both needy and irregular), but as a stakeholder of urban regeneration. The guiding idea is to empower marketers to speak with their own voices, in dialogue with residents and institutions to generate market rules together.

The participative process of market regeneration is part of the so-called “horizontal subsidiarity”. Massimo Castiglia, co-founder of S.O.S. Ballarò and president of the city district where Albergheria is, says:

The novelty of our approach is that the administration does not drop rules and a certain way of doing things from above. On the contrary, it is as if it were saying: What you are doing is good in many respects because it expresses a desire for emancipation and dignity. However, we should do better. Therefore, as an institution, we are committed to support the market and neighborhood improvement<sup>63</sup>.

In this sense, horizontal subsidiarity starts recognizing the value of citizens' initiative, directing individuals' energy and capacities toward the service of the community. On the one hand, the institution cedes fields of intervention and decision-making. On the other, it supports, leads, and mediates. While granting active citizenship broader spaces of power, it does not refrain from intervening but provides positive services to ensure that citizens live up to their assumed role. The municipality thus seems to be committed to promoting the freedom of *mercatari*'s

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<sup>61</sup> C. Bartoli, *Inchiesta a Ballarò*, cit., p. 130.

<sup>62</sup> *Ivi*, p. 134.

<sup>63</sup> *Ivi*, p. 168.

economic initiative as a social right and entrepreneurial propensity as a form of welfare.

## 5. Clinical-legal education

### 5.1 Turning street law upside down

The paradoxical coexistence in Piazza Colajanni of parallel worlds divided by an invisible wall (above, par. 3) would have remained merely an accidental and a peculiar occurrence (perceived as detrimental to the presumed dignity of the academic institution) if it had not been transformed into an opportunity for study and research. In the 2017/2018 academic year, one of us (Bartoli), who teaches *Legal Ethics, Sociology and Critics* at the Law School of the University of Palermo, proposed to her students to investigate Albergheria market and the ongoing formalization process. The task was looking at, and making students to look at law from the outside, from the perspective of those who stand on the margins of society and are in a condition of extra-legality (above, par. 2.2), thus bringing to light aspects of the legal phenomenon that would have been difficult or impossible to grasp by remaining in the position of the lawyer, the standard university student, or that part of the citizens to which the lawmaker addresses when designs rules. *Mercatari* look at law from the outside and afar (above, 2.2). We think it is worthwhile for law students to be aware of what the law looks like from this perspective. The law can only be widely understood if we also look at it from the outside.

Instead, those who attended the course in the following academic year (2018/2019) were offered the opportunity to take part in the neighborhood regeneration process (above, para. 4) by participating, together with the *mercatari*, representatives of institutions and residents, in the drafting of the legal acts for the formalization of the market.

This way of teaching law draws inspiration from the clinical-legal education. It is a kind of *street-law* but in reverse compared to the usual configuration.

*Street law* is the European most popular legal clinical program, right after *pro bono* judicial and extrajudicial advice<sup>64</sup>. It consists of dissemination events of legal knowledge in different contexts, e.g., in high schools, penal institutions, or among minorities and vulnerable groups. These initiatives belong to the so-called “university third mission”, when academic studies serve society. These programs, however, assume that academic knowledge enjoys an undeniable primacy and university holds a kind of epistemic monopoly. Therefore – *noblesse oblige* – students and scholars must shoulder the burden of bestowing their wisdom on the masses. If we challenge this assumption, the conventional form of *street law* turns upside down. We attempted to do this precisely.

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<sup>64</sup> *Ivi*, p. 54.

A crucial inspiration for the inquiry on Albergheria market was Danilo Dolci's oeuvre, particularly, how he conceptualizes law dealing with "outlaws" and "bandits"<sup>65</sup>.

Indeed, Dolci was not the first one to give voice to pariahs. However, the investigations involving disadvantaged subjects use to treat them as "case studies". They ask them to *report their experience* and not to *express an opinion*. They expect respondents to use their *memory* rather than their *intelligence*. Dolci, differently, does not address the people interviewed as *guinea pigs* but rather as *interlocutors*, knowing that they own rationality and imagination.

Dolci was aware that the abilities to learn, speak up, and argue are often stunted or compromised due to circumstances and can only be improved with practice. For this reason, he developed the "reciprocal maieutic approach"<sup>66</sup>. Like Socrates, Dolci assumes that people are custodians of knowledge and virtues, which can remain unexpressed if living conditions ban them to express such capacities. However, the two methods differ in one crucial aspect. In the Socratic version there is a master who helps the disciple give birth to the concept. In Dolci's version, there is a group in dialogue in which each one stimulates the others to generate knowledge and imagination. For its creator, the reciprocal maieutic approach is a community educational method in which the subjects involved take charge of their own destiny without delegation<sup>67</sup>.

In the wake of Dolci, the students' inquiry on Albergheria market was guided by the assumption that knowledge is widespread, and that the scholar's task is not to reach a point of view that claims to be universal but rather to collect and intertwine multiple and divergent sights. Thus, teachers and students crossed the gate of the academy building and took to the streets, not to proclaim the legal word, but to learn, learning from those whom society ranks among the least.

*Street law* in reverse, therefore, by putting the opinion of legal 'experts' in dialogue with those who live in the *banlieues* of law, intends to resize the claim of

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<sup>65</sup> Among Dolci's writings, Bartoli drew the most inspiration from *Banditi a Partinico* (1955) 2013 and *Inchiesta a Palermo* (1956) 2014. One focuses on the banditry phenomenon in Sicilian rural areas, and the other on the poverty of the urban population. In the first book, Dolci uses the term "banditi" as "banned". [The Italian word "bandito" means both "bandit" and "banned" stressing this common etymology, the author denounces how *banning* people, excluding them, causes the effect of forcing them to become *bandits*, outlaws]. Dolci dialogues with the *banditi*, those who are stigmatized and punished without having been granted any opportunity for a worthy and honest life. The second book is devoted to the jobless who make do (in the 1950s) in the underclass areas of Palermo. The research carried out by the "Legal Ethics, Sociology, and Critics" students was intended to update Dolci's inquiry. The bitter remark is that the stories of the Albergheria market characters are very similar to those collected by Dolci.

<sup>66</sup> D. Dolci, *Nessi fra esperienza, etica e politica*, Piero Lacaita Editore, Manduria-Bari-Roma, 1993, p. 327; D. Dolci, *La struttura maieutica e l'evolversi*, La Nuova Italia, Scandicci, 1996.

<sup>67</sup> D. Dolci, *Nessi fra esperienza, etica e politica*, cit., p. 327.

universality of academic knowledge. It produces that effect of “singular clarity of mind and freedom of spirit” desired by N. Bobbio in the preface to *Banditi a Partinico*<sup>68</sup>:

After reading these pages, let us listen to the sinister or ironic echo that words like democracy, justice, and law acquire in our souls. Those who will have grasped the new or scandalous sound of these words and will be ashamed of them, will acquire a singular clarity of mind and freedom of spirit to begin to speak again, without intellectualistic concepts, but on the contrary, with much humility and moderation, and a sense of difficulty and limits of democracy, justice, and law.

We do not intend to deny the importance and necessity of learning from texts, nor the peculiar value of rigorous scientific studies produced by the commitment of professional scholars and researchers. However, precisely because of the scientific method, the students were invited to train their capacity to doubt their point of view, understanding its limits and partiality, be suspicious of everything that appears obvious or taken for granted, and learn to decentralize their gaze, crossing it with other perspectives.

## 5.2 The crumbling of the wall

In the spring of 2018, around 100 fourth-year students of the Law degree course, divided into small groups, wandered around Albergheria market, asking whoever they met to give an interview. The assigned task was to collect life stories, a market description, and the interviewees' opinions on law, legality, authority, and the formalization process.

Generally, the people were happy to talk to boys and girls who were eager to listen them. The young age of the interviewers made things easier, as it helped to redefine relationships and hierarchies. An adult scholar with academic status and habitus might have aroused awe and distance. Instead, the economic and cultural disadvantage of *mercatori* was balanced by their older age and longer experience. Interviewees often showed a protective attitude toward students, delivering advice and worrying about their future. Lia, a woman who regretted leaving school too early to make a family, urged her interviewers: “Listen to me, you who are young ladies, please study!”<sup>69</sup>.

This inquiry activity, which took place in the space just in front of the University building, had the flavor of an adventure in an exotic and unsettling land. Thus, to analyze how an experience like this changes the researcher was crucial. Students had the assignment to “watch their own gaze”, noting how participating in this research had an impact on themselves. Their notes reveal a profound conversion in how they observe and judge and even in their instinctive

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<sup>68</sup> D. Dolci, *Banditi a Partinico*, Sellerio, Palermo, 2013, p. 10.

<sup>69</sup> C. Bartoli, *Inchiesta a Ballarò*, cit., p. 164.



reactions. For example, Gioia D'Amato writes: "From a sense of fear and disgust, I moved to a form of welcoming, precisely because I had the chance to hear their stories from their voices"<sup>70</sup>.

Thereby, seemingly incommensurable realities come into relationship with great ease. Maria Chiara Cardella states: "It only took eighteen minutes, just eighteen, to completely change my perspective", showing her surprise at the rapidity of her epistemic metamorphosis<sup>71</sup>. And Alberto Caravella adds: "This research work... crumbled, at least in my case, walls that appeared impossible to cross but which, in a while, turned out to be very fragile"<sup>72</sup>.

How is it possible that the wall that until then had prevented any exchange between the university and the market collapsed so easily? Its resistance was due to its invisibility. The wall is an internalized mental pattern that we are not aware of. It dictates that some paths are possible, and others foreclosed. However, as soon as we realize this is an unreflective and unnecessary mindset, the impediment dissolves. The effect is a desegregation of thought and action.

According to common sense, overcoming segregation means including, or even assimilating, those living in a condition of marginalization and hardship into the sphere of "full members of society" (supra, para. 3). Actually, all parts of society run the risk of finding themselves trapped into too homogeneous and stifling environments. Even the elites are excluded from much else. The inquiry in the Albergheria desegregated both market and academy actors.

On the one hand, A. Staropoli, a sociologist engaged in social mediation work for the regeneration process of the Albergheria area, states:

*Mercatari* experienced that Marco, a young vendor, reported the workshop results in the university hall, in front of representatives of the institutions, as a form of emancipation. They had never entered that ivory tower. They used to perceive university as a place, even physically close, inaccessible due to cultural and social gap. But now the university had become a space where some of them could take the floor<sup>73</sup>.

On the other hand, Maria Fiorentino, a student who participated in the investigation, writes:

We thought they were just thugs, dirty and chaotic, while they are people, human beings. There were stories, there were misery, hunger, illiteracy, and resignation. There was a reason for everything. This inquiry helped us discover these people,

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<sup>70</sup> *Ivi*, p. 26.

<sup>71</sup> *Ivi*, p. 185.

<sup>72</sup> *Ivi*, p. 188.

<sup>73</sup> *Ivi*, p. 174.

learning to see them with different eyes. Furthermore, it allowed us to work on ourselves and the way we approach others<sup>74</sup>.

### 5.3 Being part of a constituent process

The witness accounts and opinions collected in Albergheria market by the students were then incorporated into a book entitled *Inchiesta a Ballarò. Il diritto visto dal margine*<sup>75</sup>. This text served as a handbook for the following academic year 2018/19. The around fifty students formed four groups. The first had to process the administrative acts relating to the formalization of the market that had been issued up to that time, study similar processes tried in other contexts, and draw up guidelines the municipality could adopt. The second group was asked to analyse the new legislation about the no-profit organizations (D.lgs. 117/2017; L. 136/2018), and draft the statute of a future *mercatari's* association. The third group had the task of investigating European, national, and local norms concerning the circular economy and the opportunities that could be derived for the market (e.g., the four EU directives of 4 July 2018 known as *Circular Economy Package*; L. 221/2015; the *Regional Waste Management Plan*, and the *Regional Council Resolution* no. 526/20-12-2018). Last, the fourth group had to delve into the debate on welfare community and horizontal subsidiarity, exploring how Tuscany and Emilia-Romagna regions included those principles in their innovative legislation. Each group had a mentor to help them with the survey, scrutiny, and drafting.

The students, therefore, have been given the task of preliminary preparation of the participatory regeneration process (section 4, above)<sup>76</sup>. Deliberative democracy fails when the assembly to decide does not provide a pilot phase of study and information acquisition<sup>77</sup>.

Indeed, an academic team composed of committed and effective young people highly supported the formalization process. It was at least as important for lawyers-in-training to play the role of a lawmaker so close to the people to whom the rules would be addressed. In this way, the students experienced the process of codifying customary rules, probed the ability of law to regulate social conflicts, and the extreme difficulty of harmonizing, or at least balancing, competing demands, searching for solutions able to include those who are normally excluded. They discovered potential and limits of law. Furthermore, many of the issues tackled in their theoretical studies appeared to their eyes in the flesh.

The outcome of this experiment was surprising in terms of motivation, initiative, and quality of work. The students successfully drafted the market

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<sup>74</sup> *Ivi*, p. 188.

<sup>75</sup> *Ibidem*.

<sup>76</sup> In a survey published in 2016, out of one hundred European legal clinics, around twenty declared that one of their activities was to design drafts of laws and policies (C. Bartoli, *Legal clinics in Europe. For a commitment of higher education in social justice*, in *Diritto e Questioni Pubbliche*, 2016, p. 54).

<sup>77</sup> V. Pazé, *In nome del popolo. Il problema democratico*, Laterza, Roma-Bari, 2011.

association statute, wrote the guidelines that the municipality will adopt, and presented their research in a clear, thorough, and impressive manner. Nevertheless, they went far beyond the already challenging tasks their professor had assigned them. In fact, they studied additional materials they had identified as important, spontaneously participated in the Albergheria market assemblies to learn more about the ongoing process, got in touch with similar experiences in other parts of Italy, shadowed representatives of the institutions and investee companies of the City of Palermo involved in the regeneration of the neighborhood, submitted their proposals for consideration by *mercatori*, they developed a website project to tell the story of that participatory urban regeneration, shot a video documentary, designed a tour led by the people of the neighborhood to make the social reality of Albergheria correctly known, outlined a proposal for a reuse center, and finally organized a debate in Piazza Colajanni that ended with a social lunch, where they cooked together with friends and family members they had mobilized for the event.

#### 5.4 Role of a teacher

In this educational process, what is the role of a teacher who combines the legal-clinical approach with the reciprocal maieutic one?

Certainly, the transmissive role – whereby the teacher transfers his knowledge into the learners' minds-containers – is greatly reshaped. The clinical-maieutic teacher must prepare the ground for the students to become authors of their own knowledge in collaboration with others. He or she is a talent scout engaged in the detection of the learners' abilities, a mediator of unpredictable relationships, a prompter of sources, an inoculator of doubts and suspicions, an interlocutor of discoveries, and a supporter of the initiatives of the students-researchers-actors. This kind of professor proposes to not only written texts but also people, actions, and contexts as sources of knowledge.

Above all, the maieutic teacher must step aside, leaving students room for initiative and, therefore, power so that they can practice, test, and master their skills. In short, a certain humility is required. The teacher's questions are not aimed at certifying, as in an ordinary exam, that the student knows what he or she already knows. They are authentic questions, where the questioner does not yet know the answer, but asks with the purpose of discovering it together.

#### 6. Conclusion

We cannot yet predict where market formalization and Albergheria regeneration will go<sup>78</sup>. It is a complex and obstacle-filled process that risks going nowhere. Legality, in fact, may remain too demanding a threshold for people in

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<sup>78</sup> [The guidelines drafted by the students and *mercatori* were adopted by the City of Palermo on July 3, 2019. Due to delays caused by the pandemic, the market

such deep distress. And even if formalization succeeds, some of the benefits of market informality may be lost, such as the mutual solidarity that unites *mercantari*.

We are sure, however, that participation in market formalization process was a great opportunity both for students and scholars of legal disciplines. The discussion with the youth of both courses showed that their involvement was driven by the awareness that they finally had an active role in the production of knowledge, by the feeling that they were “doing something”, and that their study could change the lives of many people for the better. They performed a wide range of skills, challenging fears and prejudices. They experienced working together, forging new friendships with colleagues and people from the market, the municipality, and the associations involved. Reportedly, the students were amused and moved.

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regularization experiment started on July 1, 2021, and lasted one year. It was interrupted because the city council headed by Leoluca Orlando ended its term. At the time of publication of this translation, negotiations with the current city council headed by Mayor Roberto Lagalla are ongoing. The Law Department continues to play a role as promoter and mediator with Albergheria market.]

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