Problematising use conformity in spatial regulation: Religious diversity and mosques out of place in Northeast Italy

Abstract

This paper returns to a classic of planning and questions the inhibiting role that an approach to spatial regulation based on the requirement of use conformance has on the unfolding of (religious) diversity. The urgency to readdress the topic is due to the lack – among literature concerned with the urban effects of migration – of contributes questioning both the legitimacy of the categories used to order space and the very same process of ordering space through categories of uses.

To fill this gap, the paper draws from critical legal geography and critical secular scholarships and, examining paradigmatic cases of "mosques out of place" in Veneto (in northeast Italy), shows that discourses over use conformity in spatial regulation need to be drastically re-examined. They, in fact, contribute to normalise sociocultural expectations about religion and space, resulting intrinsically discriminatory.

Keywords: land-use conformity, planning, diversity, religion, culture

Introduction

This paper returns to a long debated, but still open (Moroni; 2007, 2010), issue in planning: the controversial relationship between use, land regulation and diversity. Particularly the attention is on how an approach to spatial regulation centred on use conformance inhibits the possibilities of diversity to unfold in space.

Here, diversity is conceptualised in two interrelated ways. First, the kind of diversity we are looking at is connected to the increase in international immigration. Terms such as "super-diversity" or "hyper-diversity" are oftentimes used to indicate this trend. While the discussion around and about these labels is ongoing (Vertovec, 2019), these terms suggest how migration is not only a quantitative matter (more people, more ethnicities, more fluxes) but, also, it comes together with multiple qualitative changes (Allievi, 1999). Migration modifies the relations, the needs, the fears and, consequently, the challenges planners have to be facing. Relatedly – and this is the second conceptualisation – diversity is understood as the simultaneous presence of multiple "politics of need and desire" (Harvey, 1992: page 593) and fragmentated spatial demands that can hardly be contained under the general umbrella of "public interest" (Tait, 2016). Within this frame, this paper focuses on the unfolding religious difference in Northeast Italy. The growing tension towards religious placemaking is in fact one of the outcomes of these continuous demographic changes: until a few years before places of worship in Italy were considered as absolutely unproblematic, not something

to worry about; this has changed with the increase in migration, the relative fragmentation of aspirations and the increasing demand for spaces.

Against this background, the reasons to look to the "classic" entanglement among land-use and diversity from this renewed angle are as follows: (1) most scholars interested in the urban effects of migration, including those looking at religious diversity (Gale and Nylor, 2002; Kuppinger, 2011; Triandafyllidou and Gropas, 2009), either neglected the issue of land-use conformance in regulation or just scraped the surface. (2) Increased migration prompted a conservative, xenophobic resurgence throughout national and local contexts, with Italy being no exception. This tendency is not only discursive: the spatial dimension of it is well visible in the different ways space is allocated to, and used by, different groups or in the way it is increasingly used as a tool to exclude "undesired populations" (red-zones). The planning mechanisms allowing for a conservative politic to take place in the specific context of Italy need further exploration. (3) Scholarly work tackling land-use and diversity mostly focuses on residential disparities (Whittemore, 2017), leaving that which falls outside market mechanisms off the radar, as is the case of religious facilities in Italy. Further, research in this field remains dominated by a North-American and anglophone perspective, with Mediterranean Europe remaining marginal (Arbaci, 2019). While also in Italy there has been an increase in attention about issues of migration and the city (i.e. Ambrosini, 2019; Briata, 2014; Ostanel, 2014), more prominent authors working on planning and diversity (Burayidi, 2000; Qadeer, 2016; Sandercock, 1998) typically refer to contexts which have, at least formally, developed a multicultural horizon (Fincher et al, 2014), something completely absent in the Italian context. This literature, while instructive, is insufficient to unpack what many migrant-led religious groups, Muslims above all, face in Italy, and in Veneto region.

Since the 1990s migrants have grown steadily[i] both nationally and regionally and they have been seeking spaces to be used for various collective purposes, including religious ones. In this search they were left largely unsupported, with administrations ignoring their repeated requests (XXX, 2021). Those who, autonomously adapted empty apartments, commercial spaces or warehouses face enduring precarity being at constant risk of displacement because of the informal status of these places (Chiodelli, 2015; Pace, 2013). Against this backdrop, which is shared among all minority migrant-led group identified as religious, is the localisation of Muslims the one emerging as the most problematic. Any attempt of placemaking associated (rightfully or otherwise) with the Islamic religion is accompanied by accusations of not conforming to land and building use regulations (Marconi, 2012). As a result, and despite repeated efforts to change the situation, Italy counts less than 15 officially recognised Islamic places of worship for a population of over 1,6 million Muslims, with none present in the Veneto region, where over 130,000 Muslims dwell permanently. Such a situation is the expression of a racist, Islamophobic environment (Ciocca, 2019), but, as argued in

this paper, it is also a result of the unquestioned application of a planning logic that is centred on the idea of use conformance.

Throughout this work, we take use conformance to mean an approach in which correspondence is expected between what is allowed on paper – masterplans, building permits, administrative authorisations – and the activities actually taking place. The word *what* indicates a "class of activities" (Ellickson, 1973), or categories (residential, commercial, religious), that are generally understood as discrete and mutually exclusive to prevent incompatible uses from settling next to one another (Chung, 1994) and protect others' legitimate interests in those spaces (Needham, 2006). While land-use zoning is the tool that more clearly incarnates such an understanding of spatial regulation (Ellickson, 1973; Coase, 1960), it is not unique: not only land but also buildings and temporary activities are regulated depending on the type of activity.

Despite the extensiveness of the literature looking at land-use zoning (Lehavi, 2018; Mazza, 2016; Talen, 2012; Whittemore, 2021), problems connected to use conformity are at times tangentially touched (Qadeer, 1997; Germain, 2003), but rarely addressed at their core (Burchardt, 2019; Chiodelli and Moroni, 2017), by scholars working on urban "deep difference" (Watson, 2006) as related to migration and religious diversity. Too often land use regulation tends to be conflated with other factors, such as noise or traffic, and simplistically interpreted as an excuse (Cesari, 2005; Eade, 1996; Kuppinger, 2014) used to get rid of "undesirable" groups, expressing racist instances in a technical, more "acceptable", manner.

While acknowledging that planning "response[s] to…emerging social needs has been highly uneven" (Gale and Thompson, 2018: page 2), the tendency among scholars interested in urban effects of migration has been more to remedy the distortions resulting from the (mis)application of use conformity logic – for instance, by revising parameters and categories to avoid assumptions of universality (Qadeer 2016; Thomas 2000; Lo Piccolo, 2000) and operating with more flexibility (Burayidi, 2000; Dwyer et al., 2016; Murtagh and Ellis, 2010) – rather than to tackle the problem at its roots. Focusing on how technical tools are mobilised and implemented does not radically question the logic implied in the technical tool itself, thus failing to address both the mechanisms through which use conformity requirements constrain multicultural diversity and the way these mechanisms can be reversed. This paper thus aims to contribute to the debate by deconstructing and questioning both the legitimacy of the categories used to order space and the very same process of ordering space through categories of use. The deconstruction process is theoretically grounded by insights from critical secular studies and critical legal geography – two disparate literatures that profoundly engage with how religion gets moulded and included in law and with the way law becomes spatialised. Combining these literatures nourishes planning scholarship by showing how use conformity works with an objectifies, essentialised and decontextualised idea of religion.

In what follows, we introduce the aforementioned literatures, highlighting their value to this research. Next, the context of Veneto's demographics, politics, planning, and legal framework are offered, before providing an overview of the research methodology. Following, we consider over thirty cases of conflict over mosques considered to be "out of place" (Cresswell, 1996), highlighting how use conformity inhibits the settlement of Muslims across a sizeable scale. We then train analytical attention to three specific cases in order to expose the underlining assumptions about religion as implied in the Italian approach to spatial regulation, which is based on the premise of use conformance. Finally, we critically assesses these assumptions, taking them as a basis for revisioning planning *modus operandi* in Italy, and in contexts featuring similar conformative frameworks.

Problematising religion and use conformity through critical secular scholarship and critical legal geography

Many theoretical foundations employed to question both the legitimacy of the categories used to order space (the category of religion in particular) and the very same processes of ordering space through predetermined categories are offered by critical secular scholarship and critical legal geography.
Critical secular scholars (Asad, 1993; Cavanaugh, 2009; Nongbri, 2013) are those who more openly scrutinise the meaning of religion as embedded in common sense (Fitzgerald, 2007) and question its existence as given. In this literature, religion is framed as neither the opposite of the secular nor as a "'thing' in itself, which exists across humanity as a universal" (Nye, 2019: page 50). Instead, religion is argued to be an ideological construct rooted in the Christian-European colonial past (Masuzawa, 2005), and constantly co-constituted with the secular (Asad, 1993). This view indicates that religion is neither universal nor ahistorical and suggests that its specificities cannot be neatly separated by other traits of society. In particular, critical secular scholarship outlines a significant problem in the way western, secular, societies deals with "the religious". It consists in treating religion as an object with unjustifiably clear borders (Cavanaugh, 2009), thus approaching it as if being a coherent domain, theoretically separated by other categories (Mahmood, 2016). In effect, the idea of religion as a clearly definite category is so successful that the feeling is that we would all intuitively recognise it despite its numerous ambiguities– as evidenced by how frequently religion gets discussed in Courts across different geo-legal contexts (Sullivan, 2005; Giorgi, 2020; Nye, 2001). Not only is an agreement missing on the religion fuzzy limits', but even its core is not always recognisable (Cavanaugh, 2009), with definitions being either absent, tautological or arbitrary (Fitzgerald, 2007). Many cases of Muslim's placemaking in Italy belong and play with(in) this terrain of ambiguity.
While many across the social sciences (Dunn, 2014; Miller; 2014; Gale, 2005; Gale and Nylor, 2002; Nye, 1998) and the legal studies (Fabbri, 2013; Saxer, 1996; Walker, 1982), have been concerned

with religious emplacement and its relation with the law the relevance of critical secular scholarship was only recently (Berg, 2018; Manouchehrifar and Forester, 2021; Carta, 2022) brought to the attention of urban studies. In particular, Manouchehrifar (2018) has clearly outlined how the secular imperative of indifference before religion – typical of planning – paradoxically translates in a confinement of religious expression (2018). This disciplinary debate can acquire even greater strength when bridged with the insights coming from critical legal geography.

Critical legal geography is a heterogeneous field (Delaney, 2015) interested in how law and space reciprocally configure each other and, relatedly, how they both embed and reproduce structures of power (Blomley, 2020; Waldron, 1991). Because law unavoidably happens in place and is "always 'worlded' in some way" (Braverman et al., 2014: page 1), the space-law relations are required to be more attentively unwrapped.

In particular, some authors (Bennett, 2016; Delaney, 2003; Layard, 2010) detail how "entities such as the home, the corporation, the environment (…) are legally constituted and reconstituted" and are "made meaningful in distinctively legal ways" (Delaney, 2015: page 98). They expose how familiar places that are intuitively perceived as given are instead "legal creatures" (Delaney, 2015: page 97), characterised by specific traits determined, directly or indirectly, by the way law is phrased, enacted, or more generally inhabited (XXX, 2022). Blomley (2003) points how this becomes clear "when we recognise the importance of law and space to order. The world is not given to us, but actively made through orderings which offer powerful 'maps' of the social world, classifying, coding and categorising." (page 13). Not only does the law draw lines among different categories through space using tools such as the citizen-border-foreigner trinomial, but eventually, the spatial and the legal become conflated. For instance: can we even be certain of what a place of worship is without a legal definition of it? Reversely, can we articulate a definition without reference to specific spatial elements? It is a chicken-egg situation.

If entities such as the home or the corporation are conceptualised as legally constituted, then a similar logic can apply to places where religion is expressed. Like the home, they also are "legal creatures"; their life, location, and aesthetics can only be fully understood if also accounting for the way the law takes (and makes) place (Bennett, 2016). Critical legal geographers have, so far, and with some exceptions (Cooper, 1996; Cooper and Herman, 1999), not been particularly interested in religion. Nevertheless, this field of inquiry seems to offer a fertile ground to move toward spatial regulation that is more attentive to the contents it contributes to reproducing in space. To move in this direction, this work starts by questioning how a specific idea of religion – formalised and implemented through law – affects the spatial practices and conditions of Muslims in Veneto.

Contextualising the research

Veneto and religious diversity: demographics and politics

The choice of pursuing the research in Veneto is due to demographic, political and legal factors (for the latter see the next subsection).

Demographically, during the 1990s and the 2000s, the region attracted migrants due to its economic wealth and the availability of jobs. It currently counts the fourth-largest number of migrants in Italy and is the third-largest for the estimated number of Muslims, amounting to about 134,000. About 20,000 are located in Venice (the region's capital), making 10% of the city's population. These numbers, however, conflict with the number of places officially available for prayers. While there are few "cultural centres" officially recognised, Mosques are completely absent and most places used by Muslims for prayers are completely informal. The gap between the availability and the demand of religious spaces is not exclusive to Veneto (Pace, 2013), yet the level of tension around religious placemaking has been particularly palpable here and other northern regions (Chiodelli, 2015; Saint-Blancat and Schmidt di Friedberg, 2005). This is both due to the higher numbers of migrants in these territories and to the political consensus granted to the right-wing identitarian party Lega Nord. In effect, in many ways, Veneto preceded Italy in its conservative turn. Traditionally known as the "white Veneto", with "white" indicating the Christian-Catholic orientation, Veneto was considered a voting reserve for the Christian Democracy party (DC) – a political group guiding Italy from the post-war to the 1990s. After the end of the DC-era, Veneto – with its local branch *Liga Veneta* – became the voting reserve of the Lega Nord Party, securing over 40% of the preferences of the voting population (Guolo, 2010)[ii]. Lega Nord Party was born with the idea of uniting the secessionist groups of northern Italy, and it first engaged in the creation of a neo-pagan identity, loudly asking independence from Italy.

Although Veneto's independence remains a prominent agenda item, when the Party engaged in the national polity it figured how the neo-pagan symbolic reference was weak in a country impregnated with Catholic uses. The Party then articulated its identarian aspirations through an instrumental use of Catholicism (Guolo; 2010) alongside a crusade against the "Muslim invasion". In 2016, Lega Nord was the main promoter of a regional planning law restricting religious groups' possibilities to settle. In this context, even those that from the political left discursively support a multicultural horizon, seemed incapable of convincingly articulating it, leaving migrant-led minority religious groups unsupported.

Planning and legal framework

According to Servillo and Lingua (2012), the Italian planning system is characterised by three main features: first, the centrality of the municipal level in the regulation of territorial changes; second, an

oscillation between a technical and a political understanding of planning and, third, a "conformative interpretation of the planning practices" (Servillo and Lingua, 2012: page 404)

In Italy, by effect of law 1150/1942, every administration is required to regulate its land through the periodical approval of a masterplan covering the whole municipal territory, thereby making the masterplan the key planning tool in the regulation of space and the municipality the central planning actor. The whole planning process is marked by an ambiguity which sees on the one hand planning as a merely technical activity and, on the other hand, as a domain of local politic (see also Mazza, 2002). This is clearly visible in masterplans' development process: while masterplans are drafted in planning offices their content is largely dictated by the political agenda and they are approved by the municipal council (the main locally elected political organ) which has final say, unavoidably conflating political and technical considerations.

The outcome of this political and technical activity directly affects, in a legally binding way, how land can or cannot be used. Masterplans are not solely strategic frameworks for action; they are cogent documents determining rights in land, including the activity for which each allotment can be employed. The Italian planning system is largely conformative in nature (Rivolin, 2008),

This framework is complexified by the autonomy granted to regions which, through the approval of specific planning laws, determine the masterplan structure, its renewal timings, quantities of land to be dedicated to collective uses, as well as other aspects, including the regulation of religious facilities. In short, regions and municipalities do most, if not all, of planning activity, with the National level remaining marginal. In particular, in terms of facilitating socio-spatial diversity, there is no national planning frameworks addressing issues such as migration and religious difference. The few guidelines available to local authorities are provided by the Constitution (which holds the principles of religious freedom and equality), jurisprudence and by planning law 1444/1968 on collective facilities. This law determines that places of worship are facilities of public interest for which masterplans have to provide appropriate areas. Jurisprudence has specified how this implies the simultaneous affirmation of a system of negative liberty (the State should avoid taking actions preventing the free exercise of worship) and of a system of positive liberty in that public authorities have, on paper, the duty to create the conditions for worship to be enacted both individually or collectively. Nevertheless – and regardless of the absence of any clarification about what should be considered as being "religious" — the association between religious uses and public areas has been widely interpreted as exclusive so that activities identified as part of this category can only be pursued in spaces precisely identified by masterplans. So doing the inherent vagueness of religion is spatialised and tied to delimitated areas (identified for collective facilities), buildings (places of worship), and procedures (use conformance). It follows that if administrations fail to make areas

available for the purpose when planning their territory, the possibility of groups deemed as religious to pursue their activities legally is either consistently restricted or nullified.

In the absence of alternative options, many groups leverage the complexity of distinguishing what is religious and what is not through the exploitation of legal loopholes. Using law 117/2017, which allows private socio-cultural associations (APS) to locate regardless of land-use provisions, many Muslim groups looking for spaces to pray have registered as cultural associations and readapted commercial, residential or industrial empty spaces to obtain modest prayer rooms or larger “cultural centres”.

In response to this trend of unplanned placemaking, some regions, including Veneto, reacted by imposing further regulation. Veneto LR 12/2016, colloquially known as the "anti-mosque law", dictates how the category of "religious facilities" includes any space used by groups identifiable as religious for seemingly religious intents. Not only does this law define religion tautologically – naming a space after an undefined set of activities – but this apparent enlargement of what can be accounted as religious is not accompanied by a loosening in land-use requirements. Instead, the law further imposes constraints by reinforcing the obligation of locating their activities only in areas zoned appropriately. The result is that municipalities have a monopoly over deciding if and where groups deemed as religious can settle, with all spaces previously converted leveraging ambiguities between religion and culture now figuring as illegal.

In effect, the absence of a coherent legal definition of "religion" or "religious spaces" is accompanied by a trend of judicialisation (Giorgi, 2018). Tribunals are increasingly called to verify the legitimacy of administrative measures, such as the forceful closure of a prayer room ordered on the ground of land-use regulation. It is at this level that most battles on religious placemaking unfold.

Methodology

This paper is part of a wider research project that concerns religious diversity and planning conducted in Veneto between 2018 and 2019. While the research initially accounted for several groups (identified as Muslims, African Pentecostals, Romanian and Coptic Cristian Orthodox and Sikh) across nine municipalities, a second research phase concentrated on Muslim’s placemaking (or perceived so). This choice was motivated not by specific exclusionary planning processes targeting groups identified as Muslims while sparing others (XXX, 2021), but rather by the increased frequency of conflictual events (legal clashes, foreclosures or related protests) taking place around places perceived as Islamic. This reflects the tensions in the social context and translates into more material available. The paper argument is thus based on evidence of over thirty cases[iii] of conflicts over the

settlement of Muslim groups occurring in Veneto during the last decade and on the closer analyses of three of these cases. The latter have been selected out of the pool of the 33 previously considered on the ground of spatial, legal, and temporal criteria. In spatial terms, this is a rather varied sample of building types and urban contexts. The first case concerns a deconsecrated Catholic church in the historic centre of Venice, the second is located in a structure initially used as a theatre, then converted into a warehouse and finally used as a prayer room. The third case is located back in Venice but this time in a more peripheral area of the mainland, outside the tourist circles, the building has a commercial vocation. From a legal point of view, these spaces have been used by groups registered as cultural associations taking advantage of the possibilities opened up by the regulation on private circles. The first two cases have been disputed in court while the third has not. Moreover, the complaints against the group's use of the spaces were articulated through all the types of (dis)conformity noted above (administrative, building and land use), which indicates that the issues discussed do not concern a single procedure, but are instead broadly underlying the logics and practices of space regulation in Italy. Finally, from a temporal perspective, two out of three cases occurred before the approval of the "anti-mosque law" in 2016, while the third occurred after its approval.

As it is typical of critical legal geography inquiry (Santoire, 2020), this research employs a dual-method, qualitative approach consisting of semi-structured interviews and secondary material text analysis.

More than 150 media sources, including articles and videos were reviewed, with the goals both of assessing the frequency with which attempts to limit Muslims' location are framed in terms of conformance and of learning more about the unravelling of the three of cases analysed in-depth (who was involved, timing, how the controversy evolved). Additionally, for 14 cases (all those who appealed to the Court), jurisprudence documents are also available[iv] for a total of 19 court rulings, including both first and second degrees of justice. They allow to point out how the requisite of use conformity is normatively mobilised, its relevance in legally inhibiting the location of groups identified as Muslims, and logics that subsume legal arguments around the issue of religious emplacement and use conformity. Jurisprudence documents were mostly rulings emanated by administrative tribunals (Regional tribunal "TAR", State Council "Cons.St.") and accessible through public records.

In addition to this material 20 semi-structured interviews regarding the process of location of 8 Muslim groups were also collected (of these interviews 6 regard the cases examined in more depth). Interviews were held with planners, members in leading positions in Muslim groups, police officers and lawyers. The aim was to understand how the planning system, including its legal loopholes, is mobilised to confront religious diversity, specifically probing into the emic dimension of regulations.

While I initially intended to integrate this material by making additional fieldwork, this turned out impossible due to the outbreak of COVID-19. The research was thus restructured so that the analysis of press and legal documentation constitutes the main source of information, with interviews mainly employed to make sense out of the context (Braverman, 2014) and integrate information already gained through the text's review.

How use conformity constrains religious diversity: magnitude and logic

The material regarding 33 cases of conflicts over the location of Muslim spaces in Veneto shows how the argument of lack of conformance with use prescriptions as stated in planning/ building/ or administrative documents was key to prevent Muslims from settling in all examined cases. Available press tells how Muslim attempts of placemaking are invariably opposed (by the Municipality, right-wing political Party, neighbours) by rising the argument of violation of use-conformity prescriptions, making it the more frequent point of contestation. Other arguments such as building violations, overcrowding, hygiene, and nuisances are also present, but are mobilised more lightly and less frequently.

In all 14 cases discussed before the Court, the administration used the argument of use conformity against Muslim groups. Among the 19 rulings (considering first and second degree of judgment), the 10 favouring Muslims argued that missed use conformity was an insufficient reason to forbid the group's activities unless accompanied by other relevant negative urban impacts (externalities) or unconformities. If only considering the period following the 2016 passing of Veneto's "anti-mosque law", it is possible to see a relative decrease of cases that reached the Court, perhaps due to the lack of confidence in the possibility of winning. Among the 4 that made it to the tribunal, only 1 was won by the Muslim group while the remaining favoured the administration, condemning the groups for not respecting the assigned use.

In all 6 cases characterised by the presence of a major cultural centre, both interviews and press revealed how Muslim groups and administrations allowing for the space to be utilised are similarly careful in referring to it as a "cultural centre", not as "place of worship", otherwise it would be considered illegal due to not complying to land/building use regulation. The sentence "we are a *real* cultural centre" (Muslim group, 2019, personal communication) sums up this tendency. Further, the requirement of use conformity when conjoined to the discretionary power of administrations also constitutes a preliminary barrier: "even presenting a restoration project to the technical office can be an imprudent exposure", a self-declaration of the status of illegality (Lawyer, 2019, personal communication).

Considering this worrying picture, what follows questions how use conformity turns out to be so powerful against the location of Muslim groups. Three cases are then selected out of the 33 and looked up more closely. In approaching each of them, we train analytical attention to: (1) the legal arguments arising from the conflict raging around the location of groups perceived as Muslims, (2) the idea of religion employed within legal tools and planning processes, and (3) the spatial consequences of this specific idea of religion, as formalised through an approach to spatial regulation based on use conformity. Reviewing these three cases in depth revealed that an objectified, essentialised and decontextualised idea of religion is employed by planning. Since groups are required to observe such a narrow understanding of religion and its relation with space their possibility to settle is hindered.

Objectified religion

In 2015, the main Muslim group in Venice was asked by artist Christopher Büchel to collaborate on his installation curated by the Icelandic Art Center (IAC) for the 56th Biennale of Art (Bialasiewicz, 2017). The installation, titled "THE MOSQUE" was designed in a “Legally ambiguous way” (lawyer, personal communication, 2019) and implied the temporary internal transformation of a privately owned, desecrated church in Venice old town to resemble a functioning mosque. To grant the necessary permits, the Municipality required the removal of any external elements suggesting a religious affiliation, and prohibited religious activities to occur during the exposition hours. These impositions were justified by alleged administrative inconsistencies between the permit required to hold religious rather than artistic activities. After the inauguration – occurring close to the local political elections – protests erupted, with protesters arguing that it was not an art exhibition but a full-fledged Muslim place of worship lacking respect for Italian culture and regulations. After three weeks, the authorisation was revoked on the basis of excessive crowding and lavatories were being used for ritual ablutions. The administration also argued that religious functions were clearly taking place as the space was only accessible after shoe removal. In their view, “the whole thing had nothing to do with an art exhibition” (Minutes 3.05.2015).

The closure was challenged in front of the regional administrative Court. The IAC maintained that no specific authorisation is needed for religious activities held in private buildings, even if open to the public, especially if the activity does not cause additional urban load and if it is carried where land and building regulations allow for religious uses. In their argument, the Municipality enacted an unmotivated restriction of liberties and failed to grasp the exhibition's artistic reach. Regardless of these arguments, the court agreed with the municipality because of the inconsistency between the administrative authorisation issued - for an art exhibition - and the actual use of the space, ultimately interpreted as religious (TAR 346/2015). The lawyer proposed to appeal in the second degree of justice moving, "in the direction of an evaluation of merit of what is art, what is representation, what

is worship" (Lawyer, 2019, personal communication), the IAC, however, backed off, leaving these questions unanswered.

Each step of this case reflects a confrontation between different ways of juggling the law, in and around the ambiguity of the legal definition of religion. On one side, the artist, the IAC, and the religious group leverage on a slippery ground conceptualising identities and categories as fluid; on the other, the administration and the Court set fixed borders, and ordered the world accordingly. It is not a meaningless technicality, quite the contrary, as these alternative conceptions of religion and space are central to the understanding of spatial arrangements. According to the first conception, rituals can become the core of an art exposition and can take place in a former Catholic Church. If instead a rigid understanding of religion (and of where it can occur) is embraced, a line is drawn to separate artistic from religious, resulting in the exhibition's closure. Interestingly, in order to impose a specific secular idea of religion in space, as separated from other "neighbour categories", spatial elements are called to support that very same idea, becoming a self-fulfilling prophecy. Through a simultaneous process of objectification and separation, religion is connected to a set of items, places and behaviours used to fulfil a predetermined idea of both religion and space as separate and prior to action. In such understanding, "religious facilities", while undefined, are associated with a limited range of spatial possibilities so that the use of lavatories or walking barefoot on carpets becomes a clear indication of religious (but not cultural or artistic) use. Muslims use of a church is, following this line of thought, clearly interpreted as being out of place. None of these links is expected to need an explanation (Nongbri, 2013), and space is ordered so that this analytical fixity becomes a constitutive part of it.

The ability to distinguish categories (associating them to pre-established places) is foundational to the logic of use conformity: either something is religious or not. In order to make this distinction religion is objectified and treated as a thing. To be included in legal norms having spatial relevance, it is not read in its variability and relationship to adjacent categories; on the contrary, its fixity and discrete functionality go unquestioned (Fitzgerald, 2007).

Tensions arise when this rigid understanding (of law, religion and spatial optionss) is confronted with the eclectic behaviour enacted by the Muslim group in the context previously arranged by the artist. Shading the differences between categories through a creative use of space Büchel's project shows how the ideal of religion enshrined in law and used as an ordering device (Blomley, 2003) is much more fragile than understood. While for the City "religious symbols are homogenised through secular regulation and interrogation" (Sullivan, 2005, page 42), the exposition broke these imposed borders. In a counterintuitive logic, by participating in the art exhibit Muslims in Venice traversed pre-established categories so that a church is no longer simply a church, but could turn into a mosque or an art exhibition; similarly, collective prayer is not only religious but it is also art.

Essentialised religion

The second case concerns a lengthy controversy that started in 2010. It involved one of the oldest of Veneto's Muslim groups, initially based in Arcole, a municipality of about 6,000 inhabitants. The group settled in a building that was originally a theatre, converted to a storage facility, and finally acquired by the Muslim group.

The administration, openly hostile, ordered an inspection to verify if everything was happening within the space operated in the bounds of legality. Controls highlighted a few minor building violations, some of which preceding the latest acquisition (Cons.St. 3534/2012) and confirmed how the space was being used – identified by authorities as mainly religious – was incompatible with existing land and building use formal designations. The Municipality then forced the group to stop their activities, returning the building to its original configuration. When the group asked for regularisation of the minor building abuses without repristinating the storage use, the City condemned the building to closure and forcefully broke in. Muslims prayed in a nearby parking lot for over a year in sign of protest (Muslim Group, personal communication, 2019) and filed a legal procedure against the Municipality. In the first degree, the administration was favoured due to a technicality; this evaluation was reversed in the second degree and, more recently, in 2018, by a third ruling.

During the whole trial, the administration attacked the group only on the grounds of minor building violations, insufficient to impose foreclosure (Cons.St. 3534/2012), and of the fact that, in the administration's understanding, the use that was being made of the space did not conform to use regulation. The group had been mainly found guilty of converting "the use destination to that of a place of worship" (TAR 6331/2010), something deemed incompatible with the masterplan content. The Municipality's only card was that of unconformity to use regulation, proven in their view by Friday gatherings occurring in front of what the administration named as "mosque" (Cons.St. 01998/2018). In no ruling, neither those favouring the administration nor those opposing it, any externality such as noise or excessive urban load was mentioned. Ultimately, the administration's argument was deemed inadmissible to the Court, which ruled against it because of insufficient pieces of evidence. Despite this outcome, the group, challenged by the hostile context, decided to move to a neighbouring town.

Two clashes can be outlined by analysing this case. The first concerns, once again, what elements are used to define religion. The administration labels the group as religious and the place as a mosque on the ground of weak pieces of evidence (such as people gathering on Fridays). Reversely, the group (and later the Court) reason that those very same elements are insufficient to define the activity. The group never defines the space as a "mosque", it instead characterises it as being a cultural centre used for activities that include but are not limited to collective prayers. These two alternative narratives

not only exemplify, once more, the difficulty of labelling, but also show how two different definitions correspond to alternative ways in which law becomes constitutive of space. Accordingly, to the former view, Muslims are supposed to gather in mosques in appropriately zoned areas or not at all, while, according to the second, no particular dilemma arises from converting a former theatre to a different collective use.

The second clash concerns whether defining religion should matter at all when regulating space. Put differently: should the law be concerned with defining religion and with its regulation in space or, instead, should other factors prevail? While the Muslim group legal argument indicates that the impacts of the activities on the surroundings should inform the decision on whether a space can or cannot be used for collective activities, the administration holds use conformance as the primary criteria against which evaluating location choices. In cases such as this, where administrations mobilise only the argument of use conformity, it is clear how religion is not only objectified but is also essentialised. The assumption is that religious activities can either take place in a purposely planned location, or they cannot take place at all: the judgement occurs independently from the activity's collective relevance and from the external effects generated, on the sole ground of its supposed nature. Although what does or does not count as religion is unclear (Cavenaugh, 2009), yet within the use conformity logic, its admissibility in space is determined due to its supposed "essence". When translated in spatial terms, this means that places used by the group are attackable not only on the ground of their characteristics (i.e. satisfaction of safety requirements) and eventual externalities (i.e. noise or traffic), if found to negatively impact others' legitimate interests of experiencing the city but also based on what others identify as their "true" nature. They are attackable *qua* religious. Spelling this out in the language of nuisance – or harm (Cooper, 2004) – makes the indefensible traits of this logic emerge more clearly. In cases like the one considered, (Islamic) religious practice is, independently of any other evaluation, treated as a nuisance, a burden that – as such – ought to be eliminated. However, as Waldron (1987, 2000) argued, the emotional distress that derives from closeness to something deemed morally or culturally undesirable does not necessarily have to be considered an annoyance sufficient to justify countermeasures. In Waldron's view, it is contrarily to be considered "something to be welcome[d], nurtured and encouraged" (1987: page 413). Considerations of this kind are systematically eschewed in applying use conformity regulations, which ambiguously conflates evaluations on how activities impact others' legitimate interests with evaluations on the desirability of someone's mere presence.

Decontextualised religion

This last case occurred in a mainland residential neighbourhood of Venice. It has garnered more attention than several controversies involving Muslim groups gathering in commercial spaces on the

ground floors of residential buildings. While an increasing number of Muslims had used the space since 2010, neighbours' protests became louder in 2016, when the group bought the space[v].

Up until a few years before, the road was perceived as being a "paradise" (Resident, 2016, media interview[vi]) but more recently the residents have increasingly denounced crime and degradation. The presence of the prayer room was associated with the worsening of living conditions, and inhabitants urged rules to be respected. Given the commercial vocation of the space used by Muslims (as identified by building regulations), and the way it contrasted its effective use, the space was labelled as being "born out of illegality" (Comitato Marco Polo, 2016, media interview[vii]). Some underlined how "they have nothing against them" (Resident, 2017, media interview[viii]), but are tired cohabitation which became unbearable due to noise and degradation of the area. In response to the stream of complaints, the administration required the space to be reconverted to its original commercial destination. The group refused and the conflict rapidly escalated with neighbours hanging banners of protest such as "Law 12/2016 must be respected" or "Legality=civilization". The Municipality responded by issuing an administrative measure permanently closing the space.

In response, the Muslim group threatened to pray in the streets and to strike from working, eventually blocking one of the largest Italian shipyards where thousands of Muslims are employed. In doing so they revendicated their legal right to have a place to pray, as stated in the country's Constitution. Indifferent before these arguments the planning councillor replied that everyone had an obligation to respect the rules (Boezi, 2017), thus clearly prioritising planning conformance over Constitutional principles. Following the closure, the Municipality held a meeting with the Muslim group to find an alternative location, but moving the group to a more peripheral location was the only option on the table.

In contrast to the previous two cases, there is no disagreement here on the label, in that the religious use of the space is directly revendicated to claim the group rights. Muslims underscored their right to modify the environment to fulfil their religious needs, a stand that was articulated both in force of legal reasons (as established by the Constitution) and in force of their active role in the larger society of Venice, where they constitute a substantive workforce. The Municipality, however, ignored both arguments. Instead, it supported the neighbours in conceptualising the prayer room as being "born out of illegality" and interpreted it as an obstacle to the maintenance of the road's wellbeing. Planning rules grounded in use conformity were clearly prioritised over both Muslims' religious rights and the possibility of mediation.

The dominant position decontextualises religion since neither the group nor the context are understood as capable of change – (Islamic) religious practice and the city are both conceptualised as static, with the former permanently remaining alien in a frozen context. The fact that the gathering of hundreds of people might bring changes to the neighbourhood was never part of the discussion,

with existing equilibriums conceptualised as immobile. As for result of this logic the only remaining solution is to remove the “alien” religious activity. In such a way, religion is decontextualised and the maintenance of the original road configuration ensured. The concept is clarified by a planner stating how the administration's priority is not to find spaces to satisfy emerging demands but to ensure that transformations triggered by these new demands do not negatively impact existing equilibriums (Venice, personal Communication, 2019).

Planning with external, concrete and negotiable categories, beyond use conformity

So far, this paper shows: first, how requirements of use conformity are central to reducing the opportunities available to groups perceived as Muslims to access (legal) space; second, how spatial regulation in Italy, specifically in Veneto, employs an objectified, essentialised and decontextualised idea of religion, and; third, how groups are required to conform to spatial borders built on that specific idea of religion. Localisation has thus to respond to three binaries: either the activity to locate is religious or not, either it can be located there or not (independent of evaluation on externalities) and either its externalities are acceptable or not (ignoring mutual adaptation possibilities).
Since the application of such logic grounded in secular understandings of religion favours discriminatory practices that are not simply justified through the excuse of use conformity but are premised upon it, with conformance emerging as central to racist organisations of space, this section reverses these binaries and sketches a possible alternative for spatial regulation in Italy. The reason for doing so is that, as pointed by Manouchehrifar, “as circumstances change, so should the questions we ask”, and therefore with increasing diversity, “instead of asking whether planners must be indifferent to religion, we may ask what the notion of religious indifference should mean [and how should it be articulated] at our present time” (2018: page 664). Our proposal is to favour a relational approach based on external, concrete and negotiable elements (as noise or traffic), instead of reinscribing planning practices based on essentialised categories of religion. This is not only a matter of changing planning practices, it is a radical call to adopt a different theory that favours negative liberty on top of a positive one, and, following Massey (2005), would recognise space being the product of interrelations, the sphere of possibilities and always under construction.

De-objectifying religion: from "either it is religious, or not" to "is it collectively relevant?"
The first shift requires a move away from asking whether something is or is not religious, to asking if a given activity is of some collective relevance. This implies abandoning the possibility of deliberately ordering reality (Blomley, 2003) through a limited set of generic and ambiguous

categories, as “religion” (Cavenaugh, 2009; Nongbri, 2013). If there is no identifiable object called religion then there will be no clear limit to what can or cannot be (legally) understood as a place of worship. In such an understanding, a space used by Muslims for prayers is not religious or cultural by definition, and can be both without contradiction, opening it to infinite possibilities. For what concerns spatial regulation, religion should not be special (Schwartzman, 2012) and, therefore, we should stop planning for it. It means that groups’ options of location are to be unbounded from use requirements and evaluations over whether their identity is understood as prominently religious or otherwise. Similarly, the presence of carpets or lavatories should not constitute a determinant in the attribution of one or another legal etiquette (Sullivan, 2005).

In such an understanding, no further restriction should be imposed on groups' location if not those of respecting safety requirements and avoiding disturbance (on this see letter 'c' in this section). Then the question changes from whether a given activity can be located somewhere to a question of why should it not be.

De-essentialising religion: From “can it be there?” to “why should it not?”

The second shift requires a shift away from asking if some activity can occur somewhere to if there are reasons for it not to. The possibility of determining if an activity is allowed to locate on the sole ground of its "essence" is rejected and substituted by giving priority to its impact on public space.

In some ways, this is a renunciation to the planning aim "of achieving a desired overall state of affairs" (Moroni, 2010: page 138), whenever the desired horizon is constituted by an assemblage of ordered activities. It implies prioritising a discourse (and a space) of relation over one of identity. In more practical terms this shift requires taking more seriously elements such as noise or traffic, often dismissed as mere excuses (Cesari, 2005) used to mask Islamophobic feelings. While it is true that frequently they are mobilised with discriminatory intents, it does not make them unacceptable instances per se (Miller, 2014). While the motives behind their mobilisation can be unacceptably racist, claims over noise or traffic are legit positions in a conflict over the use of space, a position that once disentangled from limits over the nature of the activity can be verified, rejected, or answered by appealing to diverse planning and design solutions. A simple traffic or noise problem would hardly lead to permanent closure if not supported by other, more absolute, claims, such as those of use unconformity. With this proposal, the intention is neither to hide racism under only apparently neutral elements (Delgado and Stefanic, 2001; Massey and Denton, 1993), nor to say that with a greater focus on such elements problems of discrimination would vanish. Instead, this is a road which avoids minority religious groups being labelled as having been “born out of illegality” and opens the chance for them to find a location without having to constantly justify their religious or cultural “nature”.

Contextualising religion: From "either external effects are acceptable or not" to "what are acceptable external effects?

The third point requires questioning parameters and thresholds used to determine acceptable external effects. Avoiding to naturalise parameters underpinning conventional conceptions of harm (Cooper, 2004) and abandoning the assumption that externalities can be judged accordingly to only apparently objective criteria, based on some universal rationality, common sense or public interest (Campbell and Marshall, 2002) is central. We should not make the mistake of considering current equilibriums as the only acceptable, just or efficient ones (Chung, 1994).

To clarify: noise levels felt as disturbance certainly vary depending on group requirements and individual sensibilities; harsh disagreements may arise on this point. They should be handled without assuming the validity of universal solutions; instead, they should be considered from the standpoints of the different groups. What is different about planning for noise (or traffic) compared to planning for use is that while each group can articulate claims reflecting specific needs, the amount of noise tolerated is unbounded from single identities. Since linking externality parameters to (objectified, essentialised and decontextualised) categories of use invariably neglects the necessities of a rapidly changing urban context, this proposal maintains that the regulation of externalities should be prioritised over the regulation of uses, especially when it comes to something as blurred as religion.

The question then becomes: how to determine acceptable external effects in order to account for an urban space that is constantly under construction? As expressed by Coase (1960), the idea of reciprocal disadvantage is helpful, as he, stresses how the harm of activity A on B should be understood as being of a "reciprocal nature" (1960: page 96). In this logic, if it is true that the presence of, say, a prayer room (activity A) negatively impacts residents (activity B), then it is also simultaneously true that maintaining the residential vocation unaltered (B) negatively impacts the possibility of the prayer room to exist (A). Parameters for acceptable externalities should be negotiated while considering the reciprocal disadvantage, and this negotiation would become the new (political) terrain on which conflict legitimately unfolds (McAuliffe and Rogers, 2019).

Concluding remarks

The goal of this paper has been to fill a gap in the existing planning literature on religious diversity in contexts with high levels of migration, and, relatedly, to radically challenge planning approaches based on requirements of use conformity by arguing planning practices incorporate a rigid secular understanding of religion without problematising it.

While this work is part of a long tradition calling for a dismissal of spatial regulations based on use conformance logic (Ellickson, 1976; Needham, 2006), what is unique is first the consideration of this

criticism as applied to a field in which typically, although with exceptions (Chiodelli and Moroni 2017), the tones have been less categorical and, second, in grounding the argument in critical secular scholarship and critical legal geography. Where the former deconstructs the idea of religion itself, especially as embedded into law, the latter suggests greater attention to the imbrication of law and space, underlining how the operation of labelling and categorising also implies an ordering of the world. In a nutshell, their joint reading suggests that places used by Muslim groups in Veneto – cultural centres marked by different degrees of legitimacy and illegitimacy, parking lots, empty churches covered in carpets– are the tangible outcomes of both specific ways that religion is legally defined and the (eclectic) ways groups themselves relate to this regulative framework. In particular, conformity requirements employing an objectified, essentialised and decontextualised idea of religion play a major role in constraining the possibility for diversity to unfold by normalising sociocultural expectations on the use of space.

It is after outlining this critique that an alternative for spatial regulation in Italy is offered, indicating a shift toward a more relationally oriented planning, focusing on external, concrete and negotiable elements unbounded from evaluation over use categories and identity. The call is, on one side, for administrations to renounce exercising their power over space through requirements of use conformity, while, on the other, to uphold their public role and be more concerned with the relations among equally legitimate groups.

This shift comes with some advantages. First, it revokes the right to oppose groups' presence on the sole grounds of moral or cultural annoyance (Waldron, 2000). Second, it partially frees groups from the discretion of public authorities, amplifying the range of possibilities at their disposal. Third, it exposes how minor elements such as noise or traffic can be subject to different sensibilities, becoming central to planning activity.

Some may object that focusing on minor elements equates avoiding the elephant in the room of racism, masking it under apparently neutral factors and allowing it to act as an underground force, thus remedying only the “most blatant forms of discrimination” (Delgado and Stefanic, 2001: page 7). However, precisely because discrimination hides behind those minor elements, letting different groups have a voice in how they wish to have those “excuses” managed literally allows the formation of a new political ground. In this sense, the elephant is not avoided or hidden; it is moved and revealed. Currently, planning in Italy simultaneously conceives and reproduces space as something closed, homogenous and static; the employment of which can be unquestionably predicated. This work calls a move for a space that is more open to diversity and to the unexpected (Massey, 2005), a space where generic, potentially discriminatory, categories are not applied blindly presuming their validity.

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[i] In 1991 Italy counted about 360,000 migrants (Veneto about 25,000). By 2021 migrants in Italy numbered over 5 million (500,000 in Veneto)

ii In the last Regional election the already Region President, Luca Zaia, traditionally affiliated to Lega Nord, reached the 75%

[iii] Cases unfolded in the following municipalities: Arcole, Arsiero, Arzignano, Bussolengo, Cittadella, Cerea, Cornedo Vicentino, Fonzaso, Jesolo, Legnago (2 cases), Monteforte d'Alpone, Morubio, Nervesa della Battaglia, Oppeano (3 cases), Padova, Paderno di Gonzano, San Bonifacio, Soligo, Thiene, Treviso, Venezia (5 cases), Verona (2 cases), Villorba, Vittorio Veneto, and S. Stino di Livenza.

[iv] Arcole (TAR 6331/2010; Cons. St. 3534/2012; Aff.1998/2018), Arsiero (TAR 287/2017), Cittadella (TAR 464/2014; Cons. St.4188/2015), Cornedo Vicentino (TAR 34/2017;TAR 188/2017), Fonzaso (TAR 707/2014) , Morubio (TAR 369/2012), Nervesa della Battaglia (TAR 1173/2009; TAR 134/2010; TAR 166/2010), Oppeano (TAR 627/2014), Soligo, (Aff. 805/2013; Cons. St. 2489/2014); Venezia ("The Mosque": TAR 346/2015; Madonna Pellegrina: TAR 286/2019; Cons. St. 2788/2019), Verona (Via Biondani:TAR 667/2011; Via Chinotto: TAR 357/2017), Villorba (TAR 2347/05).

[v] These were probably also fueled by the finding that two potential terrorists were occasionally using the space.

[vi] https://www.youtube.com/watch?v=wJFaMMNihlA

[vii] https://www.youtube.com/watch?v=MPK083Bt7D8

[viii] https://www.youtube.com/watch?v=MPK083Bt7D8