RE-DESIGNING COMMONS IN ITALY

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Abstract
The paper gives a critical account of the recent Italian debate on Commons concentrating on some theoretical problems, with reference to two different components: the economic research on the Commons, the juridical research on the property nature of Commons. It then puts them in parallel with the social demands arisen, articulated around the buzzword "Commons". The mutual relationship among these components is analysed, stressing the generative aspects of the encounter between scholarship on one hand and the social, discursive use of the Commons concept on the other hand. Finally a research agenda based on the results of such analysis is proposed in order to re-compose the mentioned duality and partially overcome the difficulties that today harness the Italian debate on the Commons and its possible applications in urban planning.

Keywords: Commons, institutionalisation, insurgence

Please cite this article as: Vianello, M., Re-Designing Commons in Italy.
plaNext (2015), http://dx.medra.org/10.17418/planext.2015.4vol.01

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Interest in the Commons – as devices that can possibly solve the problem of responsible appropriation of resources while setting up mechanisms for autonomous management and democratic decision-making – has been increasing constantly over the last decade. The Commons, referring both to common pool resources, and to the institutions that manage their appropriation by directly involving the appropriators, have been at the centre of numerous debates aimed at exploring their scope and limitations and defining their characterisation in a contemporary, increasingly urbanised world. The Italian research and debate on the Commons – despite having gained momentum rather recently, under the influence of political, ecological and economical concerns over the future of the nation and of the world economy and its sustainability – have been animated for a very long time, spanning several decades. Moreover the theoretical problems and issues that were tackled in the process of their development are of an extraordinarily complex nature, having to deal with a very rich and diverse historical background within the country and with some very peculiar problems of legal legitimacy. Such problems, in particular, arise due to the nature of Commons institutions, which are based on customs and the connection with the locale. This is especially so when they are located in the legal system of Civil Law – mostly characterised by positive, universal rights – such as the Italian one: a system inherently averse to recognising customs as a primary source of legal rights.

This paper expounds the most important lines of research that have recently been gathering around ideas of the Commons in Italy and compare them to the social use of the Commons discourse in social movements and bottom-up political mobilisations. The objective is to show how the encounter between these two elements – the academic research and the social discourse – has had and can still have fertile points of intersection: the first one being able to give directions and legitimise the second, which is to inspire and orient the first, as well as to gather consensus around it. Other countries, especially non-European ones, have advanced concepts connected to the idea of Commons in their legislation, as a result of political agendas aiming to foster a democratisation of resource management. For instance, Bolivia (Asamblea Legislativa Plurinacional, 2010) and Ecuador (Asamblea Nacional, 2008) have adopted them to some degree, as a result of constitutional reforms which declared nature and the land as a fundamental support for the progress of the nation, to be managed for the advancement of the common good, said to even possess rights of its own. Brazil, for example, through its Statute of the City put forward provisional norms to enforce the constitutional definition of urban land property as a social value (Presidência da República, 2001). Italy is therefore not alone, but it is under many points of view an exception. The attempt and debate aimed at introducing concepts related to the idea of Commons in the country are not based on new constitutional agreements and reforms, but rather on the renewed interpretation of property based on the existing charter, accompanied by bottom up social demands. This approach therefore appears

relevant as a model and an example for incepting into European constitutional interpretations of property, concepts that are reconnecting property definitions to the full expression of rights of citizenship, flanking and counterbalancing reasons of market efficiency, often found in civil codes and private law.

Economic and legal scholarship on the Commons

There are dissimilarities between the role that each sphere of research played in influencing the shape that the idea of the Commons gradually has been taking in Italy, and nuances are rather remarkable and worthy of closer examination. A distinction must be made between the role that the economic research and the juridical one have had in this process, which will be discussed in turn.

First, the neo-institutional perspective, based on the motivations and functioning of collective action as a rational economic behaviour as proposed by Mancur Olsson (1971), was inherent to the research of the Commons made internationally famous by the work of Elinor Ostrom (1990). This approach was regarded as a standard and widely accepted in its conclusions and methods - especially in its analytical procedure based on the comparison of case studies from different contexts worldwide. Its contribution has been very relevant in Italy as well, in terms of popularising the idea that there is an alternative to the paradigms of the State and the Market in the efficient and eco-responsible management of common pool resources. And also for establishing that, in working Commons institutions, there are elements that are recognisable and recurring patterns which can be considered as requirements for institutions of this kind. The latter especially was a major theoretical innovation which exposed not only institutional aspects but also physical characteristics that can help identify Commons institutions, features commonly referred to, after Ostrom, as *design principles* of working Commons. These principles, which were first identified and formulated in the book *Governing the Commons*, were later adjusted and expanded in several other works by different authors, according to the case studies and the contexts (e.g. Agrawal, 2001).

Elements that proved to be important for the planning discipline were highlighted by this type of research, especially the necessity of having nested institutions with some degree of decision making liberty, and the characterisation of some physical aspects, such as the definition of clear boundaries which are fundamental for carrying out vital activities in the maintenance of a Commons institution.

Due to the specific nature of the economic perspective of this first type of research, it was deemed necessary to take into consideration long spans of time in the analysis. This was done through relation to historical records (often through secondary sources), in order to show how Commons could regenerate resources while allowing their appropriation over

time. This necessary choice led to a collateral effect: most of the institutions studied are located either in countries where a Civil Law system is in place, but have origins dating back to pre-modern times, hence before the complete establishment of statutory rights of appropriation and property in modern terms, or where legal structures connected to a Common Law system are, at least partially, recognised.

As Ostrom (2008) has highlighted, in the legal systems structured according to Civil Law principles, bundles of rights connected to the use of Commons have only survived in specific – mostly rural and remote – locations, due to the intrinsic contradiction between the foundations of this type of institution and the sources of the juridical system in which they must find their legitimisation. There is in fact a fundamental contradiction between Commons institutions, based on customary rights of a medieval origin, and the Civil Law systems, based on statutory rights.

In light of the specific character of the Italian situation, which has parallels in other countries where Civil Law also informs the legal system, contextual aspects of a juridical and historical nature have shaped the research on the Commons. In particular, the focus has been on two main areas: the origin of the Commons in historical customary rights and their contradiction with the Civil Code. The first was analysed through a juridical and historiographical investigation of the formation and permanence of customary rights of appropriation in medieval times and especially in early modern times. The second area was investigated theoretically, exposing the legal and juridical problems arising from the contradiction between the collective property and rights of appropriation, and the Civil Code specifications of private property and public property.

Underpinning the Italian debate on the Commons – and the most reliable and valuable sources of knowledge production on the concept – are the works of jurists such as Rodotà (2007), Mattei (2011), Grossi (1974), Ferrajoli (2012), Maddalena (2014); as well as the comprehensive editorial project embodied by the journal *Quaderni Fiorentini per il Pensiero Giuridico Moderno [Florentine Journal of Modern Juridical Thought]*, critically addressing the juridical notion of property (e.g. Grossi, 1976, Mannoni, 1990) over a period of over four decades to date. These works were also responding to a wider juridical philosophical problem of a progressive nature: that of re-introducing into those positive-ly-stated abstract rights that remain peculiar of civil law systems, new vital elements tied to facts and changes happening in society from the 1970s onwards; a programme stated from the very outset of the first issue of the *Quaderni* (Grossi, 1972).

The concentration on the theme of Commons by Italian legal scholarship and its success in influencing the debate is probably something quite unique internationally. From this, two separate sets of problems emerged: on the one hand, the attempt to address customs as the

original source of rights of appropriation of resources in numerous local situations; and on the other hand, the possibility to interpret the Civil Code property definitions according to the principles stated in the Constitution. The second point is as crucially important as it is problematic, for the Constitution is not only the highest degree of legal source of rights in the Italian juridical system, but also one of the most recent as a comprehensive body of laws, resulting from a very concrete social fact – the anti-fascist struggle and World War II.

Revising the property legal definitions

Between the two afore-mentioned intertwined threads of research on the Commons, relating either to the economic or the legal discipline, the legal one, referring to a renewed interpretation of the property definitions of the Civil Code, is certainly the most intentional and strongly structured in Italy. In a sense, it was implicitly preparing the ground for a reform aiming at devising forms of management drawing on some principles embodied in Commons institutions, and giving them new legal foundations.

It followed that, in 2007, the Ministry of Justice appointed jurist S. Rodotà as the head of a Ministerial Commission that was to design an initial proposal (Ministero di Grazia e Giustizia, 2007), to be discussed in the Parliament Chambers, to entirely reform the Civil Code introducing the category of Commons ('beni comuni') along with the traditional categories of private property and public property ('beni privati' and 'beni pubblici'). This reform attempt was in a sense the culmination of this enduring knowledge production on the Commons and a very plausible way to translate some of its findings into practice. Its aims were to introduce advanced legal principles for the recognition of natural resources as Commons, so as to influence their management in a more responsive way in the face of global threats posed to resources by climate change and over-exploitation (Mattei, et al. 2007). This reform was also attempting a different, alternative approach to the privatisation of public assets over the last few decades – a process also occurring in other European nations, which nevertheless did not give rise to similar juridical comprehensive investigations and reform drafts, nor to a comparable involvement of the general public in terms of mobilisation. The long discussed Infrastructure Bill in the United Kingdom for instance (Bennet & Hirst, 2014), entailing the sale of public land, did not engender a similar reaction, and the opposition to it was organised by limited sectors of society.

The initiative of public agency in Italy had initially an important role, but as its attempts failed the involvement of other sectors of society grew more important in promoting a debate on the Commons. The broad involvement of both academia and civil society in fact is what has made the Italian case a unique, if not an outstanding, case for its attempt to critically address the very concept of property as a strategy to counteract too aggressive privatisations. The vast involvement of various sectors of society, as it will be further explained, is one of the specific marks of the debate on the Commons in Italy, along with

its aspiration towards comprehensive changes in the character and scope of the property regime.

As lucidly explained by Maddalena (2014), the point of the introduction of a new category of property in the Civil Code would not be that of mimicking Common Law dispositions dealing with the Commons in other systems, into the Italian body of law, but rather that of updating the property categories so as to match the contemporary exigencies relating to ecological protection and responsible use of resources of public interest. In fact the list of common pool resources to be considered as Commons listed by the reform draft was, in the bulk of cases, an ensemble encompassing assets that were already part of public properties or were under some sort of public protection. The draft, though, was not explicitly revealing in how they would change their management and organisation so as to encompass elements of Commons institutions.

As Marotta (2013) clarifies, this approach to the problem of Commons within the Italian rule of law was happening under the influence of the hastened privatisations of the 1990's, in which national public assets were sold out to private capitals. Declaring that some assets were to be considered as Commons was meant to ensure that their alienation was not carried out, or that some limits had to be respected in their appropriation, and that the general interest had to be kept at the core of any restructuring of their management.

These aspects were in fact not expressed in the draft of the reform, being instead delegated to a lower order of legal provisional norms, to be devised in accordance with constitutional rights. In fact, the draft defined Commons as those material assets considered fundamental for the exertion of citizens' essential rights, thus to be preserved from the logic of profit and from the rules of the market (Ministero di Grazia e Giustizia, 2007) – that is, a definition that implicitly refers to the definition of property and its social function stated in the Constitution. As a means to achieve the expression of fundamental rights, the property of Commons should not be intended as something only nominally belonging to each citizen, or the 'public', in the sense that its management and design is delegated to State bodies, but that actually, should belong to each citizen whose right of appropriation and control on that asset is a singular actual expression of the collective general interest of all the citizenship.

Thus, vital actions for the management of Commons– such as monitoring, appropriation, mutual control, design and maintenance (Ostrom, 1990) – could, within this framing and at least in principle, be exerted by any citizen or group of citizens doing actions in line with the general interests of all the citizenry (Maddalena, 2014). It is then within the idea of the exertion of the fundamental rights stated in the Constitution that singular actions can be encompassed in a Civil Code legal interpretation of Commons institutions – translating

and substituting for, although quite abstractly, what customs used to be in traditional Commons.

The approach sketched out above – referring to an interpretation of eminent domain and public property in a completely novel and renewed constitutional sense, stressing the cogent value of citizenship rights expressed by each citizen – was indeed a rather abstract backbone for which practical institutional mechanisms still had to be devised. Its value is nevertheless clear in terms of innovation and disruptive potential.

However, when the proposed reform failed to be brought for further discussion into the Parliament, and the introduction of Commons through new legal arrangements was deemed to be irremediably harnessed, many jurists turned to different research agendas: the role of other types of actors and strategies for the advancement of the Commons, both theoretically and practically, became more central (Bailey & Mattei, 2012). This process explains how civil society and its mobilisation came to play an important role into the debate.

It is in a specific perspective that one must understand the tendency of the Italian debate to include insurgent practices into a formalised juridical reflection. The objective is not to formalise or co-opt social movements into existing State structures and procedure; rather to recognise within the existing rule of law the elements of insurgent social facts from which it originated in the past, in order to revive and give new momentum to those acting in the present.

At the same time, the existence of a consistent body of studies on the viability and rationality of collective action for asset management, inspired by the work of Ostrom, which I previously called the economic scholarly production on the Commons, offered many supporting arguments for the direct involvement of groups, as a reasonable choice. Thus the two threads of research came again together complementing each other, contributing to strengthen the idea that direct management of assets by the segments of the citizenry is legitimate and sensible.

Actions sustaining the Commons, from customs to practices

Despite the fact that customs, per se, had already been the object of academic research, their role had been mostly prevalent in historical accounts of collective forms of appropriation, notably in Grossi's work (1977), and had been philosophically investigated in virtue of their closer adherence, as source of rights, to actual social facts (Bobbio, 2010). But in practical terms their actual role as sources of rights, outside of agreements of a mostly private kind is of little or no interest in modern law.

In spite of this, when the reform was aborted, it is nonetheless apparent that the coordination and involvement of people, activism, real life situations (intended both as case studies and experiments), and even hybridisation with non-structured discourses, became more and more central to expanding the discourse and the research on the Commons and finding new paths.

Jurists such as U. Mattei and S. Rodotà, with different registers, turned their attention towards situations in which attempts were undertaken to establish practices of protest, occupation and social mobilisation for the democratisation of issues of planning and management of public (or shared) assets in real life situations. While the reform was a rather generic draft, its failure shifted the focus onto very precise, context-specific cases. It would be inaccurate to say that these context-specific local situations are actually trying to introduce customary rights, separating the property from right of use. Nevertheless, it is not far from true that they were characterised by actions aiming, through the intervention of a specific group of activists or protestors, to propose new ways of use of an asset of general interest, in order to protect it from privatisation or from the logic of profit and reclaiming a social function. Some of the most famous examples were the occupation of the publicly owned Theatre Valle in Rome, now ended, or the social movement No Grandi Navi – Laguna Bene Comune [No Big Ships – Lagoon as a Commons] in Venice, calling for a direct citizen control over the management of the harbour. The specificity of these real life situations indeed called for a reconsideration of the circumstances under which actions could be sufficient elements for establishing a different right over an asset. With this in mind, it is proposed here that this approach constituted a call for an update of the idea of action sustaining a Commons: from the custom, as a collective private right of appropriation, to one connected to more absolute rights; an action representative of the general interests of citizenship. It is proposed here that as customs were the backbone structuring traditional Commons, a new type of action, that it is possible to call provisionally "practices", might underlay contemporary, new types of Commons, in a system characterised by universality of rights of a modern rule of law based on Civil Law.

This approach seems to also echo Hardt and Negri's interest for finding a renewed legitimation for singularity as a constitutive power with universal scope emerging in collective mobilisation and action - although it probably takes here a simplified and less radical form than that proposed by the authors. The idea of "multitude" they put forward appears to be a conceptualisation of a collection of singularities coming together, each endowed with its own specificities and rights, as opposed to the faceless abstraction of the 'people' as interpreted in many Constitutions (Hardt & Negri 2000).

The social use of the Commons discourse: mutual recognition and explorations

It is of vital importance to clarify the aspects of universality that emerge from this reading of the debate on the Commons in Italy. In fact, as David Harvey has also noted, Commons are, at the end of the line, specific forms of enclosures (Harvey, 2012). The reason why the reflection about Commons became such a powerful tool for imagining a different future and put forward new forms of emancipation in Italy is based, on the other hand, exactly on the attempt to counteract privatisations.

It is proposed here that it is precisely in the social use of the 'Commons' concept and in the mixed and hybrid discourses emerging from social mobilisations that one can find hints structuring the idea of practices able to sustain Commons, especially because they are often based on experimental praxes of protest and alternative management (such as occupation). If public and shared assets need to be reconsidered in light of practices which give a more valid meaning to the idea of general interest than delegated forms of administration through State organs, it is here deemed appropriate to look at those experimental practices trying to at least partially prefigure such an idea.

Parallel to the academic research, the social use of the word Commons – for political mobilisation, motivation for insurgence and recognition among activists – became very important aspects of how the issue of Commons was shaped and perceived in the Italian public discourse.

While, for the analytical purpose of this exposition, the multifaceted elements that compose the debate on the Commons are separately arrayed, their actual deployment happened often contemporaneously and in a disorderly manner. And there are some contextual reasons for that: its use in the public sphere and the attention devoted to it have seen a dramatic increase since the referendum held in 2011 against the privatisation of water supplies and services (Bersani, 2011). While questions energising the referendum were on whether to maintain public sector agency as the operator in charge of water supply, thus excluding more complex arrangements involving appropriators directly, the word Commons was used extensively. One of the most recurring slogans of the campaign was in fact 'Acqua Bene Comune', [Water as a commons] (Bersani, 2011). This was done with big and yet blurred objectives: Commons during the campaigning for the referendum emerged as a catchphrase used as means of gathering consensus around the problem of water, and in order to establish mutual recognition among local groups of activists and people for the cause against privatisation. The word Commons acquired an enormous discursive potential influencing and structuring public discourse and opinion over the management of a resource, despite the fact that its actual role was chiefly that of coordinating the organisation of dissent rather than promoting a defined new institutional vision.

A sense of what is meant here by this “social” use of the concept of Commons, connected to the referendum campaigning, is efficaciously shown in a qualitative case study by Mazzoni and Cicognani (2013). These authors give an account of how the concept of Commons was used in the campaigning for the “water referendums” as a means of mutual recognition and motivation-building among activists, to some extent in contradiction with the exact aims of the organising committee, which was making a clear statement about keeping the water in *public* hands, not mentioning the Commons at all.

When we are faced with this contradiction we have nevertheless to admit that the discursive strategy of the Commons in this case, although maybe not completely intentional, yielded undeniable results and deployed a great power of mobilisation, a very valuable condition for the implementation of new institutional assets deriving from bottom-up demands of social change. The elastic and negotiable use of the word Commons – not exactly referring to a precise definition of what a Commons would be, but still featuring a great aggregative power – matches with new categories of analysis used by Italian sociology to understand contemporary models of struggle and organisation of dissent and protest (e.g. Daher, 2011). This suggests that while comprehensive and common recognition in a collective identity among individuals taking part in Italian protests and social movements seems to have faded, new types of more temporary, malleable forms of alliance have emerged around specific objectives often, as predicted by Soja (2010), relating to matters of spatial injustice. The word Commons has partially played this role in the Italian context, and in the aftermath of the success that characterised the referendum, won with more than 90% of preferences to abrogate the privatisation law, its use in this sense rose exponentially.

Even at a local level, as in the case of the protests in Venice against the docking of big cruise liners in the old city, social movements adopted the word Commons in their slogans, “[Venice] Lagoon is a Commons”, putting forward a complex set of mixed strategies in order to try and gain control of the infrastructural projects and management of the harbour of the city and of its ecological system.

The theoretical misunderstandings to which the Commons are now exposed make it clear that there is a necessity of expounding and re-stating the first assumptions of the Italian research on Commons. Due to the disciplinary relevance of the Commons for planning, the perspective adopted here takes into consideration “space” as a central issue. However, it also stresses institutional change as an objective due to the new challenges the idea of Commons will be facing in Italy if experimented with as possible alternatives to privatisations of physical assets in opposition to further austerity measures. Legal aspects play a central role in them, and they are deemed to be central for the specific context of Italian research.

Discourse and research: finding points of intersection in order to define the Commons

Despite the fact that some jurists actively participated in and cooperated with social movements in order to more strongly substantiate their demands and understand whether and how their actions constituted a more legitimate right over assets than the public power of State organs (e.g. Bailey and Mattei), there was much controversy over the relationship between discourse and research.

Many discursive aspects aimed at widening the participation of a vaster number of people into the debate were often considered as a withdrawal from scientific analysis. When in 2013 the book *Contro I Beni Comuni, una Critica Illuminista [Against the Commons – an Enlightenment Critique]* (Vitale, 2013) came out, it was saluted by many as a refreshing j'accuse. The author was blaming Italian leftist public discourse of using the term Commons in too general ways, labelling as Commons all sort of categories and entities: job places as Commons, justice as Commons, culture as Commons, water as Commons, etc. His critiques were radical but also good intentional: Vitale maintains in that book that either Italian research on the Commons goes back to methodological accurateness or it is condemned to become irrelevant. He therefore puts forward a research agenda proposing that the investigation of Commons should tackle and challenge economic mainstream propositions while maintaining a firm attitude on the terrain of methodology (Vitale, 2013).

Indeed Mattei's book *Beni Comuni – un Manifesto (Commons – a Manifesto)*, (2010) – one of Vitale's main targets – shows many flaws and sheer simplifications in building a teleological narration in which the evil late capitalism will be at last overthrown by the rise of the righteous age of the Commons, a society horizontally organised, as if by magic, with peace and justice for all. Mattei himself has reportedly admitted that the tone of his communication strategy is meant to provoke emotional reactions, rather than thought (Vitale, 2013). So, while Vitale's critique of the indulgence of the narrative and social use of the word Commons shown by Mattei seem to be rather well directed and solidly argued, one cannot help but doubt whether such black and white distinctions between good research on the Commons, and bad, can profitably be drawn in a such a brisk manner.

However, the account given by Ballesteros and Gual (2012) on the emergence of a new Commons, seems to partially blur these lines. In their study they acknowledge the presence of a different, multi-layered set of conditions for the emergence of a new Commons (in their case study on the Ecuadorian coast), among which the political self-awareness of the commoners is explored. So while, on the one hand, Vitale considers Mattei's writings to be simplistic, ideological and biased, the narration Mattei contributes toward might eventually play a role in the emergence of real life Commons in Italy – an aim of both of their theore-

tical efforts. On the other hand, while Vitale's criticisms should definitely be taken into consideration there is space to embrace Mattei's writings so as to set a new research agenda for the Commons in Italy in light of the aggregative and transformative power that a non-structured discourse on the Commons seems able to deploy.

Conclusions: a new urban research agenda

If bottom-up agency and analytical rigour are to be matched in a possibly successful further exploration of the Commons in Italy, new objectives and research methods should be sought. The path opened by the involvement of jurists in contextual situations with social movements demanding new rights of use over resources, broadly intended, could be adopted by planning in order to produce qualitative analyses on legal frameworks, agency, externalities, etc., and produce evidence to support the emergence of new viable Commons institutions in the Italian cultural, social and economic context.
However in order to build relevant knowledge this approach should take advantage of specific research strategies, and seek patterns and comparability. Case study research, in its exploratory, quasi-experimental and descriptive versions (Yin 1985), can surely be beneficial for this endeavour and, as convincingly purported by Flyvbjerg can eventually produce true theoretical advancement (Flyvbjerg, 2006). The research on the Commons, despite the vast production, is still in the making and meta-analysis of comparable case studies has been highly beneficial in research (see the role of the American CPR database inaugurated by the National Research Council Report in 1986: Ostrom, 2008, 2007). Categories are still in the making and important parts of the theory, such as the famous design principles devised by Ostrom (1990), call for constant revision and theoretical refinement (Ostrom, 2008).

As a humble proposal, it is suggested here that some patterns can be devised in order to identify situations that can be usefully targeted for in-depth case studies in the Italian context. These patterns are to be intended as possible initial sets of conditions to be eventually expanded or discussed. Nevertheless direct observation shows that their recurrence might make them good candidates. These are:

1 **The possibility of framing each case study context within an existing or possible legal arrangement**
The contradiction inherent to the existence of Commons institutions within a statutory rights system makes the matter of studying the legitimacy of new Commons institutions extremely delicate. For these reasons, researches will benefit from including the possibility of framing these situations within possible legal arrangements as one of their assumptions. This does not mean that experimentalism should be excluded: legal arrangements might be aimed at giving legitimacy to situations that have blurred legal definitions, and especially to institute appropriation regimes fully expressing the

exertion of fundamental constitutional right, putting these at the centre to contextualise the reasons behind grey zone practices, such as occupations for instance, or advocacy groups' claims.

In this sense it is useful to recall the distinction Ostrom makes about regulations of the Commons relating to constitutional, collective choice and operational problems (Ostrom, 1990). For instance the first type of regulation problem can be a useful investigation perspective for studying cases such as the example of the Teatro Valle in Rome where the occupation of a theatre by its employees attempted to constitute a foundation of citizens to directly manage a publicly owned theatre. Collective choice problems can be given within contexts in which existing regulatory systems (such as the river community agreements [contratti di fiume], but also standard harbour plans in Italy) would pick up elements from Commons institutions, such as mutual monitoring, and incorporate those processes in their processes, thus anticipating at an administrative level the constitutional interpretation of rights of citizens affected by transformation or appropriation of resources. Operational problems, which are less relevant, can arise in cases in which existing forms of management can be paralleled to those of Commons institutions and expanded and enhanced, in order to eventually encompass new types of rights of appropriation, as in the case of the public lands subject to [usi civici] recognised customary rights that are today facing the rise of new type of uses connected to tourism and recreational uses of the landscape. Naturally the three types of problems can, and would in many cases, be present at the same time.

2 The presence of a social demand for a Commons

The existence of an agency that is proposing itself as a candidate for the management of a resource, or demanding halting current arrangements and the establishment of new ones is a central part of the process of materialising new institutional arrangement. The social demands should not necessarily have a precise idea of how the Commons institution should manage the resource they advance their demands on, but surely have the ability of conceptualising them in terms of removal of ecological externalities, inefficiency (in terms of the achievement of the general interest) and injustice of current management. Their presence can ignite the reconsideration of standard procedures of management, and despite the fact that only a judge can eventually make the last call over the (constitutional) legitimacy of their demands, their practices can anticipate administrative dispositions to include part of Commons management into administrative processes.

3 Problematising the implementation of new type of Commons in relation to the idea of "practices" and the "urban".

The Commons discourse has emerged in Italy in clear connection with the downturns of the hastened privatisations that characterised public policies from the 1990's, and has gained strength in the face of austerity measures being put in place since 2008. These contextual factors have led the research on Commons to concentrate on preventing assets of public property and general interest from being privatised. This approach is so inherent to the Italian debate on the Commons that it should be taken into consideration as one of the main objectives of the research, and still be problematised. While discursive use of the word Commons in the public debate seems to take the positive value inherent to a Commons institution arrangement for granted, its degree of efficiency, justice and openness has to be proven in each case. It must especially be continuously scrutinized how practices, contrarily to customs, can remain set of actions, the participation in which, under determined conditions of enhancement of the general interest, is not precluded to anyone.

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