

WHAT ARE COMMON GOODS (BENI COMUNI)? PICTURES FROM THE ITALIAN DEBATE*

CHE COSA SONO I BENI COMUNI? PROSPETTIVE DAL DIBATTITO ITALIANO

FULVIO CORTESE**

ABSTRACT

This paper is composed of two parts and a conclusion. The first part offers an overview of the Italian debate on common goods (beni comuni), highlighting the different authors and main schools of thought, illustrating the most significant definitions on a legal and case-law level, while homing in on the core of the underlying methodological approaches and the relations between the most common interpretations and a number of well-known economic theories. The second part aims to highlight the deep roots of the interpretative differences, on the one hand drawing connections with theories on the form of State and citizenship, on the other showing its relationship to the debate on public goods and to the evolution of the relevant legislation. The review ends with a description of a few fundamental and cross-functional characteristics of “common goods doctrines”, present in all the available literature, but valued and promoted in different ways according to the objectives of the different interpretations. The examination of these traits allows us to evaluate briefly the degree of compatibility between these different views and the current legislation, and the concrete possibility that the relative needs are actually met.

RIASSUNTO

Il presente contributo si articola in due parti e in una conclusione. La prima parte si propone di offrire una panoramica del dibattito italiano sui beni comuni, evidenziandone Autori e principali correnti, illustrando le definizioni più significative sul piano normativo e giurisprudenziale, ma anche isolando e facendo emergere espressamente il cuore degli approcci metodologici sottostanti e i rapporti tra le ricostruzioni più diffuse e alcune note teorie economiche. La seconda parte, invece, ha lo scopo di sottolineare le radici profonde dei fermenti interpretativi così riassunti, da un lato sottolineandone le connessioni con le tesi sulla forma di Stato e sulla cittadinanza, dall'altro sottolineandone le relazioni con la discussione sui beni pubblici e con l'evoluzione della relativa disciplina. La disamina si chiude con la descrizione di alcuni tratti fondamentali e trasversali delle “dottrine dei beni comuni”, presenti in tutte le letture finora fornite, ma diversamente valorizzati a seconda delle finalità di volta in volta perseguite dalle rispettive rappresentazioni. L'analisi di questi tratti consente di svolgere alcune rapide valutazioni sul grado di attuale compatibilità delle differenti visioni con l'ordinamento vigente e sulla possibilità concreta che le relative istanze siano effettivamente riconosciute.

* This paper has been prepared as a part of an Italian national research project (PRIN 2010-2011) called “Istituzioni democratiche e amministrazioni d'Europa: coesione e innovazione al tempo della crisi economica”.

** Full Professor of Administrative Law (Faculty of Law, University of Trento, Italy).
E-mail: fulvio.cortese@unitn.it

KEYWORDS: Definitions of beni comuni. Commons. Role of public administration. Italian debate.

PAROLE-CHIAVE: Definizione di beni comuni. Commons. Ruolo della pubblica amministrazione. Dibattito italiano

SUMMARY: 1. *Authors and trends*; 2. *Formalised definitions and legislation*; 3. *Economic theories and intentions*; 4. *“Archaeological” research*; 5. *Public goods “on trial”*; 6. *The Italian Theory: basic and cross-functional characteristics*.

1 AUTHORS AND TRENDS.

Much of the Italian debate on common goods (*beni comuni*)¹ stems from a *negative situation*, the dissatisfaction with certain models of managing or regulating the uses of different types of “things”: first of all “things” that in the current legislation are under the institutional care of public bodies or are at least subject to administrative discipline, or are influenced or determined by the way in which those bodies interact with them².

It is important to note at this stage that the term “things”, in this context, cannot be considered in an exclusively technical sense³, since at different times the following have been classified as varying types of “commons”⁴ or “objects” (material or immaterial): water and natural resources; historical and artistic heritage in general; land; creative works, even digital; genes and biobanks; certain buildings, whether or not they are classifiable as cultural property; images of certain works of art, events, “things” or famous people; healthcare; universities; university teaching (particularly in

1 There is copious literature on the topic. For an excellent critical introduction, see POMARICI, 2013, pp. 3 ff.

2 See, among others, CIERVO, 2012, pp. 9-10: “The term “*beni comuni*” (...) which is more often than not an empty container that is filled with different meanings, has been used more recently by a variety of movements that generated within civil society, in order to criticise the approach by which public and private institutions manage certain goods and services. According to these social movements, these goods and services should be taken away from state or corporate control and be administered directly by citizens, or by specific communities that claim their full ownership and full enjoyment”.

3 In other words in the “classic” sense, as in Art. 810 of the Italian Civil Code.

4 On this term, see mainly *infra*, in particular par. 4.

law faculties); certain urban spaces; cities (or metropolises); work; information; the traditional knowledge of a certain community; trust in public relations; the web and so-called “free” software, etc⁵.

The reaction to the above critical position, both in terms of social mobilisation and, more generally of its effect on public opinion, soon split into two different branches.

In the first are those who challenge the efficacy of these management models from a purely ideological point of view⁶.

In this view, at issue is the fact that different forms of inequality and social breakdown are caused not only by the management models themselves, but also by the basic political positions – neoliberalist and pro-privatisation – behind this choice among many other available options. This is also the basis for a number of philosophical-political interpretations that are well known internationally⁷.

In this context common goods are the expression of a more general paradigm – that of “common” *tout court* – as an alternative to the notion of “public”, which has historically *degenerated* as explained above. According to this view, following this paradigm can grant to a *new public law* an area of legislation that can best meet the needs and guarantee protection, for future generations as well, in areas that are connected to the recognition of fundamental human rights or inalienable aspects of individual or collective freedom or of values or interests that are internationally considered universal. Many scholars subscribe to this thesis, albeit with different positions⁸. This perspective has undergone a scientific and political

5 For a review of the many uses of the concept, see, for example, MARELLA, 2012, pp. 17-19. The use of the expression “beni comuni” for many very different realities is the subject of criticism in legal literature: see, among others, GAMBARO, 2013.

6 In the Italian context, the main “pillars” of this interpretation are in MATTEI, 2011; ID., 2013; ID., 2015. Ugo Mattei’s work has been met with sharp criticism: see VITALE, 2013.

7 See, for example, HARDT, NEGRI, 2010. On the subject see also the essays collected by CHIGNOLA (ed.), 2012.

8 Among which, see first and foremost MARELLA, 2012, as well as LUCARELLI, 2013, and ID., 2014. See also LUCARELLI, MARCOU, MATTEI, 2009.

development well beyond the borders of Italy, as seen from the drafting of the European Charter of the Commons in Turin in December 2011⁹.

There is however a second interpretation, in which the critical objective is somewhat narrower than the first, since, although it touches upon aspects of the form of state, it is limited to identifying as common goods those “things” that turn out to be functional in activating a *different administrative model* from the traditional one¹⁰.

Common goods, in this view, are all those entities - which we might call “catalysts” - that compel active citizens, as per Art. 118, par. 4, Constitution, to independently take care of a general interest: i.e. an interest that does not entirely coincide with a public, private or collective interest, or with the interest of a specific group, but essentially arises from an alliance of all the parties that are involved at different times and are motivated to protect and promote it. In this case too, the theory of common goods is invoked as a solution to issues concerning the maintainability of administrative bodies. And there is here, too, a clear paradigm of reference, that of shared administration¹¹, which re-emerges within the interpretation of the possible meanings of the principle of horizontal subsidiarity¹². But there is clearly, even in this interpretation, a certain continuity even with the classic (and still debated) learnings on equal rights administration and the potential to single out areas of shared administration between citizens and administrative bodies¹³. Echoes of this thesis can be found in the work of other scholars, even from outside the legal community¹⁴.

9 The text is also available at <http://www.vialiberamc.it/wp-content/uploads/2011/12/ Carta-europea-dei-beni-comuni.pdf>.

10 This is the interpretation by ARENA, contained in many different articles and presentations, all available online at <http://www.labsus.org/author/gregorioarena/>.

11 See ARENA, 1997, pp. 29 ff.

12 See, again, ARENA, 2006; ARENA, IAIONE (ed.), 2012, as well as ID. (ed.), 2015.

13 This is an allusion to BENVENUTI, 1994.

14 See, for example, CASSANO, 2004; AMATO, 2014; DONOLO, 2010.

Having said that, it is important to note an important difference between the two theses. The former often aims to provide a technical definition (*an independent legal status*) of specific categories of common goods, insofar as they necessarily relate to forms of shared or collective management. The latter, on the other hand, is more concerned with the operational system (*the organisational and procedural rules*) that an administration must follow, especially when there is a clear general interest.

As a corollary to these two theses, there are multiple, and often materially convergent, opinions, of both jurists and other intellectuals, who see common goods as a symbol of the public re-appropriation of certain utilities. The public sphere, in this context, can be considered both in its traditional definition and in its more modern conceptualisation as an adaptation to the duties of the democratic and social State and to the achievement of the goals that the Constitution assigns to the Republic¹⁵.

2 FORMALISED DEFINITIONS AND LEGISLATION.

Common goods have also been defined from a technical-legal point of view, in some cases in trials *de jure condendo*, in other cases more concretely and effectively.

Among the formalised definitions, the most significant is definitely the one mentioned in Art. 1, par. 3, point c, of the proposal of delegated legislation, issued by the Rodotà Commission¹⁶:

Introduction of the category of “common goods”, that is things that are functional to the exercise of fundamental rights and

15 Among the “champions” of this view, which is often very close to the first two interpretations described, are for example RODOTÀ, 2012 (see also the new, expanded, edition of his famous essay on property: ID., 2013); SETTIS, 2012; MADDALENA, 2014.

16 The Commission’s report – and the annexed proposal – is available at https://www.giustizia.it/giustizia/it/mg_1_12_1.wp?facetNode_1=0_10&facetNode_2=0_10_21&previousPage=mg_1_12&contentId=SPS47617. The task of the Commission, established within the Ministry of Justice, by Ministerial Decree 21 June 2007, was to “formulate guiding principles and criteria for a delegate legislation to amend Chapter II, Title I of Book III of the Italian Civil Code, as well as other related parts of the same Book that also need to be regulated by the law of property and goods”. The Commission’s work was also presented in a conference at the Accademia dei Lincei (held on 22 April 2008), the acts of which are collected in MATTEI, REVIGLIO, RODOTÀ (ed.), 2010.

to a free development of human beings. Common goods should also be protected by the legal system to the benefit of future generations. Holders of common goods can be either public or private legal persons. In any case they should guarantee the collective fruition of common goods in the ways and within the limits established by the law. If the holders are public legal persons, common goods are managed by public bodies and are located out of trade and markets; their concession/grant is allowed only in the cases provided by the law and for a limited time, with no possibility of extension. Examples of common goods are, among others: rivers, streams, spring waters, lakes and other waters; the air; national parks as defined by the law; forests and wooded areas; mountain areas at a high altitude, glaciers and perpetual snows; seashores and coasts established as natural reserves; protected wildlife; archaeological, cultural and environmental goods. The law concerning common goods should be in accordance with the existing customary law. Everyone is entitled to the jurisdictional protection of rights concerning the safeguarding and the fruition of common goods. Except for legitimate cases for the protection of other rights and interests, the State has the exclusive right to action for damages incurred by common goods. The State also has a right to action for recovery of profits. The conditions and procedures for carrying out such actions will be defined in the delegated legislation.

This passage is representative of the notion – which has remained “a dead letter” – that has fed many of the interpretations described in the previous paragraph, particularly those belonging to the first of the theses mentioned above.

This view, in turn, is influenced by a two-sided debate, international and constitutional (and comparative) on the one hand, and national on the other. The former concerns the relationship between protection of resources that are essential to life and to the exercise of fundamental rights, and assertion of constitutional principles that are consistent with this aim (a particularly privileged place for a thorough examination of this relationship can be found in what has been referred to as “the legal workshop of Latin American constitutions”¹⁷: Brazil, Uruguay, Argentina, Ecuador, Bolivia...);

17 See CIERVO, 2012, pp. 134 ff., also for an effective summary of the relative debate.

the latter regards the processes of evolution of the regulatory framework of public property and of identification of the different characteristics it exhibits compared to the private property model¹⁸.

Other definitions emerge from the case law:

(...) from the direct application (“Drittwirkung”) of Articles 2, 9 and 42 of the Constitution emerges the principle of the protection of human personality and its correct enactment within the social State, even in the context of “landscape”, with specific reference not only to the goods that legislation and the Civil Code classify as State “property”, but also with regard to those goods that, irrespective of any prior legal recognition, by their very nature or purposes, are deemed, based on a thorough interpretation of the entire legal system, functional to the pursuit and satisfaction of collective interests. (...) Consequently, if an immovable asset, irrespective of its ownership, is deemed, due to its intrinsic characteristics, especially from the point of view of the environment and landscape, to be of value in the creation of the social State, as described above, then it is to be considered, beyond the now dated perspective of the Romanic *dominium* and the Civil Code type of property, “common”, in other words, irrespective of ownership, instrumentally connected to the realisation of the interests of all citizens.

This passage in particular refers to the attempt at definition made by the Supreme *Corte di Cassazione* from within the current legislation, through a constitutionally oriented interpretation provided as *obiter dictum* during a long-standing controversy on the legal status of fish farms in the Venetian lagoon¹⁹.

This definition is also intimately connected to the requests that emerged from the work of the Rodotà Commission, although in this specific case it was completely irrelevant for the resolution of the suit (which, as is known, resulted with the *res litigiosa* being declared property of the State). It is reasonable to say that the attempt by the *Corte di Cassazione* ended up being wholly

See also BALDIN, 2014. For useful insights on South American constitutionalism, see BAGNI (ed.), 2013.

18 See MATTEI, REVIGLIO, RODOTÀ (ed.), 2007.

19 Cf. *Corte di Cassazione*, Joint Chambers, 14 February 2011, no. 3665, in *Giur. it.*, 2011, 1170 ff. There has been ample commentary on the judgement: see, for example, FULCINITI, 2011, pp. 476 ff., and CORTESE, pp. 1170 ff. For the peculiar legal system of the Venetian lagoon, see FALCON, 2015, pp. 109 ff.

insufficient: its expressed intention, in its assessment of whether or not certain goods were state-owned, to ascribe values of “social or general interest” to the utilities deriving from these goods did not, as is known, prevent the ECHR from ruling that Italy was in violation of Art. 1 of Protocol no. 1²⁰.

Another definition is contained in the municipal regulation that the association Labsus (Laboratory for Subsidiarity) and the Municipality of Bologna published and made available to all Municipalities that wanted to approve this type of legislation²¹:

Urban commons: the goods, tangible, intangible and digital, that citizens and the Administration, also through participative and deliberative procedures, recognize to be functional to the individual and collective wellbeing, activating consequently towards them, pursuant to article 118, par. 4, of the Italian Constitution, to share the responsibility with the Administration of their care or regeneration in order to improve the collective enjoyment.

As can be inferred from the definition, this is an attempt to give regulatory validity to the second of the two theses described in the previous paragraph; to date more than 70 Municipalities have approved regulations with the same aim, gradually perfecting the text²². The aim is not to offer a different legal classification to certain “goods” (regardless of whether or not they are, technically speaking, goods), but rather to create a “label” that binds local administrations to act in a certain way, according to a model of shared administration (or co-management).

It is important to note that, for quite some time, there have been other definitions of positive right, contained in laws

20 Cf. ECHR, Section II, 23 September 2014, *Valle Pierimpiè Società Agricola S.p.a. c. Italia*. This judgement has also received some attention in legal literature: see, for example, T. GRECO, M. GRECO, 2015, pp. 134 ff., as well as DI PORTO, 2013, pp. 45 ff.

21 See Art. 2, par. 1, point A of the “Regulation on Collaboration between Citizens and the City for the Care and Regeneration of Urban Commons”, available at <http://www.comune.bologna.it/sites/default/files/documenti/REGOLAMENTO%20BENI%20COMUNI.pdf>. For a commentary see DI GIACOMO RUSSO, 2014, pp. 3 ff.

22 A list of the Italian municipalities that have adopted the Regulation is available online at <http://www.labsus.org/2015/04/i-comuni-de-regolamento-per-i-beni-comuni-di-labsus/>.

of the State (see, for example, Law no. 93/1989, on the subject of architectural heritage and ratification of the EU's Granada Convention), government regulations (see, for example, Ministerial Decree no. 27190/2007 on fishing; or Ministerial Decree no. 209/1997 on civilian service), regional laws (for example, Regional Law of Emilia Romagna no. 1/2003, Regional Law of Lombardy no. 19/2010 and Regional Law of Abruzzo no. 1/2012 on water; also Regional Law of Lombardy no. 25/2011 on land; the Statue of the Region of Campania on water and wind; Regional Law of Piedmont no. 18/2007 on health; Regional Law of Umbria no. 13/2008 and Regional Law of Valle D'Aosta no. 11/2010, both on law and order; Regional Law of Emilia Romagna no. 3/2010, which qualifies as common goods land, the environment, law and order, health, education, public services, market regulation, infrastructure; Regional Law of Tuscany no 1/2005 on land management, which qualifies as common goods the essential resources of the land, as does Regional Law of Friuli Venezia Giulia no. 5/2007; see also Regional Law Umbria no. 8/2011), as well as in numerous administrative measures (mainly on a regional level: on issues such as food safety, school environment, family, civilian service, children and adolescents).

It is clear that of the different definitions reviewed, some skew more towards an axiological view, and others to a functional one.

3 ECONOMIC THEORIES AND INTENTIONS.

As mentioned, the majority of scholars in Italy working on common goods refer to or explicitly use the notion of *commons*, a term derived from economics²³ that become well known internationally thanks to a very famous essay by Garrett Hardin²⁴ and research by 2009 Nobel prize winner Elinor Ostrom²⁵.

23 For a very clear general overview, see VANNI, 2014.

24 HARDIN, 1968, pp. 1243 ff. There is a very good analysis of this famous essay, within the current debate on common goods, by COCCOLI, FICARELLI, 2012, 60 ff., as well as by NIVARRA, 2012, pp. 73 ff.

25 OSTROM, 1990.

The following excerpt lists the eight guiding principles that, according to Ostrom, and based on recurring evidence in numerous case studies, might help to direct successfully the collective management processes of certain resources by the users themselves²⁶:

A set of seven design principles appears to characterize most of the robust user-organized systems. An eighth principle characterizes the larger, more complex cases. (...)

1. Individuals or households with rights to withdraw resource units from the CPR [Common Pool Resource, ed.] and the boundaries of the CPR itself are clearly defined; (...)
2. Use rules restricting time, place, technology, and/or quantity of resource units are related to local conditions and to provision rules requiring labor, materials, and/or money; (...)
3. Most individuals affected by operational rules can participate in modifying operational rules; (...)
4. Monitors, who actively audit CPR conditions and user behavior, are accountable to the users and/or are the users themselves; (...)
5. Users who violate operational rules are likely to receive graduated sanctions (depending on the seriousness and context of the offense) from other users, from officials accountable to these users, or from both; (...)
6. Users and their officials have rapid access to low-cost, local arenas to resolve conflict among users or between users and officials; (...)
7. The rights of users to devise their own institutions are not challenged by external governmental authorities; (...)
8. Appropriation, provision, monitoring, enforcement, conflict resolution, and governance activities are organized in multiple layers of nested enterprises.

It is important to note, first and foremost, that there are certainly some similarities between the intentions of the Italian debate and the arguments used by Elinor Ostrom: for example, there is clear continuity between the ancient *res communes omnium* and goods that are part of collective properties (and which in many cases are “common goods”), on the one hand, and the notion of Common Pool Resource, on the other. In all these cases, these are

26 OSTROM, 1999.

goods which, from an economic point of view, have a low rate of exclusivity, and a high degree of functional applicability to essential purposes, thus giving rise to rival uses (especially in cases in which their scarcity is an issue).

So, in all these cases, quoting Ostrom means to acknowledge that the utilities being discussed and administered can be managed even outside the strictly property-focused paradigm of the *tragedy of the commons* (coined by Hardin and, as such, the object of a fully-fledged “falsification” by Ostrom). Those utilities can produce “federative-style” organisational mechanisms to maximize their performance and help preserve them for the benefit of the first recipients and their descendants, without the need for an exclusive regime of individual property.

The “common” of Ostrom’s view is no more than a different way of managing the area of freedom that, according to Hardin, is the cause of every type of conflict and gradual depletion; Ostrom’s “common” is basically an institutional space that is greatly influenced, upstream, by the definition of its own limits, both in terms of the identity of its resources and in terms of the identity of the users (see the first of the guiding principles mentioned above).

If that is true, the use of the Ostrom doctrine by Italian scholars is often quite successful, and helps to highlight in particular that: a) choices to do with “commons” are not irreversible and depend on preliminary options, even around what can be considered “common” (and to whom it can be common); b) these options certainly do not amount to imposing a single, exclusive property regime on “commons” (due to the contradiction that does not allow it, although, more than a logical need, it is an acknowledgement that Ostrom’s thesis is more convincing than Hardin’s); c) the related “federative framework” (as one might call it in a neutral way) that must necessarily connect to “commons” can vary from case to case, which in practice implies both the reaffirmation, whenever possible, even of a specific property (such as a public institution’s), as long as this happens in a “common” way, or the establishment of alternative management models, in which the owner surrenders before the independent significance of the “commons”²⁷.

27 Common goods are, in this way, conceived as *institutions*: on this point, see POMA-

This last passage explains why one of the most frequent requests in the Italian debate on common goods is a demand for re-publicisation, which, however, does not always coincide with the need to provide typical public tools, leaning rather on common law institutions, which are functional in achieving certain goals.

That being said, there is also a noticeable difference between these consistencies and the intentions of Italian scholarship, both legal and non-legal.

What for Ostrom is the acknowledgement of an *empirically observable regularity*, for commons theorists (and not only for supporters of the first of the two theses referenced in par. 2) is a *necessary political/institutional/constitutional position*²⁸. This position, in turn, is argued on the basis of the “rhetoric” on fundamental rights and resources, as emerges in many international documents; or on the basis of the existence of a constitutional space that defines what is “general” and that, as such, is necessarily shared between those who carry out governmental functions and the recipients of specific utilities.

4 “ARCHAEOLOGICAL” RESEARCH.

The debate on common goods has deep roots²⁹. Consider, for example, the following quote³⁰ on the reconstruction of the legal status of *res extra commercium* in classical Roman law:

Public, sacred and religious things had in common with private things the fact that they fell into the sphere of procedural *res*. However, the trial (and exchange) did not ascribe value to private things. For public or sacred things or, more specifically, for those things whose public or religious purpose had been established as perpetual, sanctuaries and citizens’ areas, founding places, their legal classification as *res* did not translate into any estimation of their value. (...) Since these “things”

RICI, 2013, p. 42.

28 See, for example, FERRAJOLI, 2007, p. 263, and p. 585. Compare with D’ANDREA, 2015, and MONE, 2014, pp. 63 ff.

29 See, for example, a recent reconstruction by DANI, 2014.

30 From THOMAS, 2015, p. 82.

are strictly speaking inestimable (...), injunction proceedings only dealt with their use, and not their ownership.

This passage highlights an aspect that emerges frequently in the Italian debate and involves, first and foremost, all the goods that can technically be defined, according to current legislation, as public goods.

The demand of the common goods theorists is essentially to re-establish – or establish from scratch, depending on the perspective – a legal framework in which public goods first of all are excluded from processes of attribution of value in a strict sense. Rather, they favour processes in which the public ownership of the property of a good confers a much tighter guarantee, both as a protection against third parties appropriating the good itself or the utilities that derive from it, and in terms of its better user, preservation and “cultivation” (even for the future).

The demand in question, in other words, unfurls into a kind of new “sacralisation” of certain categories of goods, thus guaranteed (in a different way to the Romanic model), either by attributing shared or joint owner’s rights (even just in their management), or by acknowledging a clear division between the land-owner model and the regulation of the utilities connected to the good (so as to better meet the interests of the entire community).

There is also another view that connects the excerpt quoted above with theories on common goods. It is based on the presupposition that there is a structural connection between what identifies a community and its survival, on the one hand, and what can or cannot be defined or made available through that asset, on the other. This outlook seems to clarify why the debate on common goods has reawakened interest in the study of institutions based on pre-modern common law and, in particular, of that “other way of owning”³¹ that is in contrast with the property models that historically were imposed with the dominance of state sovereignty and the laws created by it.

31 Paraphrasing the title (“Another way of owning”) of the famous work by GROSSI, 1977.

From this point of view, theories on common goods attempt to create areas of renewed unavailability, in which to place the “all-powerful” presence of the “public” sovereign and to manipulate it in order to garner a foundational respect for certain utilities³². They also try to overcome a theory of public property that, on the one hand, allows the owner of the property right to “use and abuse” unilaterally (albeit within a very strict and formal system), and on the other, leaves anything that is not one of the objects of that right open to equally unilateral, or even unregulated, re-appropriation by private parties.

It is important to remember that the establishment of the rule of law in Europe clashed strongly with the parallel rise, with regard to the government of specific general utilities, of a coherent model of sovereignty effectively (or *substantially*) legitimised in terms of political representation, which coexisted with another model conforming to the concept of property in civil law as an inalienable individual right (and also, therefore, of the *public person*)³³. On this point, it is interesting to consider a view that emerged in France between the 19th and 20th Century³⁴:

With a series of important decisions in the early years of the twentieth century, the Council [of State, *ed.*] reaffirmed the notion that there was a community of taxpayers distinct from the community as a whole. The point of these decisions was to distinguish between the social existence of the town (as a community of people sharing the same living space) and its economic function as manager of collective expenditures. The great jurist Maurice Hauriou invoked this idea in justification of taxpayer petitions, protesting excessive expenditures by

32 In favour of every person, not just citizens, see, in reference to state property, GUICCIARDI, 1934, in particular pp. 297 ff., which build on the views of DONATI, 1924 (on which see also, ultimately, CASSATELLA, 2015, in particular pp. 27 ff.).

33 This difficult “cohabitation” is well highlighted by GIANNINI, 1963, in particular p. 50. As also observed by CAMMARANO, 1972, p. 10, the juxtaposition of the two profiles in question (the institutional one and the proprietary one) has brought about “the primacy of public interest over the legal framework itself and the possibility that the latter might adapt to the former”, with the further consequence that “the dominance avails itself of the law to guarantee itself, in other words to guarantee those relationships of strength that are at its core”.

34 ROSANVALLON, 2013, p. 284 (and p. 362 for bibliographical references to Hauriou’s assessment of the case law on the French *Conseil d’Etat*).

local governments. If voters could punish elected officials politically by voting them out of office, he reasoned, then taxpayers ought to be allowed to petition administrative courts for relief if they believed that their material interests had been harmed. In his remarks, Hauriou distinguished between the *public* (which falls within the purview of politics) and the *collective* (which has to do with the management of town business), stressing the importance of the latter.

Against this backdrop, every “neutralising” (or “communalising”) aim of the previous establishment of a representational political system of equal citizens that were able to define and regulate utilities and interests, was thwarted by the simultaneous shift in the debate *from property of the goods to be managed to property of the resources* with which those goods can be managed. The advent and constitutionalisation of the democratic State and its typical policies of redistribution, re-emphasised this split (and the ensuing conflict) and soon began to erode “public property”, which had become the object of appropriation by the very “subject” that was (or was supposed to be) its guarantor.

As evidence of how current developments confirm what is described in the last quote, in a rather peculiar judgement the Council of State granted individual citizens of a Municipality, as consumer-users, the right to challenge the decisions of the Municipal Council with regard to the measures to be adopted by the regional authorities for setting new water supply rates³⁵. This example also reveals another important aspect: the fact that the creation of a “guarantee bond” on the use of certain resources considered common and on their modes of management still has to be referred to a judge as the only person truly deemed a “third party”.

5 PUBLIC GOODS “ON TRIAL”.

As we have seen, the debate on common goods is tightly interwoven with the administrative debate on public goods, public property and the way in which it can or should be managed³⁶.

35 See Cons. Stato, Section V, 15 September 2009, no. 5501, at www.giustizia-amministrativa.it.

36 In recent times see, among others, RENNA, 2004, OLIVI, 2005, and TONOLETTI,

This connection can be explained in part by the simple fact that many of those goods that are defined as common belong to the sphere of public goods. In part, however, this relationship is also tied to the *centripetal force* that the rule of law has exercised on the determination of the utilities and resources that should be ascribed to it so that it can achieve its aims (which, with the democratic State, vary in quantity and quality):

Positive law has always offered a very varied framework, but since the age of the bourgeois revolutions, the power of the liberal ideology, which considered property an individual right, has caused a blurring of the different types of positive law. Besides, there is no other way to explain the transition from the feudal era, characterised by multiple types of property, to the modern era, in which the field of property rights seems to almost be limited to the solitary, towering figure of the property owner. The important point to make today is that the numerous forms of relations between public or private parties cannot be reduced, with regard to goods, to a single model. Anyone who still does that is acting as a sociologist or a politician, but not as a legal positivist, in other words as the interpreter of existing legal systems; or they are a bad interpreter, because they force the classifications of the system into a rigid ideological schema.

The excerpt³⁷ very clearly shows the connection mentioned above, confirming its consistency with the affirmation of a specific ideological paradigm and with the tendency to generalise towards a single model of reference that can absorb or even overturn alternative models³⁸.

As evidenced by Cassese in the book from which the excerpt is drawn, even admitting that there is a single proprietary model

2008, as well as the essays collected in AIPDA (ed.), 2004, and in COLOMBINI (ed.), 2008. Lastly, see LALLI, 2015.

37 From CASSESE, 1969, p. 294.

38 These models are based, as common goods theorists would say, on another view of the “common”: see for example collective rights of public use or civic use and collective properties (on this see also CERULLI IRELLI, 1983, in particular pp. 165 ff.). Scholars make frequent references not only to the well-known works of Paolo Grossi, but also to the famous essay by VENEZIAN, 1888. For arguments on the irreducibility of appropriative models to a single paradigm, see the renowned study by PUGLIATTI, 1954.

(common to both public and private property), positive law and the decisions contained in the Constitution make it impossible to apply a consistent model to public property. Most of all, they draw an important distinction between *formal ownership* of a right to a specific good (and what that ownership means in terms of property rights) and its *management* (and what this entails in terms of the public powers that that can be wielded on that good, but also with regard to the way in which they are to be exercised)³⁹.

Subsequent and current regulatory developments also show that management can happen completely independently from ownership. Consider the following two excerpts⁴⁰:

The rule in the Code [Art. 822, par. 2 of the Italian Civil Code, *ed.*] would need to be modified while taking into account regulations on privatisation, according to which, as has been noted, nowadays it is possible to have essentially public goods belonging to parties that are at least formally private and, therefore, executive powers ascribed to public administrations for the protection of state property that no longer belong to formally public parties. More generally, it is the entire complex of Civil Code regulations on public goods that needs to be reformed, with the aim of updating especially legislation on state property with a new notion of public good, which with the new regulations on privatisation has gone from being subjective to objective, since the good no longer belongs to a formally public party.

As recently noted (...), the new regulations on the functional purpose of public goods and citizens' participation in the relative procedures entail the direct recognition of the right of subjects residing within the municipality to challenge the assignment deeds of municipal public goods. This condition of the action is not undermined if a dispute that has entered litigation does not regard a strictly speaking municipal good, but rather, as in the case at hand, a state-owned good [a stretch of beach, *ed.*] whose management is entrusted *ex lege* to the local authority, given the close similarity between the two situations. As already noted (...), the principles deriving from the regulations on "public property federalism" should be considered analogous to legal

39 For an interpretation based on this very assumption see CERULLI IRELLI, DE LUCIA, 2014, pp. 3 ff.

40 Respectively, RENNA, 2008, pp. 93-94, and Regional Administrative Tribunal Liguria, Section II, 31 October 2012, no. 1348, at www.giustizia-amministrativa.it. For a commentary, see GIANI, 2013, pp. 205 ff. A potentially significant value is attributed to this quote also by DURET, 2013.

actions that are enshrined in the regulations, whereby the interpreter is authorised to extend their scope of application beyond the object specifically considered herein.

The first passage points to an aspect that, paradoxically, although it might be able to “neutralise” the property controversy and extend certain protections also to private goods (within a shared, public-law-based regulatory framework⁴¹), at the same time is the reason for criticism by a broad sector of common goods theorists, in other words the *new constitution of value processes* for goods that should be structurally excluded. The other passage, however, with regard to these processes of value attribution, points to a certain amount of activity in the case law that is in favour of recognising the “right” of communities interested in certain goods to *influence the management logic followed by the public party* to which the goods have been entrusted from a regulatory point of view.

This is another example of how the search for a new “guarantee bond” with “things” involves the acknowledgement of the important role of the judicial body: in this case it can safeguard the “common” demand with an as much as possible shared management model or, at least, with a detailed investigation, with the intention of a convergence of interests between what the managing authority pursues and what the community proposes. It is no coincidence that, with regard to the arguments used by the community before the judge, there is not only a formal reference to a certain piece of legislation (on public property federalism⁴²), but also to Art. 118, par. 4, Constitution. This example also highlights

41 Some see in this an opportunity to introduce the category of common goods into positive law: see, for example, BONETTI, 2013.

42 The reference is to Art. 2, par. 4 of Legislative Decree 28 May 2010, no. 85 (entitled “Attribution to municipalities, provinces, metropolitan cities and regions of their own heritage, in pursuance of Article 19 of Law 5 May 2009, no. 42”), which reads as follows: “The local authority, following the transfer, manages the good *in the interest of the community represented* and is obligated to maximise the *functional value* of the good, *to the direct or indirect advantage* of the same local community. Each authority must inform the community about the process of development and promotion, including through communications on its website. Each authority can call for forms of popular consultation, even in electronic form, in accordance with the norms of the respective Statutes” (italics my own).

another constant of the debate on common goods: the search by interpreters to set in motion new processes of publicisation by reactivating more or less explicit forms of *public action*. In relation to this, it is worth mentioning again the excerpt quoted at the start of the previous paragraph, since those who carry out this kind of investigation have as a primary reference the reconstruction of the legislation of public action in the Romanic tradition⁴³.

6 THE ITALIAN THEORY: BASIC AND CROSS-FUNCTIONAL CHARACTERISTICS.

At the end of this summary reconstruction of the formal and theoretical terms of the Italian debate on common goods, we can now attempt to draw some conclusions, taking inspiration from a very well-known author in the philosophical field, who, along with others, has been upheld, both in Italy and abroad, as a proponent of an *Italian Theory* that can compete globally⁴⁴:

We must not lose sight of the nexus that unifies subjectivism and objectivism while at the same time dividing them: without a subject that represents there is no represented thing, and vice-versa. The ties that the separation between persons and things seeks to sever are once again pulled tightly together. Persons and things face each other in a relationship of mutual interchangeability: to be a subject, modern man must make the object dependent on his own production; but similarly, the object cannot exist outside of the ideational power of the subject.

This excerpt is a reminder to jurists that the relation between subjects of the legal system and “things” is not alien to a broader relationship, which the legal debate has attempted to rationalise in different ways, for example by isolating in a particular discipline all those utilities that are not prone to unilateral appropriations and should therefore be as much as possible “desubjectified”⁴⁵.

43 Very interesting on this point is the interpretation by DI PORTO, 2013. It is important to acknowledge that administrative law has always understood the importance, even within an analysis of legislation on strictly speaking common goods, of better protecting, even within the courts, the public use of the good with respect to the owner: see, for example, CAPUTI JAMBRENGHI, 1979, in particular pp. 225 ff.

44 ESPOSITO, 2014, p. 64.

45 It is in this perspective that one must consider also the frequent tendency in accounts

The entire Italian debate on common goods attempts to give new answers to the question of identifying the best balancing point with the institutional processes that regulate that discipline and, with it, the right rate of “de-subjectification”.

Also, despite the different approaches (see par. 2), it has to be said that the theory of common goods has basic and cross-functional characteristics that go well beyond this undeniable fundamental fact, but which in some way are inferred from it. These are:

- a) the *plurality* of definitions of what is “common”, both with regard to the object itself of the definition, and the social and territorial variability of the relative evaluations (note that in all common goods theories urban spaces are the default place for experimentation⁴⁶);
- b) the derivation of the source of the “common” from *constitutional/supranational data*, which are perceived as being suitable for acting as a limit to procedures of “subjectification”;
- c) the tight link between the resource (or the service) that comes from the “common” and *community of reference*⁴⁷;
- d) the necessarily *participatory* nature of the defining action, of the management of the “common” and of the evaluation of the results of the management;
- e) the *variability and heterogeneity of the co-participant parties*;
- f) the reliance on a *markedly hybrid legal technology*, drawn from both public and private law;
- g) the need for *forms of constant sharing* of information on the “common” that is being managed at any given time.

There is another characteristic that all common goods theories possess: the *parasitic aptitude* of the category that they attempt to introduce. Common goods, in others words, are not experienced only as specific, yet diverse, entities that need consistent and proportionate management models; common goods also

of common goods to connect the debate on the protection and management of certain resources to the realisation of the need to progress “from the anthropocentric ethics of proximity to the ethics of intergenerational distance” (LOMBARDI, 2014, pp. 209 ff.).

46 See, in all its clarity, IAIONE, 2013.

47 Cf. MARELLA, 2012, in particular pp. 20 ff.

represent a need for institutionalisation that tends to outgrow the confines of public property or administrative participation and relaunch a new concept of form of State, citizenship and the role of the public-private dichotomy in the economy and in the supply of certain services that have become “open” to the market. Common goods, basically, always presuppose a *different* State and administration from the existing ones.

From this last point of view, it is clear that, according to current law, among the different possible approaches there are more effective (or rather, more easily attainable) parasitic interpretations, in that, at the very least, they have a number of practical advantages.

This is the case of the interpretation that associates common goods with horizontal subsidiarity, seeing an opportunity for shared management and relying both on the explicit and clear reference to a constitutional principle (in Art. 118. par. 4, Constitution) and on the promotion of local autonomy as a driving force of a preceptive and immediately valid legislation.

But there are also competing factors at play in this approach: it is not weighed down by a terminological syncretism that is difficult to reconcile; it is markedly neutral with regard to existing classifications of public goods (in other words, it does not require any further legislative measures on a national level); it focuses, first of all, on utilities that can be “rediscussed” by activating the levels of government closest to the communities involved and according to principles that those administrations are already required to observe (in this sense the range of this interpretation is much more limited, and therefore much more “achievable”, than the other ones); it much more easily absorbs within the notion of common good interests that might be the object of public policies; it is intended not so much to review entirely the “guarantee bonds” that are connected to the institutional position of the representational political system, but rather to complement them with further instruments of legitimisation, with a view to strengthening the administration and its role in the protection of public interests.

REFERENCES

- AMATO, **Ciro**. **I beni comuni. Una questione di paradigma r(el)azionale**. Rome: Aracne, 2014
- ARENA, **Gregorio**. Introduzione all'amministrazione condivisa. In: **Studi parlamentari e di politica costituzionale**, v. 117-118, pp. 29-65, 1997
- ARENA, **Gregorio**. **Cittadini attivi, Un altro modo di pensare l'Italia**. Rome-Bari: Laterza, 2006
- ARENA, **Gregorio**. IAIONE Christian (eds.). **L'Italia dei beni comuni**. Rome: Carocci, 2012
- ARENA, **Gregorio**. IAIONE Christian (eds.). **L'età della condivisione. La collaborazione fra cittadini e amministrazioni per i beni comuni**. Rome: Carocci, 2015
- ASSOCIAZIONE ITALIANA PROFESSORI DI DIRITTO AMMINISTRATIVO (AIPDA) (ed.). **Titolarità pubblica e regolazione dei beni**. Milan: Giuffrè, 2004
- BAGNI, **Silvia** (ed.). **Dallo Stato del benessere allo Stato del buen vivir. Innovazione e tradizione nel costituzionalismo latino-americano**. Bologna: Filodiritto Editore, 2013
- BALDIN, **Serena**. I diritti della natura: I risvolti giuridici dell'etica ambiental exigente in America Latina. In: **Forum di Quaderni Costituzionali** (26 June 2014): http://www.forumcostituzionale.it/wordpress/images/stories/pdf/documenti_forum/paper/0484_baldin.pdf
- BENVENUTI, **Feliciano**. **Il nuovo cittadino. Tra libertà garantita e libertà attiva**. Venice: Marsilio, 1994
- BONETTI, **Tommaso**. I beni comuni nell'ordinamento giuridico italiano tra "mito" e realtà". In: **Aedon**, no. 1/2013: <http://www.aedon.mulino.it/archivio/2013/1/bonetti.htm#3>
- CAMMARANO, **Guido**. **Saggio sulla pubblicità dei beni pubblici. Un'analisi introduttiva**. Padua: Cedam, 1972
- CAPUTI JAMBRENGHI, **Vincenzo**. **Premesse per una teoria dell'uso dei beni pubblici**. Naples: Jovene, 1979
- CASSANO, **Franco**. **Homo civicus. La ragionevole follia dei beni comuni**. Bari: Dedalo, 2004
- CASSATELLA, **Antonio**. **Donato Donati e la scienza del diritto**

amministrativo. In: MALO, Maurizio. DE PRETIS, Daria. MARCHETTI, Barbara (eds.). **Pensare il diritto pubblico. Liber amicorum per Giandomenico Falcon**. Naples: Editoriale Scientifica, 2015

CASSESE, Sabino. **I beni pubblici. Circolazione e tutela**. Milan: Giuffrè, 1969

CERULLI IRELLI, Vincenzo. **Proprietà pubblica e diritti collettivi**. Padua: Cedam, 1983

CERULLI IRELLI, Vincenzo. DE LUCIA, Luca. Beni comuni e diritti collettivi. In: **Politica del diritto**, pp. 3-36, 2014

CHIGNOLA, Sandro (ed.). **Il diritto del comune. Crisi della sovranità, proprietà e nuovi poteri costituenti**. Verona: Ombre Corte, 2012

CIERVO, Antonello. **I beni comuni**. Rome: Ediesse, 2012

COCCOLI, Lorenzo. FICARELLI, Giacomo. The Tragedy of the Commons. Guida a una lettura critica. In: **Oltre il pubblico e il privato. Per un diritto dei beni comuni**. Verona: Ombre Corte, 2012

COLOMBINI, Giovanna (ed.). **La nozione flessibile di proprietà pubblica. Spunti di riflessione di diritto interno ed internazionale**. Milan: Giuffrè, 2008

CORTESE, Fulvio. Dalle valli da pesca ai beni comuni: la Cassazione rilegge lo statuto dei beni pubblici. In: **Giornale di diritto amministrativo**, pp. 1170-1178, 2011

D'ANDREA, Luigi. I beni comuni nella prospettiva costituzionale: note introduttive. In: **Rivista AIC**, n. 2/2015: <http://www.rivistaaic.it/i-beni-comuni-nella-prospettiva-costituzionale-note-introduttive.html>

DANI, Alessandro. Il concetto giuridico di “beni comuni” tra passato e presente. In: **Historia et Ius**, no. 6/2014: http://www.historiaetius.eu/uploads/5/9/4/8/5948821/dani_6.pdf

DI GIACOMO RUSSO, Bruno. Attività amministrativa e beni comuni: il regolamento del comune di Bologna. In: **Quaderni amministrativi**, no. 4, pp. 3-17, 2014

DI PORTO, Andrea. **Res in usu publico e ‘beni comuni’**. Turin: Giappichelli, 2013

DONATI, Daniele. **Stato e territorio**. Rome: Athenaeum, 1924

DONOLO, Carlo. **I beni comuni presi sul serio**. Available online at <http://www.labsus.org/2010/05/i-beni-comuni-presi-sul-serio/>

DURET, Paolo. “Taking commons seriously”: spigolature su ambiente come bene comune e “legitimatio ad causam”. In: **Rivista quadrimestrale di diritto dell’ambiente**, no. 1/2013: <http://www.rqda.eu/category/rivista-numero-1-2013/>

ESPOSITO, Roberto. **Le persone e le cose**. Turin: Einaudi, 2014

FALCON, Giandomenico. Per una mappa giuridica della laguna di Venezia. In: GAROFALO, Luigi (ed.). **La demanialità tra presente e futuro**, Venice: Istituto Veneto di Scienze, Lettere ed Arti, 2015, pp. 109-138

FERRAJOLI, Luigi. **Principia juris. Teoria del diritto e della democrazia**. 2. Rome-Bari: Laterza, 2007

GIANI, Riccardo. Interessi meta-individuali e tutela giurisdizionale: il caso delle “spiagge libere”. In: **Urbanistica appalti**, pp. 205-209, 2013

GIANNINI, Massimo Severo. **I beni pubblici**. Rome: Giuffrè, 1963

GRECO, Tiziana. GRECO, Mario. Valli da pesca, demanialità marittima ed “espérance légitime” del privato nella giurisprudenza CEDU. In: **Danno e responsabilità**, 134-149, 2015.

GROSSI, Paolo. **Un altro modo di possedere. L’emersione di forme alternative di proprietà alla coscienza giuridica postunitaria**. Milan: Giuffrè, 1977

GUICCIARDI, Enrico. **Il demanio**. Padua: Cedam, 1934 (reprinted in 1989)

FULCINITI, Luciana. Valli da pesca lagunari. La Cassazione reinterpreta i beni pubblici. In: **Diritto e giurisprudenza agraria, alimentare e dell’ambiente**, pp. 476-481, 2011

GAMBARO, Antonio. Note in tema di beni comuni. In: **Aedon**, no. 1/2013: <http://www.aedon.mulino.it/archivio/2013/1/gambaro.htm>

HARDIN, Garret. The Tragedy of the Commons. In: **Science**, no. 3859 (vol. 162), pp. 1243-1248, 1968.

HARDT, Michael. NEGRI, Antonio. **Comune. Oltre il pubblico e il privato**. Milan: Rizzoli, 2010

IAIONE, Christian. La città come bene comune. In: **Aedon**, no. 1/2013: <http://www.aedon.mulino.it/archivio/2013/1/iaione.htm>

LALLI, Angelo. **I beni pubblici. Imperativi del mercato e diritti della collettività**. Naples: Jovene, 2015

LOMBARDI, Roberta. Ambiente e mercato: note minime per una nuova prospettiva d'indagine sui beni comuni. In: **Il Diritto dell'economia**, pp. 209-232, 2014

LUCARELLI, Alberto. **La democrazia dei beni comuni**. Rome-Bari: Laterza, 2013

LUCARELLI, Alberto. Beni comuni. Contributo per una teoria giuridica. In: **Costituzionalismo.it**, no. 3/2014: <http://www.costituzionalismo.it/articoli/492/>

LUCARELLI, Alberto. MARCOU, Gérard. MATTEI, Ugo. **Il diritto pubblico tra crisi e ricostruzione**. Naples: La Scuola di Pitagora, 2009

MADDALENA, Paolo. **Il territorio, bene comune degli italiani. Proprietà collettiva, proprietà privata e interesse pubblico**. Rome: Donzelli, 2014

MARELLA, Maria Rosaria. Introduzione. Per un diritto dei beni comuni. In: ID. (ed.). **Oltre il pubblico e il privato. Per un diritto dei beni comuni**. Verona: Ombre Corte, 2012

MATTEI, Ugo. **Beni comuni. Un manifesto**. Rome-Bari: Laterza, 2011

MATTEI, Ugo. **Controriforme**. Turin: Giappichelli, 2013

MATTEI, Ugo. **Il benicomunismo e i suoi nemici**. Turin: Giappichelli, 2015

MATTEI, Ugo. REVIGLIO, Edoardo. RODOTÀ, Stefano (eds.). **Invertire la rotta. Idee per una riforma della proprietà pubblica**. Bologna: Il Mulino, 2007

MATTEI, Ugo. REVIGLIO, Edoardo. RODOTÀ, Stefano (eds.). **I beni pubblici. Dal governo democratico dell'economia alla riforma del codice civile**. Rome: Accademia Nazionale dei Lincei, 2010

MONE, Daniela. La categoria dei beni comuni nell'ordinamento giuridico italiano: un paradigma per la lettura del regime dei beni pubblici alla luce della Costituzione. In: **Rassegna di diritto pubblico europeo**, no. 2, pp. 63-126, 2014

NIVARRA, Luca. Alcune riflessioni sul rapporto tra pubblico e comune. In: **Oltre il pubblico e il privato. Per un diritto dei beni comuni**. Verona: Ombre Corte, 2012

OLIVI, Marco. **Beni demaniali ad uso collettivo. Conferimento di funzioni e privatizzazione**. Padua: Cedam, 2005

OSTROM, Elinor. **Governing the Commons: The Evolution of**

Institutions for Collective Action. Cambridge: Cambridge University Press, 1990

OSTROM, Elinor. **Design Principles and Threats to Sustainable Organizations That Manage Commons.** Working Paper, Center for the Study of Institutions, Population, and Environmental Change, Workshop in Political Theory and Policy Analysis, Indiana University, 17/02/1999

POMARICI, Ulderico. Beni comuni. In: ID. (ed.). **Atlante di filosofia del diritto. Selezione di voci.** Turin: Giappichelli, 2013, pp. 3-58

PUGLIATTI, Salvatore. La proprietà e le proprietà (con riguardo in particolare alla proprietà terriera) (1954). In: ID. **La proprietà nel nuovo diritto.** Milan: Giuffrè, 1964

RENNA, Mauro. **La regolazione amministrativa dei beni a destinazione pubblica.** Milan: Giuffrè, 2004

RENNA, Mauro. La tutela dei beni pubblici. In: POLICE, Aristide (ed.). **I beni pubblici: tutela, valorizzazione e gestione.** Milan: Giuffrè, 2008

RODOTÀ, Stefano. Beni comuni: una strategia globale contro lo human divide. In: **Oltre il pubblico e il privato. Per un diritto dei beni comuni.** Verona: Ombre Corte, 2012

RODOTÀ, Stefano. **Il terribile diritto. Studi sulla proprietà privata e i beni comuni.** Bologna: Il Mulino, 2013

ROSANVALLON, Pierre. **The Society of Equals.** Cambridge (MA): Harvard University Press, 2013 (it. ed. **La società dell'uguaglianza.** Rome: Castelvecchi, 2013)

SETTIS, Salvatore. **Azione popolare. Cittadini per il bene comune.** Turin: Einaudi, 2012

THOMAS, Yan. **Il valore delle cose.** Macerata: Quodlibet, 2015

TONOLETTI, Bruno. **Beni pubblici e concessioni.** Padua: Cedam, 2008

VANNI, Maria Beatrice. Understanding the Commons: the Reception of Elinor Ostrom's Work on Italian Legal Scholarship. In: **Ius Publicum**, no. 1/2014: http://www.ius-publicum.com/repository/uploads/02_12_2014_10_52-M_B_Vanni.pdf

VENEZIAN, Giacomo. Reliquie della proprietà collettiva in Italia (1888). In: ID. **Opere giuridiche. II.** Rome: Athenaeum, 1920

VITALE, Ermanno. **Contro i beni comuni.** Una critica illuministica. Rome-Bari: Laterza, 2013