

**UNDERSTANDING THE COMMONS:
THE RECEPTION OF ELINOR OSTROM'S WORK
IN ITALIAN LEGAL SCHOLARSHIP¹**

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1. PREMISE

Since the award of the Nobel prize in 2009, Elinor Ostrom's work has been gaining headline fame, which only in a small measure accounts for the importance of her work, and which has suddenly brought the subject of commons and their governance, and especially the seminal work *Governing the Commons. The Evolution of Collective Action*, to World stage spotlight. On the one hand, this allowed greater visibility and wider interest for the accomplishments of her research and their potential outcomes, on the other hand, from night to morning commons entered into a 'buzzword bingo' scenery alongside other fashionable words, like sustainability. According to Google Scholar, *Governing the Commons. The Evolution of*

¹ This paper is the elaboration of the lecture held at *The Vincent and Elinor Ostrom Workshop on Political Theory and Policy Analysis* by the author as a visiting scholar in April 2014. The Author is a PhD student in Administrative law at the University of Milano.

Collective Action, has been cited over 16.000, “in almost a thousand different journals that vary in subject matter from engineering to eco-criticism, mathematics to music, and information sciences to cellular biology”. There has been a steady progress in the number of citations since 1990, with a rate of increase, between 2009 and 2010 – that is, right after the Nobel prize award - superior to the rate of the previous 19 years².

Over the last ten years, and particularly after 2009, Italy has been experiencing a cultural wave revolving around the expression “common goods”. Motivated by the increasing global environmental issues, and the generally poor state of the national administration of public goods and services, facing distrust and wariness from people, Italian scholars and policymakers have turned to Ostrom’s work. While Italian scholarship in political science and in economics is quite familiar with Elinor Ostrom’s work³, and has been for a while, legal scholarship is struggling with it and its vocabulary. This is partly due to the existence of concurring legal concepts attached to the expression “common goods”. At the same time, this also partly reflects the generally poor state of Italian law, politics, and administration: the debate over common goods and their regulation – a trend in current legal literature⁴ – is flawed by an original vice,

² D. Kaunekis, “Researching Complex Governance Arrangements: Elinor Ostrom's Legacy for Research Methods and the Analysis of Institutional Design”, in *Policy Matters*, n. 19, 2014, p. 71.

³ This is true both of works addressed to the general public and of specialistic works addressed to experts. For an example of the former, see T. Vitale, “Società locali e governo dei beni comuni. Il Nobel per l’economia a Elinor Ostrom”, in *Aggiornamenti sociali*, 2009; S. Ristuccia, “L’importanza di una riflessione sui beni collettivi. A proposito del premio Nobel a Elinor Ostrom”, in *Bancaria*, n. 12/2009. For an example of the latter, see *Tempo di beni comuni. Studi interdisciplinari*, Annali della Fondazione Lelio e Lisli Basso 2010-2012, Ediesse, 2013, and particularly the contributions by C. Montesi, “I beni comuni al crocevia tra simpatia per il prossimo ed interesse personale”, in *Tempo di beni comuni. Studi interdisciplinari, cit.*, 2013, pp. 217-255 and by M. Donolo, “Sui beni comuni virtuali e sul loro ruolo nella governabilità dei processi sociali”, in *Tempo di beni comuni. Studi interdisciplinari, cit.*, 2013, pp. 257-304.

⁴ A. Gambaro, “Note in tema di beni comuni”, *AEDON*, 1/2013.

finding its fuel in the hasty search for a patched up solution to the lack of financial resources and the dispersion of the few available⁵.

In this paper, I will first review some basic concepts on Common Pool Resources (CPRs), both in general and in relation to Elinor Ostrom's work. I will then illustrate the concurring concepts attached to the expression “common goods”, which is the literal translation of the Italian “beni comuni”, and from there proceed to the second part, which is focused on the reception of Elinor Ostrom's work in Italian legal scholarship. In my conclusions, I will sum up the reasons for the misrepresentations reported and briefly illustrate how Elinor Ostrom's work may be useful to address the issues Italy is facing.

2. COMMON POOL RESOURCES, SOCIAL DILEMMAS, AND COMMON PROPERTY REGIMES IN ELINOR OSTROM'S WORK

In economics, goods can be classified according to the presence and degree of two features, or lack thereof: excludability, meant as the degree to which access to them can be prevented, and rivalry, which means that consumption by one person prevents others from enjoying that same unit. CPRs are characterized by a low degree of excludability and by rivalry⁶.

Thus framed, a CPR has features that expose it to the risk of triggering a social dilemma. A Social Dilemma is a situation in which the rational behavior of an individual in economic terms – the tendency to maximize his gain – leads to suboptimal outcomes from the collective

⁵ S. Marotta, “La via italiana ai beni comuni”, AEDON, 1/2013.

⁶ The latter is also referred to as subtractability.

standpoint, meaning that the individuals are collectively worse off⁷. Renowned examples of social dilemmas are the Prisoner's Dilemma, the Public Good Dilemma and the Commons Dilemma. The latter, also known as the Tragedy of the Commons, depicts a situation in which a resource owned in common is managed by each owner with a individualistic short-term, maximizing approach – an approach which leads to the depletion or destruction of the resource.

According to mainstream political economy, there would be only two ways to prevent such an (inevitable) outcome: either by privatizing the resource into proprietary subunits, the owner of each unit maximizing his/her self-interest to the benefit of all, or by “mutual coercion, mutually agreed upon by the majority of the people affected”⁸.

Elinor Ostrom's lifetime field research brought to light a wide number of cases in the most diverse settings, which proved that, certain conditions being met, people would be able to cooperate in order to collectively manage CPRs in an effective and optimal way, yielding benefits for participants and possibly also for others. These situations had been neglected precisely because nobody thought they would exist: therefore, they were underrepresented in scholarship, which focused only on failures of collective action strategies to confirm conventional beliefs. Following initial findings, Elinor Ostrom's research was aimed at understanding how these collective strategies would work, and subsequently at identifying the conditions which allow for their success.

When dealing with a CPR, we must bear in mind the difference between natural scarcity and economic scarcity, the latter being a different way to frame rivalry. Mere natural scarcity does not make a resource a CPR, just as much as its natural abundance does not imply that it's not

⁷ R. M. Dawes, "Social dilemmas", in *Annual Review of Psychology*, p. 170; P. Kollock, "Social dilemmas: Anatomy of cooperation", in *Annual Review of Sociology*, 1998, 24, p. 183.

⁸ G. Hardin, "The Tragedy of the Commons", *Science*, 162/1968, p. 1247.

scarce in the economic sense. Furthermore, we must bear in mind the difference between the economic framing of goods and the allocation of rights over them: “Shared resource systems – called common-pool resources – are types of economic goods, independent of particular property rights. Common property on the other hand is a legal regime – a jointly owned legal set of rights”⁹. Given certain physical features of the resource and certain social conditions of the group depending upon the resource, a CPR may be subject to a common property regime. As Elinor Ostrom reminds us, “using ‘property’ in the term used to refer to a type of good, reinforces the impression that goods sharing these attributes tend everywhere to share the same property regime”¹⁰. Yet, not every CPR is subject to a common property regime, nor is necessarily owned by a communal group¹¹. The term generally used to frame resources held in common, or shared by a group – resources which are, too, vulnerable to social dilemmas – is “commons”. With specific regard to the issue of property rights, “conventional theory distinguished among communal property, private property and state property and equated communal property with the absence of exclusive rights”¹². However, in the course of the Twentieth century the very idea of property was re-conceptualized: the monolithic concept of ownership as comprising all powers over its object was replaced by the idea of a property as a bundle of rights – access, withdrawal, management, exclusion, alienation – held in various

⁹ Hess and E. Ostrom, *Understanding Knowledge as a Commons: From Theory to Practice*, 2011, p. 6.

¹⁰ Hess and E. Ostrom, *Private and Common Property Rights*, 2007, p. 9.

¹¹ “Common pool resources may be owned by national, regional, or local governments; by communal groups; by private individuals or corporations; or used as open access by whomever can gain access”, Hess and E. Ostrom, cit., 2007, p. 9.

¹² Poteete, Jansson, E. Ostrom, *Working together. Collective Action, the Commons, and Multiple Methods in Practice*, 2010, p. 45.

combinations¹³. In this new perspective, communal property is recognized when a group of individuals forms and organization which “exercises at least the collective-choice rights of management and exclusion”¹⁴ over the units produced by a defined resource system. Full ownership exists when “members of the group have the further right to sell their access, use, exclusion and management rights to others, subject in many systems to the approval of the other members of the group”¹⁵. Therefore, it was shown that a communal property regime does not necessarily imply open access: rather, open access may be the result of an unsuccessful claim to exclusion, of a conscious public policy choice, or of ineffective exclusion¹⁶. The set and combinations of rights in a bundle vary independently of the nature – public, private, or mixed, of rights-holder¹⁷.

These being the necessary premises, the dilemma menacing Common Pool Resources may be tackled by designing a collective action institution which deviates from the classical dichotomy between the traditional form of private property and governmental coercion: this, indeed, was the most unexpected finding of Elinor Ostrom’s research – that groups could work out agreements which by regulating access to and use of a resource would enable a long-term sustainable consumption rhythm of the resource in question.

¹³ Schlager and Ostrom, “Property-Rights Regimes and Natural Resources: A Conceptual Analysis”, in *Land Economics*, 1992, p. 250-251.

¹⁴ Hess and E. Ostrom, *cit.*, 2007, p. 16.

¹⁵ Hess and E. Ostrom, *cit.*, 2007, p. 16.

¹⁶ Hess and E. Ostrom, *cit.*, 2007, p. 7.

¹⁷ V. Ostrom and E. Ostrom, “Public goods and public choices”, in E. S. Savas (ed.), *Alternatives for Delivering Public Services: Toward Improved Performance*, 1977, pp. 9-10.

The groundbreaking revelation must nevertheless be mitigated by Elinor Ostrom's own observation that this kind of strategy is neither required nor feasible at all times. Through numerous field analyses, Elinor Ostrom identified eight "design principles", core factors affecting the likely long-term survival of a CPR institution¹⁸. Later, drawing from the existing research carried out by Netting in the Swiss Alps, who identified five attributes that he believed would be most conducive to the development of communal property rights, she further identified other variables related to the attributes of participants which are conducive to the selection of rules and rights which enhance the performance of communal property-rights systems, among which size group and homogeneity¹⁹.

The aim of this analysis of CPR situations was to understand the reasons behind the success or failure of collective action strategies, and, over time, to allow scientists to make previsions on the functioning of such strategies before and in the course of their implementation, and to adjust them. Vincent and Elinor Ostrom, together with fellow researchers across the World, devised the Institutional Analysis and Development Framework (IAD). Within this framework, institutions are defined as a set of prescriptions and constraints that humans use to organize all forms of repetitive and structured interactions, and can be formal or informal, the former being the set of rules-in-form and the latter being the set of rules-in-use. Within an "action arena" – the place where choices and decisions are made, a broad number of variables affects the behavior of the actors involved: we already mentioned the features of the community and of its members, as well as the features of the resource and the environment. The institutions that

¹⁸ "Institution" is used by Elinor Ostrom as meant by Douglass North, that is, as "the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights)", D. North, *Institutions, The Journal of Economic Perspectives*, 1991, p. 97.

¹⁹ Hess and E. Ostrom, *cit.*, 2007, pp. 22-24, and specifically p. 19.

shape the action arena, the characteristics of the community and the physical features of the resource and environment are the three key variables for the assessment of how a collective action situation works. These three variables have been further elaborated into specific conditions, such as, respectively, the rules of exit, the homogeneity of values among the community, and the mobility of the resource stock or flow. The interaction between the three variables, and between the sets of conditions each of them stands for, occurs at different levels, each worthy of assessment in order to gain a full understanding of the picture: the operational level of analysis, where individuals collectively make decisions about day to day activities, the collective-choice level, where decisions about the choice of rules that govern operational activities are made, the constitutional level, which deals with the actors authorized to make collective-choice decisions and the rules governing those decisions. Collective action strategies have a dynamic dimension: Interaction occurs over time, and is constantly influenced by the outcomes of previous interaction, which draw people to cooperation or prevent them from engaging in it; to some extent, also cooperation may be a rational long-term choice of the individuals involved, but to work, it relies more than often on the relationships of trust and reciprocity they are able to establish.

Originally conceived as a tool for the analysis of CPR situations, the IAD has since then been used in a variety of situations concerning also the supply of public goods and services, or the management of resources shared *de facto*.

This brief story and the clarifications it provides are necessary to bridge the gap that exists between Elinor Ostrom's work and its understanding by Italian legal scholarship. The most important clarification of all has yet to be voiced: there are no normative claims in Elinor Ostrom's work, that a particular legal class or set, or even a physical type of good or resource, should or should not be managed in just one particular way: as she acknowledged in one of her last works, "These principles have inspired hundreds of studies. And they are, indeed, helpful as

a possible place to start an investigation. But they are in no way prescriptive—nor are they models”²⁰.

One last reminder, necessary before moving on to the next part of this paper, regards the use that Elinor Ostrom herself made of the expressions CPR and commons: Students and collaborators who worked with her throughout her life, today agree that these two expressions were sometimes used as interchangeable in her works²¹, and at other times were used as referring to two different categories, often depending on the context of the work they were used in. Yet, despite the sometimes hasty use of labels, a thorough reading of Elinor Ostrom’s works allows to frame the various basic concepts she used, which do retain a precise scientific meaning and are indeed different one from the other.

3. CONCURRING “COMMON GOODS” CONCEPTS

One of the difficulties in reading Italian legal scholarship on “common goods” is that the literal correspondence – “beni comuni” – is used as a label for different and concurring concepts that pertain to different fields of law. Also, the expression “beni comuni” is often used to translate into Italian the expression “Common Pool Resource”, with the notable exception, among others, of the translation used in the Italian version of *Governing the Commons*, where the expression “beni collettivi” (collective goods) is mostly used. On the one hand, the legal literature on “beni comuni” tends to use this label without clarifying the existence of concurring concepts, which nevertheless it frequently mentions, possibly upon the assumption that they are

²⁰ Hess and E. Ostrom, *cit.*, 2011, p. 7.

²¹ Even her most famous book, *Governing the Commons*, has a title that leads to confusion, being discrepant with the actual object of the study, which are common pool resources.

matching and that what applies to one applies to the other as well. On the other hand, autonomous notions of “beni comuni” are offered, in which features from the objects of one or the other of those concurring concepts are mixed together, or integrated with new features.

3.1. Res communes omnium usum

The first of these concurring concepts takes us very far from the Ostrom Workshop both in time and space: we need to go back to Roman law, II-III century A.C., and to the concept of *res communes omnium*, literally “things in common among all”. This group of goods is first mentioned occasionally by reference to two single types that fall within its boundary: the sea and the air, which are “*communem usum omnibus hominibus*”. The turning point is Justinian’s codification, the *Corpus Iuris Civilis* (CIC): this consists of a number of legal texts, among which the *Institutiones* and the *Digest*, issued in 529 A.C., which collected and opinions of jurists and gave them force of law. Justinian being the leader of the Eastern Roman Empire, the only province where the CIC was introduced in the Western part of the Empire was Italy, following the conquest in 554 A.C.. From Italy it would later pass to the rest of the Western Europe and influence civil law codification. Both the *Institutiones* and the *Digest* contain a passage by the jurist Marcian, a passage in which for the first time *res communes omnium* are made into a separate class of goods, between public and private things. Marcian stated “*Quaedam naturali iure communia sunt omnium, quaedam universitatis, quaedam nullius, pleraque singulorum, quae variis ex causis cuique adquiruntur. Et quaedam enim naturali iure communia sunt omnium*” and listed these goods: “*Aer et aqua profluens et mare et per hoc litora maris*”²². These “things” were by natural destination to be used by any human being: regardless of citizenship, anyone had the (need and the) right to breathe, sail, draw water, fish

²² Marcian, *Inst.* 2.1. and 2.1.1.; *D.* 1.8.2.

and dry fishing nets on the beach – and none had the technology to appropriate air, rivers or the sea in a way that excluded these uses (exclusion which was also prevented by law). Yet by its nature the CIC, and the *Digest* in particular, contained alternative models of the *summa divisio* between classes of goods, and a fuzzy distinction between *res communes omnium* and *res nullius* (open access), as well as between *res communes omnium* and *res publicae* – a lack of clarity that carried on to following texts.

A lot can be said – and has been said – on this quote from Marcian, but what is interesting here is that this wording in modern times provided the foundation for both a legal class of goods, and a new branch of law. The Dutch jurist Hugo Grotius used this passage to deny Spain’s exclusive claims to the commercial routes in the Eastern Indies sea²³. Grotius argued “Fundamentum struemus hanc iuris gentium, quod primarium vocant regulam certissimam, cuius perspicua atque immutabilis est ratio; licere cuivis genti quamvis alteram adire, cumque ea negotiari”²⁴, precisely based on Marcian’s passage. This argument provided a possible answer to the issue of the relationships between sovereign states, rather than between states and their citizens or subjects, and became foundational to modern international law. Interestingly, a point Grotius highly emphasized was the fact that the use of open sea, consisting in seafaring and fishing, was innocent and inexhaustible, and that the open sea itself was not susceptible of occupation as a whole²⁵.

²³ Spain and Portugal claimed that the Treaty of Tordesillas they had signed between them in 1594, had allotted the newly discovered ocean routes exclusively to Spain and Portugal; the subsequent attack and seizure of the Portuguese ship Santa Caterina and of her precious load by the Dutch were justified by Grotius as an act of defense against the monopolistic claims of the ship’s motherland.

²⁴ H. Grotius, *Mare Liberum*, 1609, Caput I.

²⁵ These claims were furthered and reinforced by Emer de Vattel, *Le droit des gens. Ou principes de la loi naturelle, appliqués à la conduite et aux affaires des Nations et des Souverains*, 1758, Tome I, Livre I, chapitres XX and XXII.

At the same time, Marcian's quote gave rise to a partly different interpretation, which highlighted another aspect of the class of goods it referred to: common goods were also conceived as goods that by their own nature are destined to support the living of any human being, and from which it would be uncivil to exclude anyone. This different *nuance* to the expression can be explained by remembering that, among jurists, Marcian was by far one of the most learned in literature and philosophy and his legal discourse was deeply influenced by the works of the stoics Cicero and Seneca (who was mentioned also by Grotius), whose works had in turn been influenced by Greek Stoicism. In particular, Cicero – whose writings, like many others from the Classical tradition, need to be the object of careful reading, given that often legal, philosophical and political views and arguments are mixed together – had stated that these goods by their own nature are to be used by everyone, and just as much as anyone has a right to use them, each person has duties over their preservation too²⁶. This way, the goods and resources as part of the physical world are tied by their natural function to the realization of “the common good”, that is, what is good for the community, as opposed to the pursuit of sheer self-interest²⁷.

Hence, from what was once, despite its fuzziness, a single legal class of goods, two different *rationes* were extracted and emphasized, which in turn shaped two partially distinct notions:

- Common goods as technically insusceptible to occupation as a whole (and it's indeed interesting that one of the known critics of Grotius, John Selden, in the work *Mare clausum*, 1635, tried to demonstrate that appropriation of the sea was in fact as feasible as the

²⁶ Cicero, *De officiis*, Liber I, VII.21-22, and Liber I.XVI.51-53.

²⁷ For a brief and interesting overview on the historical shift from a concept of “common good” as what is good for all, to “common good” as the sum of individual interests, see Bruni “La scienza economica e i beni comuni. Storia, tragedie, e qualche sorpresa”, *Notizie di Politeia*, 2012, 113-114.

appropriation of land) and to depletion –thanks to their natural abundance – regardless of continued use and apprehension;

- Common goods as functionally destined to support human life, resources from which no-one must be excluded and which everyone must care for and use rationally.

The second couple of features expresses a choice of value, but also heavily relies on assumptions based on the first couple of features, as the two sides of a same coin.

Centuries later, in international law the notion of goods that should not be appropriated by individuals or nations to the exclusion of others was further developed into a new and autonomous construct. Following the devastations of II World War the “common heritage principle” was conceived: according to this principle, certain natural resources or cultural goods are part of the common heritage of humankind, and should therefore be held in trust for the people and for future generations and protected from destruction and overexploitation. The expression “common heritage of mankind was first mentioned in the preamble to the 1954 *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, and enunciated as an international law obligation in the *Outer Space Treaty* of 1967. This new perspective altered the original view to include the broader idea of what is necessary to a *worthwhile* living: not only goods necessary to the physical sustenance of the human being, but goods that allow the cultural development of the human kind.

3.2. Common usages

A little later in time but close in space, compared to Marcian’s contribution, we find another concurring legal concept attached to the expression “common goods” (though originally referred to as “collective goods” or “collective properties”, or even better as “civic uses”): it

refers to ancient medieval rights of use and appropriation which were granted to local communities by their lord within the feudal system to complement self-sufficient household private economies. These rights and their object would vary according to the features of the land: cutting wood, putting animals to pasture, fishing, drawing water, picking acorns, branches, bark, turf, clay, stone, sand, lime, or the remains from harvested fields. They correspond to medieval English common law rights of commons: a set of incorporeal hereditaments outlined by William Blackstone in his *Commentaries on the Laws of Ancient England* (1765-1769), which insisted upon common land and could be exercised only by members of the local community.

Throughout the Medieval period and the Modern era, these uses have been the object of acts and legislations meant either to convey land into a more sensible, economy-wise private property structure, or, in a totally opposite perspective, to preserve the benefits these lands yielded to the population by assigning land to the inalienable public domain held in trust by the State for the people²⁸. Yet, in many places they have survived, either formally or informally and

²⁸ In Italy usages, which had been the object of hostile laissez-faire measures since the end of the Nineteenth century, had survived, only to be opposed by the Fascist regime which tried to reorganize them in view of their elimination through monetary settlement (regio decreto legislativo 751/1924 and legge 1766/1927). Yet, also this initiative failed, and after the Second World War and particularly from the 1970s, these lands found the favor of the legislator, on the one hand because they were still essential to many local economies (both in terms of sustenance and of touristic exploitation), on the other, due to the increasing environmental worries. In the 1980s, usages proved to be less productive in relation to their original destination than in the new perspectives offered by the construction of public infrastructures and networks. Despite the Constitutional reform of 2001 which allowed for a greater legislative and administrative role of regions, in absence of a national legal framework not much can be done by regions alone to simplify the procedures concerning usages. In France, immediately after the Revolution, the *biens communaux* had been placed within the public domain of Municipalities by lois 13 Avril 1791, 28 Avril 1792, and 10 Juin 1793, to avoid their appropriation by the nobles. In the 1980s, these lands and particularly the lands “incultes ou manifestement sous-exploitées”, underwent a “mise en valeur”, in the name of local development and of the creation of public services (loi 9 Janvier 1985 and loi 31 Decembre 1985). They were then destined to uses new and different from the original ones: National and regional parks and nature reserves were established respectively by loi 22 Juillet, 1960, n. 60-708, décret

still remain today. In Italy, their history has been uncovered by law and history of law scholar Paolo Grossi, who rescued them from the oblivion to which they had been sentenced from the French Revolution on, and in Italy particularly after the unification of the nation²⁹.

These usages characterized European local self-sustenance economies up to the last century and are now going through reforms in many countries, which seek to transform their structure to serve the new purposes of landscape protection, sustainability, and green tourism³⁰.

One or the other of the concurring concepts just illustrated – often all of them – appear in every discourse on common goods, and are normally associated with the latter historically or theoretically. CPRs, *Res communes omnium usum* and its later developments, and common usages – all or in in pairs – share some features: a low degree of excludability, open-access, the

législatif 25 Avril, 1988, n. 88-443 and loi 10 July, 1976, n. 76-629). In England, common lands – lands object of common rights similar to usages, belonging to commoners – started being enclosed in the XIV century. Enclosures continued during the eighteenth and nineteenth centuries by acts of Parliament which provided for the offer of other lands to commoners (often of lower quality), in compensation of extinct rights. In fact, landowners already enjoyed much of the land, but not legally, being required to comply with the system of common fields and to oblige to the request of even just one commoner to exercise his common right. Parliamentary enclosures were therefore an efficient way to keep the costs of an agreement, through the use of common law and equity, as they required the approval of four-fifths of the commoners. By then, the rights of the commoners did not have great value in the new economic order: there were few protests and many voluntary enclosures (although some resistance came from families of small farmers and landless workers, who had to leave the rural areas and became the urban workforce within the industrial revolution). At the end of the nineteenth century the process of enclosure was almost complete. Instances of environmental protection and the promotion of tourism, which in Italy and France have been tackled also through the new discipline of civic uses, in the UK have long been pursued through different tools.

²⁹ P. Grossi, *Un altro modo di possedere. L'emersione di forme alternative di proprietà alla coscienza giuridica postunitaria*, 1977.

³⁰ Charlotte Hess and Elinor Ostrom have analyzed the results of a field research carried out by Robert Netting on a village irrigation system in the Swiss Alps, a long standing common usage system, Hess and Ostrom, 2007, pp. 18-24.

exposure to depletion and destruction, the natural function of sustenance. Some of these features are explicitly conceptualized into the different definitions, some are not. Indeed, these shared features and the history of law indicate vicinity, even kinship among the mentioned concurring concepts. Yet, these cannot be treated as one, or as steps of a linear and uncontroversial evolution from one to the other. Marked differences characterize each of them and must be adequately evaluated and compared within the appropriate context. And even differences within the shared features deserve to be acknowledged, particularly the low degree of excludability which can be based on technical restrictions or on ethical choices.

4. ITALIAN LEGAL SCHOLARSHIP

Within today's Italian legal scholarship, the expression "common goods" is used very frequently. Most of the times, it is also used in association with Elinor Ostrom's work: studies and articles on property, environmental resources, and their management, as well as on the most diverse subjects such as education, labor and freedom of information, almost inevitably include reference to Elinor Ostrom and to her most known work, *Governing the Commons*.

The sudden eagerness for the subject in the last decades is motivated by the ever increasing environmental issues involving both national and global natural resources. Yet, only half a century ago Massimo Severo Giannini, in the course of the lectures held in 1962/63, taught his students that ether, air and the sea – *res communes omnium* – were thus defined not because of extrinsic reasons consisting in the number of people using them, but due to intrinsic reasons consisting in the kind of use they are susceptible of³¹: Despite being rival in an economic sense,

³¹ M. S. Giannini, *I beni pubblici*, Bulzoni, Roma, 1963, p. 36.

these resources were so abundant that both scholars and legislators had no reason to regulate their use or to face property issues³².

Today's enthusiasm for common goods is affecting negatively the operability of the expression as the effective label for a legal category, draining any possible meaning from it, crushing the different concurring concepts, and counting among its fatalities also Elinor Ostrom's theories³³. Of course, not every legal scholar is to blame for this approach³⁴, yet, even among those who correctly frame her work and recognize its importance and potential, the opportunities that lie waiting for policymakers and legislators are not appreciated.

³² M. S. Giannini, *Diritto pubblico dell'economia*, Il Mulino, Bologna, 1977. The same argument was expressed that same year by the civil law scholar Pietro Rescigno: "ci venne insegnato che dal concetto giuridico di 'bene' esulano le cose che tutti godono come l'aria e l'acqua fluente, per rifarci agli esempi di scuola. Un siffatto modo di pensare vuol dire non solo insistenza sul carattere di estraneità e di alienità, rispetto al singolo, delle cose su cui cade il suo potere di appropriazione, di disposizione e di godimento; vuol dire pure che rimane fuori dall'interesse di studio e di riflessione del giurista tutto ciò che gli appare oggetto di godimento così generalizzato da non esigere protezione specifica", P. Rescigno, "Disciplina dei beni e situazioni della persona", in *Quaderni fiorentini per la storia del pensiero giuridico*, 1976/1977, n. 5/6, 11, Milano, 1978, p. 878.

³³ In some cases, Elinor Ostrom's work is briefly mentioned as part of the unavoidable literature on the subject treated, and then the author moves on to make her or his own point.

³⁴ See M. Cafagno, *Principi e strumenti di tutela dell'ambiente come sistema complesso, adattativo, comune*, Giappichelli, Torino, 2007, which contains a complete, accurate and clear account of Elinor Ostrom's work and theories, and of their context, uses them within a broader legal and economic analysis of issues related to the environment, and draws interesting conclusions for the future. See also L. Nivarra, "Alcune riflessioni sul rapporto fra pubblico e comune", in *Oltre il pubblico e il privato. Per un diritto dei beni comuni*, Ombre corte edizioni, Verona, 2012, which offers a strikingly precise account of Elinor Ostrom's work, illustrated in juxtaposition with the work of other scholars – jurists and philosophers – who offer new and different notions of common goods based on values.

4.1.1 Mattei's holistic approach and Elinor Ostrom as a self-serving neoinstitutionalist

The main work I will discuss is Ugo Mattei's *Beni Comuni. Un manifesto*, a blockbuster book on common goods written by a legal scholar in private, international, and comparative law. Right from the title, it's clear that the author is forwarding a political agenda, against the evils of capitalism and the severe shortcomings of the State. Despite the declared intent to sketch an *"institutionally viable notion of common goods, that may reduce to unity a number of different fields, yet without degenerating into a sort of fashionable, abstract, ambiguous, and excessively generic password"*³⁵, throughout the book Mattei never introduces nor suggests a clear definition of common goods. Like many other scholars who tackle the subject, he would rather say what common goods are not: *"Common goods are not – like reality as a whole – a set of well-defined objects ("cut" as in Bergson's view) that may be studied in a lab and seen from the outside according to a Cartesian logic and an empirical observation"*³⁶. Common goods are such *"due to the contexts in which they become relevant as such. Hence the extreme broadness and flexibility of the notion, and the difficulty in subsuming it within traditional legal (goods, or services?) or political (right or left?) classifications"*³⁷. This leaves us without the allegedly sought after "viable definition" of common goods. Neither can we build one definition of common goods by finding shared features among the things this author lists as common goods, by occasional mentions throughout the book: a railway, an airline company, the health service, drinking water networks, the university (p. V); all the goods produced thanks to general fiscal financing (p. XVII); in medieval times, a forest, rivers and

³⁵ U. Mattei, *Beni Comuni. Un manifesto*, Laterza, 2011, p. XV.

³⁶ U. Mattei, *cit.*, 2011, pp. XIII, XIV.

³⁷ U. Mattei, *cit.*, 2011, p. 53.

creeks, the city, and churches too (p. 27); the Earth (p. 40), and again “the live earth: Gaia” (p. 47); labor (p.53); la (p. 60); the health service (p. 64); the urban waste disposal service and the urban snow plowing service (p. 66). He further classifies common goods by distinguishing between natural (the environment, water, clear air) and social common goods (the cultural heritage, historical memory, knowledge), and between material (city squares, public gardens) and non-material common goods (the space within the web) (p. 54), and also according to the relevant level of governance: strictly local, like a small playground or a kindergarten, or with a broader scope, like land rent, up to the national level, like freedom of information and to the transnational one (e.g. academic research and internet governance) (p. 61). Mattei even describes common goods as a new way of framing rights, or alternatively public interests. The goods, resources, and services mentioned are supposedly meant rather as a means for the expression of rights and interests, which nevertheless are mentioned as common goods in their own right. There is no space for the identification of a common regulatory framework: once we are dealing with such a heterogeneous mix of things and concepts, the utility of any class or category is lost. Indeed, the only argument – insistently repeated – on the regulation of common goods is that they must be open-access, and that people must participate in their management: we are left to wonder through which strategies and institutions, and to what extent.

This being Mattei’s vision, the treatment of Elinor Ostrom’s work by this author is questionable. Mattei assumes that Elinor Ostrom’s object of research is his same, and dismisses her as having done “*none other than challenged the crude application of the homo economicus model to problem of common goods*”³⁸, failing to “*generate in the scientific community full recognition, even political, of the revolutionary consequences of placing common goods in a place central between the categories of law and politics*”, because her “*neoinstitutionalist critique, by trying to cure economics from its inner paradigm, has not drawn any political*

³⁸ Mattei, *cit.*, 2011, p. XI. And later also, “to be honest, she reinvents what Engels had already written over a hundred years ago”, p. 5.

*conclusion from the fact that the model of the greedy, bulimic actor indeed accurately describes the behavior of two of the most important institutions of our world*³⁹, the modern limited company and the State. In this view, the award of the Nobel prize constitutes the blessing of mainstream, orthodox economic thought to her work, proof of the above failure.

Each of these statements does wrong to Elinor Ostrom. First of all, Mattei diminishes her claim to a mere “challenge” to pre-existing ideas: this word does not account for her claims as the results attained through a lifetime of research performed with scientific methods. Secondly, her findings were indeed revolutionary, at the time of their first publication: they were denying with solid evidence what had been unquestioningly believed by economists for centuries, and raising attention to a resource management paradigm which up to that time had been not only neglected but thoroughly overlooked. Also, she never claimed that the cooperative behavior of actors in successful CPR situations was *id quod plerumque accidit* – despite being more diffused than expected, it was always a minor trend in respect to unsuccessful cases, and mostly witnessed in small communities. Lastly, she did acknowledge and in many case offered proof that private enterprises and State bodies were often the cause of destruction of a resource, as opposed to functioning collective action strategies devised by local groups: something she wouldn’t have done as a member of the capitalist ‘in-crowd’. Far more than this, she identified features of goods and groups and other conditions affecting the feasibility of such strategies. Indeed, the award of the Nobel prize for economics *per se*, and to a political scientist in particular, certifies the shift in perspective that she contributed to cause in the scientific community, and the policy impact of her work is evident.

Mattei seems to draw inspiration from the philosophical-international notion of common goods, which he elaborates further to reach his own holistic notion. At the same time, his long-time research interest on property and its evolution – in particular on the social purpose which

³⁹ Mattei, *cit.*, 2011, p. XII.

property is destined to serve in the Italian system, at least in the words of the Constitution, as opposed to the preceding view of an absolute ownership the protection of which justifies the very existence of the State – accounts for the direction he impresses upon his vision, and the exasperation for the poor state of affairs in Italy serves as an excuse for his exorbitant and impractical proposal.

Despite being an educational work addressed to the general public, *Beni Comuni. Un Manifesto* has had mystifying effects on the understanding of Elinor Ostrom’s work also within scholarship. Indeed, Mattei’s representation of Elinor Ostrom’s work is often the main one which legal scholars consider, his authority on the subject of commons and property being both the outcome of his career as a jurist and of his participation in the Committee called by the Minister of Justice (Decree June 21, 2007) to draft a bill to delegate the Government to reform the current layout of property in the Civil Code⁴⁰ and which proposed the introduction of the

⁴⁰ The Reform did not fall through. It is odd that such a material reform of the Code and of the legal system as a whole would be delegated to the Government, especially given the instability that historically characterizes it, affecting its duration and ability to function. This Reform was above all aimed at overcoming the unsatisfying classification of property in force in our Code. The *Demanio* (public domain), in particular, is a category which stands not by a unifying feature of the goods it encompasses, but just by normative decision that a certain good or resource is part of it. Some goods listed therein can only be owned by the State or local administrations, others are part of the domain only if owned by one of those entities. Goods within the public domain cannot be sold, nor can they be lost by adverse possession. The Committee framed its own task as a “*quest for a taxonomy of public goods that reflects the economic and social reality of the different types of goods, in the belief that the mere legal status of the types existing in the Italian law in force, constituted an arbitrary criterion*” (...).The quest led the Committee to the formulation of the category of common goods, meant as “*things that express utilities which are functional to the exercise of fundamental right as well as to the free development of the person*”. These include, “*among others: rivers, streams, and their sources, lakes and other waters, the air; parks as defined by law, forests and wooded areas; mountain areas of high altitude, glaciers and permanent snow, beaches and coastlines declared environmental reserve, the protected wildlife and flora; the archaeological cultural, and environmental heritage, and other protected landscape areas*”. This list, which comprises a large number of natural resources, and some classes of artificial goods or resource, is meant to create a group of things

category of ‘common goods’ in the Italian system. Many contributions on the subject of common goods, inspired by Mattei’s eagerness, assume his vision as the ‘state of the art’, and overlook the distinctions that a scientific approach requires.

4.1.2 Vitale’s reproach to Mattei and the definitive dismissal of Elinor Ostrom

Understandably, Mattei’s book gained rapid fame and became very controversial: scholars, especially from other areas of research, expressed from mild to strong criticism over his views⁴¹. The main and most outspoken critic in writing is political philosophy professor Ermanno Vitale, who published *Contro i beni comuni. Una critica illuminista*. Vitale’s book is divided into two sections, a *pars destruens* and a *pars construens*. The first part consists of an analysis of Mattei’s *Beni Comuni* which at times turns into a bitter mockery of the jurist. We must credit Vitale with the clarification on the actual context of many of the works treated and quoted by Mattei. Yet, even Vitale tells us that

that will be subject to the same regime: a regime that brings nothing new, in comparison to the current regime of each of the goods listed.

⁴¹ See, for example, the discussion published in *Notizie di Politeia*, XXVIII, 107, following the presentation of *Beni Comuni. Un Manifesto* organized by the University of Milan in February 2013: Banfi, Antonio, “I beni comuni di U. Mattei: un ritorno alla politica”, in *Notizie di Politeia*, XXVIII, 107, 2012, pp.100-105; Rangone, Nicoletta, “Quali regole per I beni comuni?”, in *Notizie di Politeia*, XXVIII, 107, 2012, pp.106-112; Bruni, Luigino, “La scienza economica e i beni comuni. Storia, tragedie, e qualche sorpresa”, in *Notizie di Politeia*, XXVIII, 107, 2012, pp.113-124; as well as U. Mattei “Una risposta ad alcune critiche”, in *Notizie di Politeia*, XXVIII, 107, 2012, pp.125-127.

“After all, Ostrom’s criticism of Hardin is just a reminder that a “commons” is not necessarily devoid of rules or insufficiently regulated. Close to private property in its strict meaning, and to public institutions, also intermediate institutions may in certain cases and within certain limits contribute to an efficient regulation of the resources of the planet” – and this, only in small scale communities and in respect to local resources⁴².

Oscar Wilde once said that women have a wonderful instinct about things. They can discover everything except the obvious. Wilde was a witty teaser, but this is actually also a subtle compliment, especially if applied to the case in point: it is so easy to state that something is obvious after someone else has pinpointed it; it is far more difficult to understand that something which no one else can see is going on, and find evidence of its existence, and understand the reasons and conditions that make it work. While framing correctly the core message of Elinor Ostrom’s research, Vitale still ends up minimizing its importance. Furthermore, by insisting on how Elinor Ostrom’s research and results have nothing to do with the aims of social justice that Mattei allegedly advocates with his own notion of “common goods”, Vitale ends up excluding Ostrom’s research from the picture: already diminished to a mere reminder, her work is also incompatible with Mattei’s claims, and this incompatibility ends up being the measure for its relevance to the issue of common goods in general.

4.2 Other approaches

Other works by legal scholars deserve a mention in the attempt to illustrate the reception of Elinor Ostrom’s work in legal scholarship.

⁴² Vitale, *Contro i beni comuni. Una critica illuminista*, p. 13, and also p. 10.

4.2.1 The asserted superiority of public property in Elinor Ostrom's work

An author who has brought the subject of common goods under his focus is private law scholar Gabriele Carapezza Figlia. In his article “Premesse ricostruttive del concetto di beni comuni nella civilistica italiana degli anni Settanta”, he bases his discourse on common goods on the international law “common heritage of human-kind” principle, which he believes had been first used in the Declaration of the United Nations Conference on the Human Environment held in Stockholm in 1972. Carapezza seems to assume that there is no difference between this notion of common goods and the commons and CPRs mentioned in Elinor Ostrom's work, which he mentions. At the same time, he recognizes the existence in the Italian system of legal norms that conform or modify the traditional structure of private property by limitation of the powers of the owners of particular types of goods, such as movable objects which are part of the cultural heritage or land within a protected landscape area. In respect to these, the choice about the functional destination of the good or resource is made by the law, the number of rights within the proprietary bundle is reduced and the rights are modified, the alienation and circulation of the goods or resources is strictly constrained. In this author's view, the notion of common goods serves as the label to unify under one name all the instances in which private property's traditional structure is remodeled by the legislator towards the satisfaction of the public interest consisting in the “*maximum fulfillment of the value of the person*”⁴³. As to their regime, the Author claims that

“even though a strictly constrained private property regime is compatible with a lessened rivalry between the different uses of a good, aimed at favoring a higher

⁴³ Carapezza Figlia, , “Premesse ricostruttive del concetto di beni comuni nella civilistica italiana degli anni Settanta”, p. 1072, and also p. 1084.

*accessibility to it, a certain normative structure of public property is particularly adequate to manage the fruition of the good according to rules inspired by constitutional solidarity and aimed at guaranteeing its optimal use. A well-devised public property regime can indeed overcome the economic efficiency of private ownership, because it can both guarantee the intergenerational safeguard of collective resources [and here a footnote links this statement to pages 269 and following of *Governare i beni collettivi*, the Italian edition of *Governing the Commons*] and avoid what has been defined as «the tragedy of the anticommons»⁴⁴.*

This is a very general, apodictic claim in favor of the relative superiority of public property in facing certain issues, a claim which is questionable both *per se*, and in respect to the comprehension of Elinor Ostrom's work. Indeed, as we stated in the opening, Elinor Ostrom never advanced normative claims of this kind, not even in the page referred to by Carapezza. What she did state in the pages referenced to is what has already been clarified: certain common pool resources are effectively managed by groups through collective action strategies which allow their long-term preservation. Specific features of the resource and of the community depending upon it, as well as of the strategy implemented, are relevant in predicting success of the latter, which is not granted. Lack of these features leads to failure, just as much as poor administration by the Government and short-sighted private exploitation would.

4.2.2 Ostrom, and the Community as a limit

A commendable initiative was led by Maria Rosaria Marella, professor of private law: in the course of 2012, she chaired a series of meetings to discuss the meaning and scope of the

⁴⁴ Carapezza Figlia, *cit.*, p. 1072, and also p. 1079.

concept of common goods, gathering together scholars from different fields and backgrounds – philosophy, sociology, anthropology, and economics. The outcomes of this enterprise were then published in a collective work *Oltre il pubblico e il privato. Per un diritto dei beni comuni*⁴⁵.

The workgroup led by Marella acknowledged the impossibility to find a definition for common goods, given the broadness and diversity of the set considered⁴⁶: Common goods are water, natural resources, and goods which have a physical layer but also evoke more complex scenarios, like the environment, the art heritage and the historic-cultural heritage of a Country; common goods are also, among other immaterial things, genes, images of other goods, traditional knowledge and customs; institutions which offer services which satisfy social rights like health or education; common goods are also the urban space of the city and labor. Once admitted the impossibility of coming up with a definition, the focus is shifted to an attempt at identifying the common features of common goods, which according to Marella are the following: the fact that they cannot be regulated according to common rules; the fact that they are linked to a community; the fact that they must be managed collectively, with participation from the people. The utility of a legal class of goods which share no common regulation is questionable (and the other two common features seem too weak and general in order to effectively distinguish these goods from others). Also, once again we are told that collective management and participation are a “must”. Rather than a spontaneous bottom-up strategy, this evokes an imposed top-down collaborative constraint: how can this obligation be encouraged or enforced? It also seems to evoke a universal shared-management pattern for every situation involving one of the goods listed as common goods, with no exceptions.

⁴⁵ AA.VV., *Oltre il pubblico e il privato. Per un diritto dei beni comuni*, M.R. Marella (ed.), *cit.*, 2012.

⁴⁶ This approach accepts all the current claims on what common goods are, without questioning any of them, and then tries to unify them in a group by looking for common features.

With specific regard to the subject of this paper, many contributors, including Marella who was the editor of the volume, refer to *Governing the commons*. In particular, in the introduction we read that the fact of identifying a common good with the community depending upon it may actually be a theoretical weakness, preventing the good from playing the role of social, economic and political transformation it may potentially play. In this view, “*given certain socio-economic starting conditions, stating that a resource or an institution is a common good does not necessarily trigger a redistributive process towards the broader community or other communities of users or citizens, but rather ensures a more equitable use of the utilities from that good within one’s own community. This would seem to be at first glance the limit of the theory of Ostrom.*”⁴⁷. Once again, we are warned against the limit of Elinor Ostrom’s theory: a limit which only appears as such owing to the superposition of a notion of common goods completely different from the notion of CPRs and common property regimes she worked with, and of a purpose radically different from the aims of her research. Indeed, the features of the community depending on any given resource, and the way in which they affect the functioning of a collective strategy, have been taken into account and carefully analyzed by Elinor Ostrom throughout her life, but she did not *identify* the resource with the community in a normative fashion. More importantly, the results she reached and on which her theory was built were the outcome of fieldwork; they came from the observation and conceptualization of real-life systems and communities. So even from a logical point of view, to state that a scientific theory is limited because giving a certain label to a phenomenon does not trigger the desired results, is quite unfair. But beyond the labelling issue, we must still bear in mind that a collective action strategy does not even ensure the equitable use of a resource within the community (or within a

⁴⁷ M.R. Marella, “Introduzione. Per un diritto dei beni comuni”, in *Oltre il pubblico e il privato. Per un diritto dei beni comuni*, M.R. Marella (ed.), cit., p. 23.

broader community than the one directly affected), a fact that Elinor Ostrom was well aware of, and about which she often warned her readers⁴⁸.

5. CONCLUSIONS

Let us clarify: not every Italian law scholar who has dealt with Elinor Ostrom's work has offered a misrepresentation of her claims and findings, or has advanced arguable criticism of them.

Let us further state that the problem of the misrepresentation of Elinor Ostrom's work is not an all legal scholarship issue, nor an all Italian issue: all around the World, even in the United States, political scientists and scholars from other fields alike have sometimes narrowed her achievements to just parts of her research⁴⁹.

Some of the misrepresentations of Elinor Ostrom's work reported here may be due to reference to concurring “common goods” notions. All the scholars mentioned are surely aware of the existence of these concurring concepts and their differences, yet the lack of clarity over their use is disappointing. If and where the choice has been that of deliberately mixing them to create a new notion, this choice should have been stated and explained both in the making and in the use. But within the instances illustrated we find very specific reference to, and arguable direct criticism of, Elinor Ostrom’s work. Why is this? For one, in favor of the benefit of the doubt,

⁴⁸ Indeed, the fifth chapter of *Governing the Commons* (pp. 143-181) is devoted to “Analyzing Institutional Failures and Fragilities”, and provides, like subsequent works, examples of unsuccessful, or only partially successful collective action strategies.

⁴⁹ R. Pacheco-Vega, “The Impact of Elinor Ostrom's Scholarship on Commons Governance in Mexico. An Overview”, in *Policy Matters*, n. 19, 2014, p. 29.

the Italian edition of *Governing the Commons* was published only in 2006, therefore being available to non English-speaking readers only relatively recently. We are also aware of the appeal that quoting a Nobel prize winner's theory in connection with one's own work exerts on any of us, and the prestige that stems from being able to find fault with that theory. Certainly, all the law scholars who have expressed an interest in Elinor Ostrom's work, earnestly assume to be displaying a loyal representation of it, and for one reason or another they did not have a chance to properly access her work, nor those works by Vincent Ostrom's works which served as a basis for her research. A thorough study of the *corpus* of her works, or at least of its main gems, favored by their translation into Italian, may encourage such interest. Cooperation with scholars from the field of political sciences would also be useful, thanks to their familiarity with the Ostrom's work and the jargon of the field. Once these steps are taken, inaccurate reference and arguable criticism to Elinor Ostrom's work will not be justifiable anymore.

Some have argued that the resources Elinor Ostrom dealt with in her research are of a particular kind, not easy to find in the Italian territory: they are natural resources belonging to small groups which depend upon them for subsistence and at least originally regulated by means of informal, bottom up rules by somehow primitive communities in lack of a national state and its formal apparatus. Therefore, they conclude that the utility of this research in our system is relatively low. Yet, Italy has a history of shared management systems involving CPRs, some of which are still operating today. But even when resources cannot be qualified as CPRs or are fully owned by the State or by local government units which decide over the possible allocation of rights over them, Elinor Ostrom's theory may still be useful. Furthermore, the Italian institutional setting allows for participation of local communities in the management of resources and services: the Constitutional Reform of 2001 introduced the principle of vertical subsidiarity as a guide for administration and decision making over public matters, requiring the State, Regions, Metropolitan Cities, Provinces and Municipalities to “favor the autonomous

initiative of citizens, as individuals or in associated form, for the performance of activities of general interest”⁵⁰.

Also with respect to the issue of legal reforms and policy making and implementation, an assessment of what happens in an action arena, performed by fellow political scientists using the IAD framework, would be a useful tool for tuning decisions and changes both in the general and specific regulation of certain resources.

As a general indication, Elinor Ostrom’s findings show that in situations which involve similar resources and similar actors – or at least apparently so – a collective action strategy (as much as a State imposed regulation or a private management system) may not always lead to success. This suggests that the idea of applying one-and-for-all strategies or matching univocally one kind of institution with a category of goods should be at least nuanced, both by providing for more elastic schemes and by correctly selecting which features truly make a situation similar to another in view of the aim pursued.

Much can be yielded from the tools and hints that lie waiting along the path that goes from understating the commons to understanding the commons.

⁵⁰ Art. 118, comma 4, Costituzione della Repubblica Italiana. In this direction, we mention the document approved in February 2014 by the Committee of the Municipality of Bologna: the *Regulation for the cooperation between citizens and the administration for the care and regeneration of urban common goods* (www.labsus.org), which nevertheless deals with goods which cannot be qualified as common pool resources and only at certain conditions may be qualified as commons as meant here.

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