

GOVERNING THE URBAN COMMONS

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Abstract

The purpose of this paper is to investigate a crucial question relating to institutional design in the public sector. After two centuries of Leviathan-like public institutions or Welfare State, do we still need full delegation of every public responsibility and/or exclusive monopoly of the power to manage public affairs? In particular, is there space for a collaborative/polycentric urban governance matrix? In the “sharing”, “peer to peer” “collaborative” age, there might be space for a new design of public institutions? Can urban assets and resources or the city as a whole be transformed into collaborative ecosystems that enable collective action for the commons?”. To investigate this question I chose the city, conceptualized as a commons, as an observation point. A large, developed urban city like Italy is a unique point of study. It is a large community of its own, and it is also developed of individual smaller communities that have their own networks.

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1. The shared care of urban commons and services of common interest

Where does a person go if she lives in a city, she is not fortunate enough to have got a garden and she desires to immerge herself into a natural environment to take advantage of all the ecological services that a green space can provide as practicing outdoor sports, reading a book on a lawn, breathing on average cleaner or fresher air within urban boundaries? How can that person enhance her own thirst for social relations and meet new and different people and therefore get in touch with other cultures and experiences she has never heard of? Where can she cultivate her own sense of community belonging, make her identity blossom through her own talents and passions and take part in her traditions? What are the infrastructure and services that increase the quality of urban life, enable people to live lives worth living or make

them feel free to move around? What are the facilities and services that let people share or cultivate lifestyles more consistent with their own individual sensibility and with whoever lives in the same space? And from a real estate point of view, what determines the higher or lower economic or simply the aesthetic value of a community? How can legislation and regulation develop mechanisms to facilitate the shared care of urban commons and develop a sense of community?

All these questions have one identical answer. They are the urban spaces and services of common interest. They satisfy several needs that come with living in a city because they are functional to a community's well being, as well as to the individual exercise of rights of citizenship. Specifically, they encourage higher quality of life and work, sociality, mobility, entertainment, sharing, sense of community and the possibility to cultivate abilities and passions. All these things immediately are affected by the higher or lower quality of infrastructure that a city provides its own inhabitants'. Unfortunately the urban spaces and services of common interest undergo a deep crisis period. This crisis is determined by two factors. One factor of crisis is the deficit and decline of the public or collective spaces, as in the suburbs as in the central areas, as in the moment of transformation as facility as during the maintenance one. On the contrary, the second factor of crisis occurs when citizens gradually lose their interest and attention for the urban public spaces, perceiving them as nobody's or local public authority's places, rather than everybody's places as common spaces. And this attitude of ownership and responsibility divestment from citizens permits the undisturbed and unpunished attack on these goods by those who do not manage to appreciate their importance for urban conditions of life and social cohesion.

According to the first factor, more and more pressing commitments imposed to the budget of local authorities lead them to intervene less and less on behalf of the needs of local communities. These commitments are dictated by the European Union's discipline about the stability pact and are derived from the Italian public debt. In addition to this, there is reduction of state money conveyances resulting from the Italian public accounts worsening as a consequence of the 2008 financial crisis. The public resources reduction impacts not only the services for people but it also strongly bears on the urban environment, in particular on the

public spaces. The growing lack of public resources is combined with more and more disinterest by citizens, in particular the youngest people, in the preservation, cure and maintenance of places of living and aggregation where community life happens. Conversely, responsibility forms for use and management of local public services find it hard to develop and propagate themselves. Most likely, this lack of interest arises from inadequate education of the citizenship by not only institutions but also by single families and schools. But in order to construct the urban well-being, the involvement of principal participants—that is, the citizens themselves who use and live in the city—in the urban ecosystem is crucial. In fact, according to Lefebvre the “ideal city” is «a perpetual oeuvre of the inhabitants, themselves mobile and mobilized for and by this oeuvre. [...] The right to the city manifests itself as a superior form of rights: right to freedom, to individualization and socialization, to habitat and to inhabit»¹. So all the above-mentioned crisis factors have prompted a dangerous worsening of local/urban degradation. This is all putting a strain on physical shape/aspect and on the functionality of local communities, with particular attention on spaces and services of collective usage that are particularly important for urban life. First of all, urban spaces with particular “cultural value” (that is historical, artistic, architectural, landscape value) are the subject of study here. Beyond those, we also consider urban spaces and services that are not characterized by the above-mentioned value, but nevertheless bring local societies together and their decline determines a social and economic direct or indirect decline of local communities. Urban decline is also the product and the cause of decreased efficiency and involvement of citizens in planning and distribution of local services. In this sense the urban spaces and services are functional to local community well being and to urban life quality and so they must be considered “urban common goods”. Institutions and civil society in alliance between them must be able to align in their production and care.

As Donolo claims,

[the] commons are a group of goods necessarily shared. They are goods because they let the social life develop, the collective problems solution, subsistence of human being about his relationship with the ecosystem whereof

¹ H. Lefebvre, *Il diritto alla città* (1970) (original edition *Le droit à la ville*, 1968).

he is part of. They are shared because they provide their better qualities when they are treated and so ruled and regaled like “in common goods”, accessible to everybody at least as a matter of principle. The common goods are shared although it is often possible and this is a reality more and more frequent, that someone or some group is excluded from their use².

So you first put a relational notion of common good compared to the traditional classifications based on morphological characteristics and their formal ownership. Somehow common goods are goods and this is to say objects to a certain extent. They are not always comparable to wares, but the most relevant thing is that they only exist because they are part of a qualitative relationship with one or more subjects (and not related to acquisition and appropriation). In other terms, object and subject cannot be separated when you speak about common goods. You don't have a common good, you share in common good. You cannot expect to “have” a square, a public garden, a park, you can only aspire to “be” active part of an urban ecosystem³.

It seems necessary here to share the opinion of who thinks that the «commons goods become relevant as such only if they add theoretical awareness of their legitimacy to a procedure of *conflict*, for identification of some qualitative relations that involve them. In other words, the common goods are in this way because of contests where they became relevant as such and not because of presumed ontological, objective or mechanic characteristics that would characterized them»⁴.

This means, for example, that a square is not a common good in and of itself only because it is a simple urban space, but it becomes a common good given its nature as «place for social access and for existential exchange»⁵. It is not possible to separate the physical features of an urban space considered as a common good from social ones. And so it would not be possible to exclude certain groups of people from an urban space that is subject to the principle of universal access, as a common good. An administrative measure that restricts particular categories of people from using a certain urban space should be considered void. In fact, as Mattei, a lawyer and

² C. Donolo, *I beni comuni presi sul serio*, Labsus.org, (31st May 2010).

³ U. Mattei, *Beni comuni. Un manifesto* (2011) 52

⁴ U. Mattei, *Beni comuni. Un manifesto*, cit. at 3, 53.

⁵ Ibid.

civic law professor, asserts, the urban space par excellence is the square. This last «belongs to a typically global community or rather to everybody, geographically stable or wayfarers, who can in the abstract enjoy its function of exchange place. And this happens according to ways and forms whereof everyone is interpreter. [...] In range of common goods the subject is part of the object (and vice versa)».⁶

Those town planners who have defined what “public space” means are on the same wavelength. According to Crosta, a professor of urban and environmental policy and planning,

[The]public space is not bound to collective use. It is reductive considering “public” a space used “in common”. The in common use does not “make” the space a public space, also when it has to do with more different uses. The public character does not concern a single place where collective activities go over or a place destined for these. Instead, a space “results” public because it is built from the social action on certain conditions: it is a social construction not necessary, but possible.⁷

Vitellio explains

that the public space, considered as the space with the function of facility or service produced by the state for the social life, is flanked and overlapped by other services and facilities not envisaged and not produced from a politic-administrative institution. [...] Privatized public spaces, advertised private spaces, almost public spaces rise up from interweaving of social relationships networks and single individual paths. In this way the characteristic of non-appropriation and non-removal of public space is problematic. But there are also places identified and projected as public and they are object of care and adoption from inhabitants, schools, associations, while others are often abandoned private places and they are made public through appropriation forms from social movements. [...] In this case, more than in other experiences, the public spaces do not give back only citizens as users/customers, but as *citizenry*, active people able to thematize the public matter.⁸

In the same way, the local services can and must consider themselves as common goods. In many cases it has to do with activities of tangible and intangible common goods management. For example, when you manage the local public transport system, you protect material common goods and immaterial common goods at the

⁶ Ibid.

⁷ P.L. Crosta, *Società e territorio, al plurale. Lo “spazio pubblico” – quale bene pubblico – come esito eventuale dell’interazione sociale*, Foedus, I, (2000), p. 42.

⁸ I. Vitellio, *Spazi pubblici come beni comuni*, in “Critica della razionalità urbanistica”, 17 (2005), 9-20, at 12.

same time. In the first case these are the urban environment and the urban road network that otherwise would be congested by private transport. Secondly it has to do with the right of collective, shared, sustainable mobility of people, specifically the social relationships that this kind of mobility can create and the psychophysical well being produced without any doubt by freedom from a model of private transport-based mobility. Similar arguments could be made about water service, urban health service, gas and electric distribution service and about their networks and facilities. Ultimately, the idea of urban common goods concerns all those urban spaces and services we consider “local common goods” or “community goods”. These last are reckoned as everybody’s spaces and services and so as “common spaces and services.” They are public only because they have mainly been put in some public administration’s keeping, care or supervision, until now. But it is not necessary that the formal ownership forcedly be public. Common goods in private hands can exist. The “common” nature of urban common goods comes from the fact they are closely connected to an area’s identity, culture, traditions and/or they are directly functional to social life development of communities settled in that area (for example a square, a park, a roundabout, a mountain path, a garden, a historical building, a school, coffee tables, etc.). These also count even though they have not always had the above-mentioned cultural importance and even though they are not formally owned by some public administration. Given their common nature, then they are characterized by a necessity to guarantee universal access and use and by the inescapable need for involving community members and anybody who has deeply cares for the urban common goods’ survival, care and conservation in decisions and actions that regard them. This conclusion partially seems to go well with results where considerations of private lawyers have gotten as yet and with the Supreme Court’s orientation. According to private lawyers’, conclusions reached about by the so called Rodotà Commission are important. Through the decree of 21 June 2007, the Ministry of Justice sets up a study commission to elaborate a proposed change of regulation of the Italian Civil Code about common goods.⁹ At the end of its deliberations, the Commission has characterized the “common goods” as goods

⁹ About the results of the Rodotà Commission see U. Mattei, E. Reviglio, S. Rodotà (eds.), *I beni pubblici. Dal governo democratico dell’economia alla riforma del codice civile* (2010). See also M. Renna, *I “beni comuni” e la Commissione Rodotà*, Labsus (2009).

functional to exercise of fundamental rights and to development of persons. So they need a strong conservation also in favour of future generations. They are consumer goods used without rivalry but with problems of depletion. Not only can they belong to the public body but also to individuals. You have to be assured their collective use is within limits and according to modalities scheduled by the law. If the common goods ownership is public, they are placed not for sale but their concession is allowed only in the single cases provided by law and short-lived cases. Anybody can institute legal proceedings for protection of rights related to common goods preservation and use. But only the state is legitimized in an exclusive way for the exercise of action for damages.

This doctrine seems also to permeate the most recent ordinary case law of legitimacy. The Italian Supreme Court, in fact, said in United Sections (SS.UU.) from articles 2, 9, 42 of the Italian Constitution that it is possible to obtain the principle of the protection of the human personality, whose proper execution occurs not just in the state property domain or property of the state. It can also occur within those «goods that, independently by a preventive identification by legislature, for their intrinsic nature or finalization, prove functional to the pursuit and fulfilment of community's interests, on the basis of a complete interpretation of the entire regulatory system». And the Court was keen to stress the irrelevance of formal ownership and the close functional link between the common goods and the exercise of social rights. In fact, «[w]here an immovable property, independently by the ownership, because of its intrinsic connotations especially environmental and landscape, appears intended to the implementation of the welfare state [...] this good has to be considered common. That is to say you prescind from title deed which is instrumentally connected to the realization of all citizens interests». In addition, the Court emphasized that any immovable property is a common good if it helps to achieve benefits for the community. Moreover the Court stated that «rather than to the state apparatus, as public juridical person individually designed, the public good nature should refer to the state-community, as an entity exponential and representative of citizenship's interests (community) and as the body responsible for the effective implementation of the latter». The Supreme Court took care to remind the state-apparatus of renewal of

common goods on the state as the state-community¹⁰, as an entity which exhibits everybody interests, «involves the charges of a governance that makes effective the various forms of enjoyment and public use of the good»¹¹. Here you reveal the double limit of the findings accepted by the Rodotà Commission and the Supreme Court. You do not consider the planning capacity that society is able to express through both stable and organized actions and daily practice actions about direct management, care and maintenance of common goods. You only worry about ensuring the affirmation of use or open enjoyment of common goods. Nothing more. While with reference to urban spaces as common goods, new rights stand out, «“rights of care”, not about ownership, by the exercise of that supportive and sensible freedom that nowadays represents the new way of being citizens». This is implied by the art. 118, last paragraph, of the Italian Constitution¹². These rights are associated by Arena with third-generation rights.

Similarly, according to Cellamare,

[the] urban practices, as well as a geography of values and meanings, express a strong planning, they are full of projects. First, this counts for collective actions more or less organized and intentional, but also it counts for daily, ordinary practices that city uses and also consumes. These seemingly do not seem to cause big changes in body shape and structure of the city, while in reality have a strong influence on the

¹⁰ Italian public law distinguishes the state as an apparatus, where the state is a structure of central power, and the state as a community, which includes all political and organizational autonomies (e.g., government and citizens).

¹¹ Italian Supreme Court, SS.UU., (14 February 2011), no 3665, in G.D.A. 1170 (2011), with comments of F. Cortese, *Dalle valli da pesca ai beni comuni: la Cassazione rilegge lo statuto dei beni pubblici*; as well as *Diritto e giurisprudenza agraria, alimentare e dell'ambiente* 7, (2011), 1, p. 473, with comments of L. Fulciniti, *Valli da pesca lagunari. La Cassazione reinterpreta i beni pubblici*. See also S. Lieto, “Beni comuni”, *diritti fondamentali e stato sociale. La Corte di Cassazione oltre la prospettiva della proprietà codicistica*, *Politica del diritto*, 2 (2011) 331. Moreover see the “twin decision” Italian Supreme Court, SS.UU., (16 February 2011), no 3811, on which see the note of C. Feliziani, 12 agosto 2011, available at www.labsus.org.

¹² G. Arena, *Beni comuni. Un nuovo punto di vista*, LabSus.org (2010).

Art. 118, last paragraph of the Italian constitution states: *State, regions, metropolitan cities, provinces and municipalities promote the autonomous initiatives of citizens, individually and associated, for activities of general interest, on the basis of the principle of subsidiarity.*

characterization of places. [...] The urban practices, even the most "trivial" as strolling, are full of often implicit projects. It has to do with paths we choose, meeting places, related time, way we perceive the space we cross etc. The action shapes the space and complies with the space¹³.

This planning capability expresses itself with great clarity in relation to construction, to methods of public spaces use and management, but also in relation to methods of living them. This is possible developing plan concepts for the spatial configuration of places, but also developing «methods (to) manage them, centred on self-organization, on cohabitation, on flexibility of the uses, on full utilization, on free accessibility, on care»¹⁴.

2. The urban welfare

The protection and preservation of public spaces and local services, seen as urban common goods, inextricably have implications with social inclusion policies. Even the Supreme Court seems to have caught this profile where it reminds us of functionality of the common goods with respect to the creation of the welfare state. The functionality of the local services respect to the well being of people who live and are part of a certain community is self-evident. But what is also increasingly clear is the connection between welfare policies and spatial dimension. Redistributive inequalities, social conflicts, situations of personal distress manifest themselves in their most dramatic representation in the city. Then, in the modern era, the social inclusion subject has to be faced with aim that town planners call the welfare or urban well being¹⁵.

In general, a condition without well being and therefore an "unease" condition will be determined whenever you deny the person freedom to evolve fully and which affirms his own dignity as a unique individual who can improve his own talents (art. 3,

¹³ C. Cellamare, *Fare città. Pratiche urbane e storie di luoghi* (2008).

¹⁴ C. Cellamare, *Fare città. Pratiche urbane e storie di luoghi*, cit at 13, 101.

¹⁵ P. Bellaviti, *Una città in salute* (2006); Id., *La città, la salute e la pianificazione urbana*, in G. Nuvolati, M. Tognetti Bordogna (eds.), *Salute, ambiente e qualità della vita in ambiente urbano* (2008); id. *Benessere urbano. Approcci, metodi e pratiche per sostenere la capacità di "stare bene" nello spazio urbano*, *Territorio*, 47 (2008); Id., *Alla ricerca di un nuovo "benessere" urbano promuovendo la capacità degli abitanti a "stare bene" nella città*, in F. Pomilio (ed.), *Welfare e territorio* (2009); S. Munarin, C. Tosi, *Lo spazio del welfare in Europa*, *Urbanistica* 139 (2009) 88-112.

paragraph 2 of the Italian Constitution)¹⁶. This approach is consistent with the passage from a redistributive conception to a procedural conception of the principle of equality. Therefore, it is consistent with the nature of the canon which makes the Republic predominantly act to promote conditions through *ad hoc* public policies, giving effect to the rights of citizens, in particular the social ones, rather than a mere obligation to ensure by law the rights of public services¹⁷.

Now, in order to allow the "full development" it is fundamental that the person feels good in their "space of living". And a city allows its citizens to "feel good" only if it provides them with a set of tangible and intangible goods and conditions, which will allow the person to grow and cultivate himself¹⁷¹⁸. For tangible goods, one must have the possibility of owning a house or moving houses, having a job, living in a non-degraded environment and using gardens and public places. With regard to tangible goods, one must be able to outline or change his own plan of life, not perceiving any risk to his own safety, feeling welcomed from the place where he lives, making use of support social networks¹⁹. In the twentieth century, in its origins, the issue of individual or collective well being of citizens has been primarily addressed in its physical dimension. Therefore the welfare policies of most developed countries have mainly focused on the construction of a "public urban space", that has "houses, community facilities, green spaces and infrastructures»²⁰. In fact, it was observed that the spatial dimension inevitably influences the quality of citizens' daily life and their forms of interaction and sharing. In other words, cities are the most important ecosystem for the development of the human personality. In fact, they represent the primary physical space by which you must ensure conditions of individual and collective well being, exercise of the rights of citizenship and the possibility of

¹⁶ G. Arena, *Interesse generale e bene comune*, Labsus.org (2011).

¹⁷ See C. Pinelli, *I rapporti economico-sociali fra Costituzione e Trattati europei*, in Pinelli, T. Treu (ed), *La costituzione economica: Italia, Europa* (2010), 31 and 37. In general, about the principle of equality, see L. Paladin, *Il principio costituzionale di eguaglianza* (1965); C. Rossano, *Il principio d'eguaglianza nell'ordinamento costituzionale* (1966).

¹⁸ A. Belli, *Editoriale*, *Critica della razionalità urbanistica* (2005) 17.

¹⁹ P. Bellaviti, *Disagio e benessere nella città contemporanea*, in Acts of the 14th Conference SIU "Abitare l'Italia. Territori, economie, diseguaglianze", (24-26 march 2011).

²⁰ B. Secchi, *La città del ventesimo secolo* (2005), 108-10.

coexisting differences²¹. Today, in fact, you deal with «city of differences»²² because of the «plural populations that inhabit space and time of everyday life»²³ or «thousand plural bodies that inhabit cities, in their diversity and richness of genders, ages, styles of life and consumption, sexual dispositions, religion and spirituality, geographical and cultural origin, physical and mental health condition, income levels or social position. In fact, the city consists of urban spaces and with reference to uses that people make of them»²⁴. At the same time, the lack of awareness and moderate or non-existent capacities for governance of public institutions is coupled with the social complexity of the contemporary city. This is at the origin of phenomenon of urban insecurity, degradation of the urban environment and conflict in the use of public spaces, rising of marginalization and exclusion areas (that is migrants and the homeless), elevation of barriers that prevent freedom of movement or expression of citizens. You think of workers who daily have to deal with the urban traffic problems, architectural barriers or degradation and, in some cases, lack of urban infrastructures dedicated to the elderly, children and the disabled, the deterioration of citizens health as a result of the overall reduction of the "urban well-being."

Until now the response of the Italian legislature to this problem has been the public offering of quantitative standards, established by law in the abstract, infrastructures and/or services. The national planning law no. 1150 of August 17 1942 puts the general town plan in charge of defining «areas intended to form spaces for public use» (Article 7, paragraph 2, no. 3). Moreover it establishes a general principle of the field by virtue of which "maximum relations between spaces intended for residential and productive settlements and public spaces for collective activities, public parks or parking only" must always be respected (art. 41

²¹ Bellaviti, *Disagio e benessere nella città contemporanea*, cit. at 19 [...]. The author notes «as the spatial dimension affects the quality of daily life of the different urban actors and their forms of interaction and sharing. In fact, the city with its space and its infrastructures is the individual and collective "real life" and it is the privileged "space" for well-being development, the emergence of citizenship rights and the realization of the coexistence of diversity».

²² Bellaviti, *Disagio e benessere nella città contemporanea* cit. at 19, 1.

²³ G. Pasqui, *Città, popolazioni, politiche* (2008).

²⁴ G. Paba, *Corpi urbani. Differenze, interazioni, politiche* (2010).

quinquies, paragraph 8). Although the matter has passed into the sphere of regional legislative competences following the reform of Title V of the Italian Constitution²⁵, this relation between private spaces and public spaces is still regulated by a ministerial decree.

Specifically, the Ministerial Decree of April 2, 1968, no 1444 connects the settled number of inhabitants to the minimum equipment of public spaces or minimum spaces reserved for collective activities, and, more precisely, it requires 18 square meters of public spaces for every 80 cubic meters of construction. Of course it is a rule that suffers and has suffered many derogations, especially in intensively built areas or in the ancient units²⁶. Moreover, it has to do most of the time with spaces that have been badly planned or designed, or managed even worse. Then, today, those spaces are drastically reduced or altogether cancelled because of lack of necessary public funds. It has evidently to do with an anachronistic solution that now is in crisis because it does not take into account the complex factors that have meanwhile emerged in modern society. It above all establishes a merely quantitative reserve of spaces that has never guaranteed their correspondence with the real needs of the community, nor their real realization²⁷. This quantitative and hierarchical, centralist setting must be replaced by a polycentric, qualitative and relational logician contained in the concept of the urban welfare here put forward.

But the need for a change of perspective originates itself from the above-mentioned factors that are causing a crisis of the urban environment and consequently of the physical and social liveableness conditions of citizens, particularly the disadvantaged population groups. The urban welfare, understood as a set of conditions that allow citizens and community to "feel good" on their territory, depends on the existence of conditions that guarantee full access to local resources and play on the communities and citizens' capabilities in their maintenance and care. In fact,

²⁵ According to the art. 117 of the Italian Constitution, every matter that is not directly and explicitly assigned to the State, is to be considered under the sphere of the regional legislative competence.

²⁶ See. P. Urbani, S. Civitarese, *Diritto urbanistico. Organizzazione e rapporti* (2010), 90.

²⁷ P. Stella Richter, *Diritto urbanistico. Manuale breve* (2010), 55.

[the] town planning increasingly appears as a set of practices that support the "capability" of communities to "feel good" on the territory. A double capability. A social capability, that sparks complex relationships with the context and the claimants, aimed at a reciprocal learning, full of responsibilities, lightweight, that aims at taking care of things and to show concern for the others. An institutional capability, made up of institutional competence, technical capacity, promotion of inclusive processes and research of bonds with national policies frameworks from the "local"²⁸.

Therefore the city and its public and private institutions must give citizens the opportunity to take care of their own city in first-person²⁹. This opportunity can help citizens to improve their individual and social capabilities and to build social cooperation, reciprocity and solidarity networks³⁰. That "person flowering" Sen considers to be the real heart of "happiness" is the only value you must measure to test the real community well being. It can be reached prearranging conditions so that citizens (especially those of younger age) can freely and individually choose to take charge of taking care of, protecting and preserving the common goods of a city, for the whole community and for future generations. According to Sen, justice does not depend on treatment reserved to individual by the institutions or by political power. But it derives above all from the «ethical and cultural ties that unite the individual to society and create what is called atmosphere of freedom, the overall environment in which individual choices make sense»³¹.

The development of individual skills becomes more important than the rules, procedures and institutions aimed at guaranteeing the fair treatment of individuals. If you really want to get justice you need to guarantee this "atmosphere of freedom". Then you need to pay attention to the social and cultural activities that enrich and do not depress the skills necessary to pursue individual choices, functional to individual's personal projects and expectations. Only in this way he

²⁸ A. Belli, *Editoriale*, cit. at 18, 2.

²⁹ A. Amin, N. Thrift, *Città: ripensare la dimensione urbana* (2005); M.C. Nussbaum, A.K. Sen (eds.), *The Quality of Life* (1992).

³⁰ U. Mattei, *Beni comuni*, cit. at 3; S. Bowles, H. Gintis (eds.), *A Cooperative Species. Human Reciprocity and Its Evolution* (2011).

³¹ N. Urbinati, *Liberi e uguali. Contro l'ideologia individualista* (2011), at 29, citing A. Sen, *Capability and Well-being*, in M.C. Nussbaum, A.K. Sen (ed), *The Quality of life*, cit. at 29, 30-66.

will be aware of his possible unease and what he needs to overcome it³². In this perspective, poverty exclusively does not depend on income, but above all the tangible and intangible actual resources of which the individual needs in his society to achieve the above-mentioned true well-being. It is possible through his action capacity³³. So the government and the civil society must encourage the culture of individuality through policies that aim at correcting the social and material inequalities that market generates, by incentives or interventions³⁴. Therefore it becomes important to verify the existence of an individuals' effective capacity to operate with autonomous responsibility in the society they live. You must begin to think that «political democracy and civil rights get freedom of other kind to grow [...] as well as the economic one, because they give voice [...] to people who are in condition of poverty or are more vulnerable»³⁵. This is necessary to foster the full development of social welfare.

3. The principle of “horizontal subsidiarity”, or “sharing” as the cornerstone of a new urban welfare

Then, among "freedom of other kind" you also must include those that prepare citizens for sharing and reinforcing ties in the civic care of common goods. If these are impoverished, they impoverish everybody and if they are enriched, they enrich everybody³⁶. But you must be aware that most disadvantaged lower classes in the immediate future suffer the effects of the dissipation of common goods. Common goods and social cooperation ties reinforce the commons, and they represent for the weakest and poorest people one essential base of support. Consequently, their eventual destruction or degradation can mark the transition from a situation of poverty to no survival conditions. So, even with the same income, citizens living in an area lacking in common goods are poorer than citizens living in an area rich with common goods. Now, the adoption of this perspective in relation to the urban welfare must aim at enhancing the close relationship that can exist between quality

³² A. Sen, *The Idea of Justice* (2009), I-27.

³³ A. Sen, *The Idea of Justice*, cit. at 32, 253-60

³⁴ N. Urbinati, *Liberi e uguali*, cit at. 31, 35.

³⁵ A. Sen, *The Idea of Justice*, cit. at 32, 253-60348.

³⁶ G. Arena, *Cittadini e capitale sociale*, Labsus.org (2007)

of the urban environment and everyday practices of use of its inhabitants and users. From this point of view, the community builds its "space of living" through its "use" of the territory that is a multiple and time-varying use.

According to Crosta, in fact,

certainly we do not edify the territory [t]hrough the use we make of it, but we build our "space of living" continually redefining terms of our relationship of use with territory, with all those like us use territory, and with the institutions, rules and habits that regulate territory use. [...] If we think of [territory] as our space-of-living, then we are dealing [...] with a heterogeneous space, the composition of which varies over time, in relation to type, methods and time of our activities³⁷.

So the quality of the urban space

does not depend only on the amount of equipment - infrastructure and services - present in an area and on the quality of projects and "objects" located on territory. It also and especially depends on relationships established between the material city and people who live the city and on concrete opportunities that city offers to the people about "living" the city. This refers to living the city well, daily, according to citizens possibilities and needs and making it their own, transforming and adapting it to their own conditions and tangible and intangible requirements. In this direction, you advance the idea and the possibility of an "urban welfare" which focuses on a wider conception of goods and conditions that support the capacity of communities and individuals to "feel good" in the city. This conception in particular includes spaces and practices of active citizenship, understood as activation and responsibility from citizens about forms of care and common goods treatment. In a more broad sense, it has to do with routine and daily behaviour, through which all subjects can more take part in the urban life and they can reach well-being generated by the city material, social, cultural "space"³⁸.

The "public care" of these goods, mainly left in the local public authorities' care, is revealing itself insufficient. This is for economic reasons, arising from both the progressive reduction of public financial resources and the poor ability of public administrations to diffuse collective intelligence. This means poor ability to systematize the legacy of knowledge and competences present in society and get the various civic energies to cooperate with each other for the care of these local common goods.

³⁷ P. L. Crosta, *Di cosa parliamo quando parliamo di urbanistica*, in M.C. Tosi (ed.), *Di cosa parliamo quando parliamo di urbanistica?* (2006), at 93; Id., *Pratiche. Il territorio è "l'uso che se ne fa"* (2010).

³⁸ Bellaviti, *Disagio e benessere nella città contemporanea*, cit. at 19, 3.

Therefore it is necessary to mobilize further additional and not replacement resources beyond the public ones. According to the art. 118, last paragraph of the Italian Constitution³⁹, this "added value" research is addressed to society, organized or not. And this is possible within a projected and coordinated fight against the degradation of urban common goods and in favour of goods "civic care"⁴⁰. It is equally essential to research the tools and facilities which can facilitate this change of philosophy centred on exchange, co-operation, systematization of all participants in the shared care of spaces and urban services of common interest. It has to do with the public ones, provided with powers, resources and necessary means for the proper care of common goods and the civic ones, available for implementing their energies, resources, knowledge and skills to take care of community goods.

4. The civic care of urban spaces

The civic care of urban spaces should be based on four lintels, which represent the action lines you have to undertake at the local level in support of redevelopment of such goods and to change route of de-gradation and civic disaffection. These actions are characterized by a different degree of practicality and they bear on sectors/different objects (training, communication, regulation, urban environment redevelopment).

4.1 The shared care of urban spaces

The first line of development recorded in these recent years involved the implementation of regulations for the so-called small-scale projects, concerning urban fabric or local interest⁴¹ and the wide-scale diffusion of forms of urban green spaces civic adoption⁴². Lastly, there are various initiatives, developed at the

³⁹ «State, regions, metropolitan cities, provinces and municipalities promote the autonomous initiatives of citizens, both as individuals and as member of associations, relating to activities of general interest, on the basis of the principle of subsidiarity».

⁴⁰ G. Arena, G. Cotturri (eds.), *Il valore aggiunto. Come la sussidiarietà può salvare l'Italia* (2010).

⁴¹ C. Iaione, *Microprogetti, storia di silenzi tra assenti e rigetti*, Labsus.org (2009).

⁴² V. Taccone, *Quelli che il parco*, Labsus.org (2011) as well as M.C. Marchetti,

municipal level, to foster urban creativity through temporary custody of the so-called "legal walls" for young members of street art. Let us pause over the first proposed regulator schedule because it represents the only model has been entered in the state ordinary legislation. The small-scale projects are the directly enforceable administrative tool of the constitutional regulation contained in art. 118, last paragraph. They are also provided and regulated in the art. 23 D.L. November 29, 2008, n. 185 converted into law January 28, 2009, no. 2. According to this law, groups of "organized citizens" can formulate to the authorized territorial local authority operative proposals for the realization of local interest and easy practicable works, without any burdens for the authorized territorial local authority.

The costs necessary for the formulation of the proposals and realization of the works supported by proposers are allowed as an income tax deduction up to 36%. If this tax reduction is possible, it is valid to wait for the implementation of fiscal federalism, which will allow the deduction from tax of authorized authority⁴³. The small-scale projects represent a model to start a civic regeneration of urban spaces because they allow citizens to directly take action to solve the problems of the local community or neighbourhood in which they live. Citizens can organize themselves into groups, temporary and without permanent organization too, to do care for local common goods. The positive effects of this tool are not limited to direct realization of the carried out small-scale project (e.g. redevelopment of a degraded urban space). First, they have pedagogical and ethical effects. In this kind of initiatives that applies the principle of "horizontal subsidiarity", he who takes part in this kind of initiative realizes he is not anymore a simple passive citizen who suffers from the obligations and prohibitions of administration. But he starts to become aware of his ability to be a citizen who is individually more responsible in his daily life (e.g. adopting lifestyles that minimize the cost for the community, such as shared mobility and waste separation). And then, he realizes he can be a citizen who can offer knowledge, skills, resources and solutions to the administration. So those who get involved in urban small-scale projects become better citizens because they become more caring towards their city's

Nuovi spazi pubblici: il verde come bene comune, Labsus.org (2012).

⁴³ S. De Santis, *La detassazione dei microprogetti di interesse locale*, (2009) 17.

problems and more willing to help the administration in the care of local common goods. Then, these initiatives propagate multiplier positive effects and imitation; participants are affected by the initiative through a fostered sense of community, and non-participants (i.e. other inhabitants of the neighbourhood and other citizens) are also encouraged to join. If municipality workers or employees constantly set right the urban decline situations, citizens are not inclined to protect the fruit of the municipal intervention, as it would happen just as easily if other citizens directly invested their time and resources.

Moreover seeing some people who take care of the local common goods can also induce other citizens to take initiative in protecting and caring for the same or other local common goods. In turn, the local authorities consider the citizens no longer bearers of problems and complaints, but allies willing to cooperate to solve general interest problems for the local community.

First, from a more strictly legal point of view, the authorizing mechanism and its possible limitations must be identified. The law creates a mechanism of tacit refusal, according to which after two months following a submission of the proposal from organized citizens «the proposal itself will be rejected. Within the same time-limit the local authority will be able to arrange the go-ahead of proposals made under the paragraph 1, by reasoned decision and also adjusting the essential stages of the implementation and the execution time process». In any case, the small-scale projects cannot repeal in part to planning instruments in force and safeguard clauses of adopted planning instruments. These projects are also subject to the consent of the authorities responsible for the protection of sensitive interests (e.g. art history, landscape and environmental conservation).

However, from the operational point of view the local authorities first "can" and actually "must" adopt a special regulation to regulate the activities and procedures relating to the realization of small-scale projects. This is necessary to implement the ordering of the small-scale projects. The adoption of the regulation is not compulsory. The regulation could be replaced by a framework act of the Municipal Council that regulates administrative procedures and structures for its implementation, playing directly on the national disposition. In single instances, the local authority provide for adopting an "approving reasoned decision" of proposals submitted

by citizens. This decision must regulate the essential stages of the implementation and the execution time process and, if necessary, it must involve other individuals, authorities and concerned offices, and in addition provide assistance and prescription. Anyway, for the success of this policy, both the work of organization and communication and training within the administrative structures of the local authority will be crucial. This is true because it has to do with a cross and innovative, strategic policy. It is cross because it puts itself at the crossroads of different local administrative functions and therefore it requires a unique flexible and lean control room, (out of department office, purpose temporary office etc.). This control room must be as much as possible in contact with the political and administrative leadership of the municipal administration and it must be able to communicate, interact and relate with the various departments and offices of local administration.

But, above all, its innovativeness requires administrative staff equipped to communicate with citizens in a collaborative, flexible and not formalist way. Therefore it must be able to give up the traditional scheme in which the administration interacts with citizens in an authoritative, hierarchical, rigid and formalist way. However, at the same time, the administrative staff must have appropriate qualities and capabilities to facilitate civic dialogue, leadership and authority. So, their aim is following and going through these projects and their promoters. This activity will require very careful selection and training of personnel who will be put at the head of the implementation of this policy. The Italian regional administration also can play an important role in encouraging the diffusion of this administrative tool. In fact, a major obstacle to the start-up of small-projects is the "brevity" of the law. At present, the Italian regional administration also can do nothing and lets the scope of application of the national law execute itself through mere local regulatory intervention. However, the Italian regional administration may "extend or reduce the scope", better defining the type of intervention you can propose, field and limit, and it can also clarify the nature of the private proponents, generically defined as "groups of organized citizens". It is not clear whether it can modify the procedural mechanism of rejection by silence. On the contrary, the principle of the deduction is mandatory. Finally, the Italian regional administration can approve,

by municipal resolution, guidelines broadly containing criteria for regulations that are semi-binding on the local authorities or a type regulation that local authorities can accept or adapt to their needs.

4.2 Public-civic partnerships (PCP)

The second line of intervention should aim at favouring the creation of forms of public-private non-profit partnerships for the protection and care of the local common goods. The reference model should be found in the American experience of Park Conservancies (from now on called “pc”) or Business Improvement Districts (from now on called “BID”). It involves contractual or institutionalized forms of collaboration between different local stakeholders (i.e. individual or institutional philanthropists, associations, NGO, local businesses, citizens, residents, merchants, estate landowners etc.) and with local authorities. Pc must be created with donative NPO, that is, non-profit organizations originally established through the initiative of informal groups of citizens interested in taking care of a particular local common good - such as "friends of the xxx park". These organizations subsequently structure themselves in a formal way, creating a legally distinct subject with the aim of collecting donations in favour of the common good in question and systematically organizing the civic, voluntary initiatives for the management of the local common good. In this case, the responsibility of those who manage the NPO is primarily on active citizens and donors. In fact, if the common good management does not achieve significant results in terms of quality, the pc will suffer in reputation and therefore it will not be able to mobilize civic resources; in addition, it will not see renewed confidence in the "donations marketplace". In other words, poor quality of management automatically translates itself in a reduction of civic participation and an inevitable decrease of donations. For this reason and in favour of this model's success, it becomes critical for the pc to get full physical, management and financial availability with the local authority, through a management agreement. Above all, it is crucial to reassure that the current level of public financial resources intended to the considered common good will not be reduced. The public support reduction usually has negative consequences on those who become active to add time or economic

resources to public powers and not to substitute or relieve the public authorities from their duties and responsibilities. BID must be commercial NPOs, that is, non-profit subjects (generally through public law) originally established due to the will of a qualified majority of estate landowners in a given area to provide additional services to the neighbourhood. During the start-up, the BID activities are financed by an extra fee for all owners included in the BID. But their success in the long-term depends on their ability to generate income, through fees on consumption and proceeds deriving from rental of areas for events. Therefore, in this case, the primary responsibility is to the market. In fact, a poor management of the common good will lead to a reduced income capacity that would prejudice the funding of the activities necessary to ensure care, conservation and valorisation of the local common good.

According to a first approximation, the above-mentioned two forms of organization could be taken in Italy through the establishment of involvement foundations⁴⁴ with conditional gifts ex art. 793 c.c. The latter provide the opportunity to impress on the disposal of property a specific purpose by apposition of a burden, but they do not provide the property separation (see art. 2740, paragraph 1, c.c.), or by assigning to the foundation the trustee role, what would guarantee the property separation.

The New York Foundation may represent a useful model to experiment. But it involves the traditional model of community or allocation, being tested by some foundations (see Cariplo Foundation⁴⁵ and Foundation for the South) in the social services field. In this case, the foundation, created especially for the protection of the common good, would not directly manage the commons, but it would restrict itself to intermediating. So its aim will be to finance projects for the common good care by single citizens, groups, non-profit organizations present in the territory. This is possible through resources derived from the property income or from special funds containing movable and immovable property,

⁴⁴ See A. Police, *Le fondazioni di partecipazione*, in F. Mastragostino (ed.), *La collaborazione pubblico-privato e l'ordinamento amministrativo* (2011), at 39.

⁴⁵ The Cariplo foundation is an Italian foundation that promotes the activities of the "third sector"; NGO's, cultural association and so on. The Foundation for the South is an Italian foundation that funds projects promoted by association or other entities that aim at developing the socio-economical situation of Southern Italy.

objects of donation or other disposal of property.

4.3 Everyday subsidiarity: the control of individual behaviours, habits and urban civic duties

The third line of action should have object nudges (that is incentive administrative measures)⁴⁶ or, better still, policies to empower citizens in the care of the general interest and therefore of common goods. It has to do with what elsewhere is called the "everyday subsidiarity"⁴⁷. It must be part of the so-called "communication of citizenship", that is an administrative strategy not based on the exercise of administrative authoritative powers, but on actions aimed to convince citizens to share the effort necessary for achieving targets of general interest through their behaviour or their resources⁴⁸.

In other words, can the citizen that saves energy, makes a sustainable use of water resources, follows the rules of waste separation, chooses public transport or shared mobility rather than private means, keeps his property in good condition (e.g. he restores the façade; he cleans or clears the sidewalk from waste, debris or snow; he prunes trees that threaten to damage public roads; he disposes of dead leaves that could cause a fire or that obstruct rainwater drainage channels; etc.), be considered a citizen who plays "activities of general interest, on the basis of the principle of subsidiarity"?

Consider the citizen who in his private life or in the private goods management has a good behaviour directed at reducing or even eliminating the "collective problems" (or rather, for the community) and consequently contributes to reduce/eliminate the need for organizing a public response. Can he be considered an active citizen who must be "facilitated" by the authorities? Or, looking at the phenomenon from an opposite and inverse point of view, can you speak of real civic obligations of the owner or the "private citizen"?

You can argue that in some cases it has to do with

⁴⁶ R.H. Thaler, C. R. Sunstein, *Nudge: Improving Decisions About Health, Wealth, and Happiness* (2008).

⁴⁷ C. Iaione, *La sussidiarietà quotidiana*, Labsus.org (2010).

⁴⁸ G. Arena *La funzione pubblica di comunicazione*, in G. Arena (ed.), *La funzione di comunicazione nelle pubbliche amministrazioni* (2004), 69.

behaviours already required by law, but in other they are irrelevant conduct by law and it would be good that they remain in that way. Someone else could argue that there is any subsidiarity in the action. It is valid at least until the public authorities do not really try to establish an alliance with the citizens in order to protect the public interest through better governance of private property or individual conduct.

Some of the cases shown could fall under the civic principle of *neminem laedere* (ex art. 2043 c.c.). After all, you can speak of non-contractual liability if you do not shovel the snow on the sidewalk in front of your house. In some cases or ordinances, these could be considered as fixtures and there could be negligence if someone slips on the sidewalk (see the case *Soederberg vs. Concord Greene condominium Association*⁴⁹).

You could say the same thing if you were a farmer and you do not engage in proper "maintenance" of irrigation systems, which then leads to a train crash (see the case of the apple orchard of Merano⁵⁰). Similarly, if you were a landowner and you do not periodically clean the rainwater and spring water channels (see the landslide of Montaguto⁵¹ which for several months has blocked Puglia's rail links with the rest of Italy, or flooding of Sarno caused by the lack of cleaning of the channel system Regi Lagni by the reclamation consortium, however commissioned by the Italian region of agro-nocerino-sarnese⁵²). Here I am referring to the numerous hydro geological instability phenomena caused, as appropriate, by the lack of involvement or malfunction of those which at least in theory are cooperatives between the owners of areas that require coordination of public and private interventions for the soil defence, water regulation, irrigation and environmental protection— the reclamation and irrigation cooperatives⁵³. On the contrary, other cases, such as the failure to paint a facade or the state of decline and abandonment in which you leave your property, could fall within the Anglo-Saxon concept of nuisance. This refers to limitations on the use of your property (that is also in the Italian

⁴⁹ See <http://www.socialaw.com/slip.htm?cid=19699&sid=119>

⁵⁰ See http://www.libero-news.it/news/389717/Merano__agricoltura_troppo_spinta_tra_le_cause_del_disastro_.html

⁵¹ See <http://www.montaguto.com/modules.php?name=News&file=article&sid=724>.

⁵² Cfr. <http://www.cittattiva.net/?p=132>

⁵³ I. Salvemme, *La sussidiarietà nei consorzi di bonifica*, Labsus.org (2008).

Civic Code with illegal entries and the alleged damage). A very recent Freyfogle essay⁵⁴ is quite enlightening with regard to this subject. And this doctrine would be in correspondence with the art. 42 of the Italian Constitution, which establishes that private property meets its limits in order to ensure its social function. From point of view more oriented to subsidiarity, in my opinion, there is also a different possible configuration of cases in question. They could be incorporated as part of what I have initially defined “subsidiarity in small daily choices”⁵⁵. You think of the sustainable use of natural resources or energy, waste separation, urban mobility regulation that incentivizes collective or shared transport and disincentives private or individual mobility.

This last sector has also been the subject of a case study⁵⁶ around which you have tried to build an individual-based regulatory scheme. It is centred on individual behaviour to combat climate change with a grassroots strategy⁵⁷, without waiting for the leaders of the earth to agree on regulatory frameworks motivated by strong economic and national interests. Actually it has been shown that it is a paradigm concretely applicable also to other sectors⁵⁸. The simple rediscovery of bicycle, public transport, shared mobility and then sustainable mobility⁵⁹ or development of tourism spread in hospitable communities⁶⁰, renewable energy, local biological products, waste separation and more sustainable lifestyles valorisation, and so on, are all examples of how you can contribute to protect the general interest, by making small adjustments to daily life⁶¹. You can say the same if, in their everyday lives citizens, care about managing their private assets like their car, or the backyard better, to

⁵⁴ E.T. Freyfogle, *Property and Liberty*, *Harvard Environmental Law Review* 75 (2010) 95 and 107.

⁵⁵ C. Iaione, *Progetto “cambieresti?”* Labsus.org (2008)

⁵⁶ C. Iaione, *The Tragedy of Urban Roads: Saving Cities from Choking, Calling on Citizens to Combat Climate Change*, *Fordham Urban Law Journal* (2010) 889.

⁵⁷ F. Spano, *Cosa puoi fare tu per l'ambiente?* Labsus.org (2009)

⁵⁸ Under the label “Sustainability”, sections “Beni comuni” and “Società” of www.labsus.org categorize cases and materials that show the possibility of life in a sustainable manner in harmony with the nature and her community.

⁵⁹ S. Chiaramonte, *Una giornata con la famiglia Attiva* Labsus.org (2010) available at www.labsus.org.

⁶⁰ V. Taccone, *Albergo diffuso: la vacanza è sostenibile* Labsus.org (2011).

⁶¹ M. Pistilli, *Un anno di greenMe*, Labsus.org (2010).

improve them or correctly preserve them, so that they give a benefit or do not cause damage to the community and therefore to the general benefit.

Ultimately, each of us, in obedience to the rules of good civic behaviour in their private life, both with regard to the use of private property and to the use of public goods, can make its contribution to protect the "general interest, or better, using more common terminology, the common goods"⁶². Citizens can become the best allies of the government.

But the alliance only can exist where there is "individual social responsibility". In fact, all of these behaviours are based on the assumption of responsibility towards others and towards the common goods⁶³. These citizens feel that they are responsible people, not in the punitive sense of the word, but in the accountable sense. It has to do with citizens who feel invested with power. This power will provide answers to collective problems with individual behaviour in everyday life and is mostly borne out of the private sphere. Gregorio Arena has shown how the subsidiarity also implies a social individual responsibility, because it is based «on the assumption of responsibility by citizens towards the common goods, of which they autonomously decide to take care with the administration. In other words, it can be said that active citizenship is the assumption by individuals, alone or together with others, of social responsibilities, that is responsibilities towards the community»⁶⁴. In this case the responsibility is confirmed day by day, and it is implemented in the private sphere even if it bears on the community to some extent.

Also in the case that an alliance between public authorities and citizens is realized and, in our view, is implied by art. 118, last paragraph. In fact, according to the paradigm of everyday subsidiarity, citizens decide to take care of the common goods through everyday behaviours directed at minimizing collective problems or the costs reduction for the community that generates a need to organize a public response. But the public authorities do not suddenly stop taking care of such common goods. Indeed, the

⁶² See G. Arena, *Beni comuni*, cit. at 12; C. Donolo, *I beni comuni presi sul serio*, Labsus.org (2010); C. Iaione, *L'acqua bene comune*, Labsus.org (2010).

⁶³ M.C. Marchetti, *Sviluppo sostenibile? Dipende da noi*, Labsus.org (2009).

⁶⁴ G. Arena, *Responsabilità sociale individuale*, (10 March 2007), available at www.labsus.org.

public authorities find unexpected allies in the citizens who decide to embrace the everyday subsidiarity. If you want, it is a form of spontaneous and informal alliance.

It is possible and desirable that real civic duties arise from the introduction of responsibility policies based on the everyday subsidiarity. On the contrary, these policies should be aimed just to become a source of legal production/protection of incumbent behaviours for the care of the common goods.

But how do you authenticate and thus promote the surfacing of an individual social responsibility in the everyday life? Sure, you might appeal to legal principles, more or less vague, more or less formalized in laws regulations.

For example, Fabrizio Fracchia has explained that a solid normative basis for the sustainability policies could be found in the principle enshrined in art. 3-*quarter* of D.L. no. 3 April 2006, n. 152. According to this article «all human activity legally relevant in accordance with this code must comply with the principle of the sustainable development»⁶⁵, in order to ensure that satisfaction of needs of current generations cannot compromise the quality of life and possibilities of future generations.

If we remember behaviour types exemplified at the beginning, we realize that it has to do with rules of behaviour that are the object of already existing habits. For example there are "decorations", that is, the improvements the owners have completed on their properties like painting of the facades for celebrations of the twentieth anniversary of the parish. The rules of conduct can be the object of "civic habits" whose training and implementation can also be "favoured". Therefore, the public authorities can induce them with formal regulatory frameworks (such as in the case of waste separation or public regulation of private mobility).

The habit is the source par excellence of "everyday subsidiarity" and so the "subsidiary right".

In my opinion, this type of subsidiarity predominantly must live in their customary laws. It is about individual behaviours that can be object of habits or social norms, as they call them in the USA⁶⁶.

In Italy, Fabio Merusi, already after the constitutional

⁶⁵ F. Fracchia, *Sviluppo sostenibile, dalla teoria alla pratica quotidiana*, in (10 August 2009), available at www.labsus.org; as well as Id., *Sviluppo sostenibile e diritti delle generazioni future* (2010).

⁶⁶ C.R. Sunstein, *Social Norms and Social Roles*, Columbia L. Rev. (1996) 903.

reform of Title V has caught the bond between subsidiarity and habits. In fact he points out how «recognizing the citizens autonomous initiatives, the principle of subsidiarity also recognizes a source of normative production from civil society and so a non-state source, therefore not connected to the codification logic». Merusi also has said that "[r]ecognizing that associated citizens can carry out general interest activities according to the principle of subsidiarity means recognizing the existence of a right alternative to the state one. As in this case, if it is favoured it means establishing that if there is a right produced by individuals, it cannot be replaced by the public one, unless it affirms its own exclusive jurisdiction»⁶⁷.

At this time, in the United States too, the social norms are the object of renewed interest by the law and economics and sociological doctrine. But the novelty of this approach is its connection with another line of research now in vogue, behavioural law and economics. In fact, the customary cases we are talking about (whether positive law or law in development phase) have a common feature, the effect of internalizing negative externalities. In other words, the economic costs produced by individual behaviour or general lifestyles generate a cost for the community and produce a general reduction in the collective welfare. Think of the increased quality of life (in economic terms too) and a more attractive local community where people adopt behaviours and lifestyles that lead them to take much better care of spaces, local public goods and private goods (as immediately repairing a broken window or immediately cancelling the graffiti on the building facade to avoid giving the impression that the breaking windows or doing other graffiti represent socially accepted behaviours and, therefore, not "expensive"). The reference to the broken windows theory of Wilson and Kelling is immediate⁶⁸. Another important aspect is the effect of greater social control that this regulatory framework involves. And, in fact, the field in which this theory has already given a good account of itself is just the community policing that has allowed the redevelopment of different American cities⁶⁹. This approach has been

⁶⁷ F. Merusi, *Il diritto "sussidiario" dei domini collettivi*, in RTDP 1 (2003) 77.

⁶⁸ G. L. Kelling, J. Q. Wilson, *Broken Windows. The Police and Neighborhood Safety*, Atlantic Magazine (1982) 29-38, which develop the intuition of J. Jacobs, *Death and Life of Great American Cities*, (1961).

⁶⁹ R.C. Ellickson, *Order without Law: How Neighbors Settle Disputes* (1991); Id.,

able to change attitudes and the role of the administration (in one specific case, the local police) as the citizens' administration⁷⁰. Exactly as Gregorio Arena hopes⁷¹.

Finally, a warning methodology follows. You must build the subsidiarity daily. Generally, the social norms prosper in "homogeneous communities" (close-knit). In order to build good civic habits in heterogeneous communities, like almost all communities in western and industrialized countries have become, you must necessarily resort to the "common good" methodology. This is not a fixed and unchangeable object or objective. Instead it is a dialogue and deliberative process in a dynamic and constant way that builds and rebuilds values and object-goods (tangible or intangible) really unifying the heterogeneous community. It has to do with the unifying values that may vary over time and space. From here, we need to investigate and delve into the institutions from which deliberative democracy originates⁷².

4.4 The public communication and the creation of local network via 2.0. The wiki-subsidiarity

The fourth and final course of action in the field of urban spaces could consist in public communication initiatives (advertising campaigns, promotional activities about events/fairs and reward tools) primarily directed to new generations of educators, public officials and citizens. Mounting stands at fairs could be part of this line of action, as Exposcuola, ForumPA, CompA⁷³ and other local or sectional fairs that include object professions and training of new generations (e.g. Young-Future

Controlling Chronic Misconduct in City Spaces: Of Panhandlers, Skid Rows, and Public-Space Zoning, Yale L. J. (1996) 1165.

⁷⁰ N. S. Garnett, *Private Norms and Public Spaces*, in "William & Mary Bill of Rights Journal" (2009-10), 183.

⁷¹ G. Arena, *Cittadini attivi. Un altro modo di pensare all'Italia* (2006)

⁷² G. Arena, F. Cortese (eds.), *Per governare insieme: il federalismo come metodo. Verso nuove forme della democrazia* (2011).

⁷³ Exposcuola, to foster the relationship between Expo Milan 2015 and the Italian schools, available at: <http://www.exposcuola.org>; ForumPA is an Italian consulting firm in the field of public administration, in particular: communication, innovation and change in the public administration.

for you⁷⁴). Moreover, reward tools could be also activated as the prize for the subsidiarity. Labsus has carried this out in collaboration with the Foundation for Subsidiarity and ForumPA.

Part of the instruments could include incentives and initiatives directed to solicit citizens' groups, associations, informal groups, cooperatives, schools and sports clubs to submit proposals in order to promote the leading role of civil society and citizens' involvement in the care of local common goods (e.g. "Reggianiperesempio"⁷⁵; "RAEEporter"⁷⁶). But this communication strategy primarily should aim at the implementation of all these logistics, communications and institutional tools, for the creation of local networks of citizens considered individually or jointly, committed to or interested in the protection of local common goods. This networking action heavily should invest in new technologies and social networks.

One possibility is to create maps of common goods (similar to the ones available at <http://www.use-it.be/europe/>; www.partecipedia.org) or platforms for sharing initiatives aimed at taking care of the local common goods (e.g. <http://my.barackobama.com>; <http://seedspk.com/>) or, finally, systems that involve citizens in monitoring the state and protecting the local common goods (e.g. <http://www.everyblock.com/>). Finally, the map could be translated into the creation of structures, research centers or local laboratories in order to facilitate and mobilize civic resources, as well as disseminate techniques/methods of public deliberation, participation and collaborative governance for the treatment of local common goods (e.g. Placemaking; Minneapolis Neighborhood Re-vitalization Program). In this regard, you have talked of "wiki-subsidiarity"⁷⁷. Always more frequently, you wonder

⁷⁴ See YOUNG, fair about orientation in the world of school and work, *available at* <http://www.udinefiere.it/099/youNG+2011>.

⁷⁵ "I reggiani, per esempio" ("The Reggio Emilia people, for example") is a project promoted by the Municipality of Reggio Emilia, which was founded in 2008 with the idea of discovering and bringing out the rich capital of the local community through a collection of stories and good practices of active citizenship and social responsibility. See <http://www.comune.re.it/reggianiperesempio>

⁷⁶ Foto RAEEporter (RAEEporter, in the edition 2010) is a campaign to increase awareness about the environmental importance of proper recycling of RAEE promoted by ECODOM in co-operation with Legambiente. See <http://www.raeporter.it/premiazione.aspx>.

⁷⁷ See C. Iaione, *La wiki-sussidiarietà* Labsus.org (2011).

about how new technologies and Web 2.0 can improve transparency, efficiency and democracy of the "public governance" of general interests.

There are minted evocative and fascinating linguistic forms such as "open government", "wiki-government", "wiki-cracry", "we-gov". The Obama administration in the USA⁷⁸ and the Cameron administration in the United Kingdom have made of them a workhorse to gain and maintain the confidence of citizens. The Ministry for Public Administration and Innovation tried to chase it but it did not go beyond the Italian traditional solutions. There have been only many beautiful words in a legislative corpus that largely remained unrealized in? a new bureaucracy. But none has yet asked how the "civic government" of general interests may be encouraged by the introduction of Web 2.0 tools. Therefore, in order to promote subsidiarity you must begin to think about using Web 2.0 tools. Moreover, there exist numerous contact points between subsidiarity correctly understood and Web 2.0. Both have the same morphology: they live if there is a network of individuals who do not only link the passive nodes, but also provide themselves tools to create a productive and active constant interaction. So it must be about active and not passive nodes. Both of them appeal to collective intelligence, that is that heritage of knowledge, learning, skills, and abilities widespread in society as in the Web and that are willing to join without a strictly individual profit. This is more evident for the Web 2.0 (you think of tools like blogs, forums, chat, and systems like Wikipedia, YouTube, Facebook, My-Space, Twitter, Gmail, WordPress, TripAdvisor) as for subsidiarity. We never cannot tire of telling this. The subsidiarity we speak about is based on supportive and responsible freedom of active citizens who decide to make their time and capabilities available to taking care of the general interest. These citizens decide to share with public authorities the responsibility for governing, by giving answers to community problems through small daily gestures, as well as through real systematic measures of civic care of the common goods. Therefore cooperation becomes an archetype of subsidiarity. In fact, the basic feature that subsidiarity and Web 2.0 share is the fact that

⁷⁸ On the mechanics of open government see http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment/.

cooperation between the various network nodes is incorporated in their DNA. Both of them live if network nodes cooperate, share, put together, collaborate, dialogue, face and act together. A common goal is established through a constructive and moderate comparison, the necessary resources are shared and the responsibilities are allocated in view of the common action. And, conversely, success as failure is shared in the resolution of community problems.

Cooperation from the bottom is increasingly necessary to solve problems and govern processes that public authorities are no longer able to face and solve. This often happens because of guilty inertia, sometimes because of evident inability or lack of resources, but more often because the problems are so complex, branched and rapidly evolving to prevent the public traditional administration from gaining any more skills, resources, knowledge or speed to provide an adequate response to the needs of an ever-changing society. It is the syndrome of the Red Queen: you have to leg it to stand still in the same place and you have to run very fast just to move.

Now, you cannot care about the reasons of this failure. Instead you must take up this challenge and opportunity. Citizens must do it, and there are many of them who are tired of seeing their city and their country languish and who think they have ideas, imagination and feeling for work directed towards the common goods. Moreover, many of them are not content with delegating the task of intermediating with the public administration to their representative for 4-5 years. This must be done by those politicians and those administrators who really want to work with a spirit of service to the citizen and develop innovative solutions to provide answers to the community problems and keep up with the speed of a society 2.0.

This will involve politics and public administration in urgently rethinking their role. They should turn from monopolists of care power for the community interests into managers of a "PA-platform" capable of supporting the shared, civic solution that contributes to general interest issues. Of course we speak about most of them and not all of them. The public monopoly of the public interest care is an atavistic tare that public authorities will have difficulty in shaking off. But you have to start trying, if necessary alone, even from the bottom. Web 2.0 can represent the way that citizens and local administrators can try to wake up even those who

now have the highest public responsibilities.

After all Web 2.0 is a formidable instrument of cooperation. In fact, it facilitates and simplifies the surfacing and organization of this feeling of shared care of the common goods. Web 2.0 may allow citizens and innovative public administrators to channel these civic energies, to direct them towards the right goals, to equip them with the necessary resources so that they can successfully complete episodes of common goods civic care. There are several tools that seem appropriate to support the aspirations of someone who wants to be an active citizen. These are tools that help you to associate temporarily or team up with other active citizens in order to offer a contribution to the community.

These tools allow citizens to return part of their time and resources, especially the intangible assets, to the community in which they live. They are also aware that individual success can never be completely separated from the context in which you live, grow and operate. The common goods that we have and the community that welcomes us, puts us up, cares for us, that is the land and people who allow us to lead a civil, healthy, prosperous life, full of those privileges that many communities in developing countries yearn for. It is a wealth that we take for granted and that we do not become aware of and take care of anymore. But if we do not change route, we will soon dissipate this wealth of common goods.

Then Internet 2.0 can substantially help citizens who want to spend their time to return anything to their communities. You range from sites which allow the sharing of good practice (Participedia; Civic Commons), knowledge (Code for America; Pro Civibus) or time and energy for the public interest (The Good Gym), to useful platforms to raise problems for the local community (ePart; Fixmystreet; Decor urban no; Police.uk), tools for geo-referencing of general interest activities or information (Ushahidi; Seedspeak; Fontanelle, C-Tag; Crowdmap; OpenStreetMap; Openforesteitaliane; Dating the change), sites for fundraising that can be used to provide means to take care of common goods (Eppela, Kiva, JustGiving, Kickstarter, Schoolraising; Zopa), up to real online communities designed to put in contact those who want to change things (Shinynote; Jumo; Developmentcrossing). There are also sites that promote the everyday subsidiarity (Zipcar, Velib, Snapgoods; Sharesomesugar; Neighborgoods; Tourboarding).

Therefore, you need a platform for subsidiarity 2.0. This is all the more true when you consider that real platforms for civic action are still rare, at least in the present state of our knowledge. You intend for these Web 2.0 tools that have been designed and engineered with the primary purpose of protecting citizens to cooperate for solving a well-defined collective problem or developing a particular common good, local or national. This is possible under the aegis of a public administration that wants to "help" the autonomous initiative of citizens to carry out general interest activities, through a Web 2.0 tool accompanied by online support tools in material reality, as required by art. 118, last paragraph.

Most likely Critical City approaches this type of instrument. This is a role-playing game designed to encourage young people to leave home, explore their own city territory, develop and implement small-scale projects of urban spaces care, learn and identify other citizens willing to work on the same project and thus also improve the social cohesion of the reference community. But in this case, the coordination with public authorities is lacking. Instead, Change by us NYC is the tool developed by the City of New York to allow citizens to share their ideas to improve the city and it prepares them to transform their projects into concrete actions with help of other citizens. Also Seedspeak seems to uphold the same philosophy.

In Italy, an experiment with characteristics close to our ideal has not yet been set up. It would be an institutional tool to allow civic meet up. Many people are already working on a web platform conception that aspires to offer a complete and unique answer to the needs and challenges posed by the wiki-subsidiarity. But will the institutions be able to take the opportunities that can further the general interest and the care of the common goods?

5. The services of common interest

The services that are of "special significance" for the local community can be considered real common goods⁷⁹. For example,

⁷⁹ In this vein, F. Trimarchi Banfi, *Considerazioni sui "nuovi" servizi pubblici*, Riv. It. Dir. Pubbl. Com. 5 (2002), 594, argues that "in art. 43 of the Italian Constitution the relevance of the activity as a service to the public come before the possible service assumption by the State of public authorities or users community' and she mentions D. Sorace, *Pubblico e privato nella gestione dei servizi pubblici locali*,

urban mobility, especially if it relies on public transport and sustainable mobility forms, such as cycling, is an instrument that improves the individual and collective well being of community's members, as well as a strong tool in the fight against inequality. But the same could be said for the shared management of other local public services such as water service or electricity distribution. The referendum battle on local public services management (from now on called SPL), ended with the net victory of "yes" in June of 2011, was played on the contrast between people in favour of municipality at all costs and those confirmed for privatization of services of general economic interest, that easily could be defined "services of common interest." Yet, the meaning of the first question was essentially to restore the liberty of local communities self-organization that has never been questioned by the European Union⁸⁰. Now, this freedom of choice has been restored also into the Italian legal system and you must begin to consider a "third way" with respect to the two types of management so far contemplated from national law and practice. In fact, between municipal socialism and town liberalism it is possible for a third way to develop the principle of "economic democracy".

5.1 The third way of non-profit utilities

The non-profit alternative is not unrealistic at all. Instead it is an operative solution practiced in many industrialized countries. For example, the majority of local public services in the United States are managed by this type of organization. And in Europe too, it is not rare that typically public local services, such as water, are managed by non-profit organizational models.

But what is a non-profit utility (NPU)? It is an organizational model, usually developed in private law, that: a) involves all stakeholders and, therefore, first of all the citizens, in the property or, at least, in the ownership of a SPL; b) does not provide an entire distribution of useful earnings to several members, but their almost exclusive reuse for the

Riv. It. Dir. Pubbl. Com. (1997) 52, who speaks about public services "in the metajuridical sense". See also F. Merusi, *Servizio pubblico*, in *Novissimo Digesto Italiano*, vol. XVII (1970) 219.

⁸⁰ See C. Iaione, *Le società in house. Contributo allo studio dei principi di auto-produzione degli enti locali* (2007).

strengthening/modernization of infrastructures and/or for the improvement of the service quality. According to the first point, it has to do with management forms in which citizens are no longer mere users because they are, although with different degrees, involved in the services management. You range from co-ownership of the infrastructures or individual who supplies the service, to collaboration in strategy and the evaluation of services, going through forms of direct or indirect representation, in the organs of government. In fact, where citizens do not own the NPU they are still the owners, in the sense that they are able to control and direct management decisions through the user community representatives or independent experts who sit in the NPU organs of government. Under the second aspect, in an NPU, rate receipts primarily are used to cover operational costs and debt financings costs (that is, payment of interests on financing for investments in network or service development). Instead, business net profit is not addressed to the dividend distribution except through a discount on the rates applied to citizens. In fact, in principle, profit is ploughed-back into the NPU to ensure the strengthening of the infrastructure, its modernization and thus its efficiency. On the contrary, if you analyze the budgets of of the big companies that manage networks for general interest services, such as highways, electricity and gas, in the last five years, you will realize that there is an almost total alignment between business net profit and dividend. This means that almost all the profit is allocated to shareholders' remuneration and almost nothing to network strengthening. This would not happen with an NPU. In the event that the profit exceeds what is required for these interventions' financing, it can be set aside as capital buffer to insure against the risk of unexpected costs, to keep down the cost of debt financing or for future development needs. The profit can be redistributed among users in the form of a rate discount (usually for weaker sections of the society only), or, finally, it can be used as aid for other general interest services, however characterized by a lower profitability. Ultimately, the reinvestment of profits clause for infrastructures' strengthening and modernization or for service in favour of users' improvement, along with governance mechanisms that ensure the representation of citizen-users in the SPL company, are the two load-bearing axes of a NPU.

5.2 The cooperation of users and communities

The NPUs have a theoretical framework that includes different organizational models. The examples and organization modalities can be classified into two big categories: users cooperatives/associations and foundations for SPL management. The first model was tested in Melpignano, in the province of Lecce (Region Puglia), where there is a community cooperative for the production of energy from renewable sources where partners are both the City and the citizens. These citizens contribute to the project by providing their houses for the installation of solar panels and they receive in exchange the produced energy at zero cost. The profits generated by the sale of surplus energy are reinvested in infrastructures and services for the local community.

In Italy there are also some examples in the water service management. Above all they are realities in mountain areas where the aqueducts were built and continue to be managed by a citizens' consortium. One of these cases is the Mezzana Montaldo Consortium in the area of Biella city (Region Piemonte), where there is the "Consortio Acqua Potabile" (Drinking Water Consortium) that manages the aqueduct in a non-profit organization.⁸¹

5.3 Foundations as municipal utilities

But, looking at larger NPU, the organizational model changes and it is very close to the foundations' one. The best-known example is that of Glas Cymru in Wales, which governs a water supply network that works for more than three million people. It is a company limited by guarantee, that is, a corporate company that does not have shareholders and that allocates each financial surplus for the consumers' benefit. In place of members looking for compensation of their holdings, there are "members" selected depending on skills, experiences and interests that allow them to perform effectively their role within the NPU. And the main task of the guarantee company members is to check the work of

⁸¹ In the German model, for instance, a foundation (*Stiftung*), can be directly created through a juridical act, the *Stiftungsgeschäft*; the personal will of the main founder is sufficient, while for instance in the French system, the will of the founder is not enough, there is the need to the public recognition of the public utility of the foundation. M. Sabbioneti, *Democrazia sociale e diritto privato* (2010) 545.

management is carried out in accordance with the highest corporate governance standards (it is precisely the “UK Corporate Governance Code” to which all listed companies must conform themselves). This happens in order to ensure the NPU a commercial performance, in terms of service quality and cost efficiency that is comparable to, and better than, those of other water utilities with shareholders. A panel composed of independent personalities from the NPU manages the members’ selection process in such a way to ensure that the structure reflects as closely as possible the range of consumers and bearers of interests served by the NPU. Members have the power to appoint and revoke three executive directors and six non-executive independent directors provided by statute. In the United States, the NPU system is even more consolidated. Many cities and states administer local services, such as the aqueducts and public transport. This is possible not by corporations (i.e. our Italian SPA), but by public authorities. They are nothing other than trusts, so very similar to our Italian foundations that do not provide for dividends. In New York, a trust of this kind is the Metropolitan Transportation Authority (MTA), the entity that manages public transport.

Trusts are private law instruments and the choice falls on them because the public organizational model does not favour funding through the debt financing. In fact, markets have difficulties in trusting opaque instruments such as public law companies. Therefore the NPU organizes itself according to the private law model, but has the sole objective of qualitative and efficient management of service and not of risk capital remuneration in the short term, through the sharing of dividends with shareholders, public or private.

5.4 Investing in NPUs

The repeal of a provision that has allowed the return of the invested capital in the water services management may discourage traditional private investors, who pursue an "adequate" financial return by the invested risk capital in the short-term logic. It is said in the absence of an adequate remuneration the risk is that you cannot attract the private capital necessary for infrastructure financing, while the lack of funds is just the problem of local services management in Italy. First, in many cases, individuals do not bear

their economic resources at all, but come into these management companies "in debit". In many cases the private managers resort to complex financial engineering operations to find the resources necessary for the modernization of infrastructures. They do that by loading down newly-acquired utility with the debt and, in the worst cases, they are forced to squeeze the utility with the distribution of very high dividends in order to repay the debt incurred with banks to acquire it. And, then, there is no reason that a NPU is unable to seek out the capitals market to ask for the funding of its infrastructure development plan through a credible project. Indeed, the International case study just shows that NPUs have big recourse to debt financing. Moreover, a non-profit organization can achieve better conditions just because it must reinvest all earnings by statute in the effective and efficient service management, not having immediate obligations of remuneration. However, there are investors interested in intervening in sectors or operations functional to create "positive externalities", such as transport infrastructures, production of energy from renewable sources, water, water and urban health infrastructures. They are, for example, sovereign wealth funds, pension funds, insurance companies or European banks, that is the so-called "long-term investors" (ILT). They do not invest in these sectors only for the social responsibility that in many cases is embedded in their mission. They do this because the sectors have huge development potential and because the risk is lower. However these individuals look for remuneration of the invested capital, and as a corresponding for lower risk they accept the prospect of long-term return. In short, the long-term investors do not pursue immediate and full remuneration of shares participation. In this case, the profit logic is consistent with the general interest mission. So you should see that at least in the case of ILT involvement the minimum remuneration of the invested capitals these individuals require to make available their capitals of long-term projects is possible. Alternatively, you should facilitate the meeting of NPU and ILT through the arrangement of financial instruments designed just for the infrastructure financing at the service of local communities. UE and ILT efforts go in this direction for creating project bonds⁸².

⁸² On 19 October 2011 the UE Commission adopted a legislative proposal to launch a pilot phase of the "Europe 2020 Project Bond Initiative". The initiative aims to

5.5 Freedom of self-organization of local authorities

The legislation on the public services management, repealed by referendum (article 23-bis of D.L. 25 June 2008 no.), did not prevent by itself the recourse to the NPU. As we said the Community legislation is less restrictive than the referendum object and now it expands again all its enforcement importance (cf. the Italian Constitutional Court., 2011, no. 24) and it does not interpose any obstacle to this type of management. In fact, the introduction of the NPU could have been theoretically pursuable according to the pre-existing legislative framework and it could be so depending on the European Community regulatory framework in force. You could and you can establish that individuals who participate in tender for the service award or the private associate selection of a mixed-activity holding company are also or even only non-profit. Moreover you can assign a higher score in the notice for competitions for a non-profit management structure. As a last resort, you could try to argue that the NPU is a form of management assimilated to in-house providing, because at the origin it shares the nature of the hypothesis alternative of "effective and useful recourse to the market."

It is important to remember that there is not a valid solution in all circumstances. The type of management to be taken greatly varies depending on the contexts and you must think about the type and size of the service. In this sense, abrogation of art. 23-bis⁸³ is very important just because it brings again the freedom of choice into the local services organization. Therefore, it also brings the possibility to assess which administration modality of SPL is more functional to needs of different local communities and different geographical, social, cultural contexts. Why change

revitalize and expand the capital markets in order to finance European infrastructure big projects in the fields of transport, energy and information technology. The advances of the initiative are published in http://ec.europa.eu/economy_finance/financial_operations/investment/europe_2020/index_en.htm

⁸³ The article 23 bis of the law n. 112/2008 is devoted to the local public services of economic relevance and is been declared illegitimate by the Italian constitutional court after the referendum of June 12 and 13, 2011. According to the second paragraph of the article, the management of local public services of economic interest could be assigned to private entities, to be selected through public contest or public/private company, with a private partner to be identified through public evidence competition.

where the public administration or the private administration have given a good account of themselves? After the abrogation of art. 23-bis a national legislative initiative had to follow. It had to be an initiative able to reconcile the different needs and motions, to stabilize the normative framework and, in particular, to introduce an independent authority for regulation and control of performances of various public, private, or non-profit administrators. In fact, the autonomy always must be accompanied by the responsibility. And then the goal of regaining freedom of choice for local communities must be balanced by direct regulatory instruments aimed at giving local public decision makers and service managers a sense of responsibility. In fact, freedom encroaches into arbitrariness and embezzlement if it has no limits and balances. Instead, a law has followed; it essentially confirms the previously in force regime and it reproduces the dichotomy municipalizing-privatization undamaged, with the exception of the integrated water service. But the referendum has had subject all the integrated water service.

6. The Collaborative City

The CO-City, a mechanism of commons-based collaborative/polycentric governance, has been put in place in cities throughout Italy. In a CO-city, collaboration is the central tenet of governance, and the commons are managed by the following groups acting in collaboration through an institutionalized partnership between the public, private, and the community: social innovators (i.e. active citizens, makers, digital innovators, urban regenerators, urban innovators, etc.); public authorities; businesses; civil society organizations; and knowledge institutions (e.g. schools, universities, cultural institutions). Such collaboration aims to foster a physical, digital, and institutional peer-to-peer (p2p) platform that has three main aims: living together (collaborative services), growing together (co-ventures) and making together (co-production). Notably, each field experiment must be molded to the unique needs and conditions of a particular city. The collaborative city was inspired by the experience of sharing cities, which have spread throughout the

world⁸⁴: San Francisco, Barcelona, Amsterdam among the others. The most famous and developed sharing city is Seoul, Korea, which has set up an infrastructure to encourage and facilitate sharing through its “Sharing City, Seoul Project”. From a regulatory and legislative perspective, the city has instituted the “Seoul Metropolitan Government Act for Promoting Sharing”⁸⁵. The act defines “sharing” as “the shared use of space, objects, or information to enhance their social, economic, or environmental values and to enhance the citizens’ benefits or conveniences” and provided incentives for sharing resources. It should be noted that there is a division between the sharing city and the collaborative city. The collaborative city is unique because of its fundamental underlying principle, that of public collaboration, whereby public institutions foster collaboration among citizens and between citizens and public administrations. An impact is expected on increase of social capital, satisfaction with democracy, sense of belonging to the community, and trust in institutions. Further, like with a sharing city, collaboration can be a tool to improve urban quality of life and access to the urban commons

The seminal example of the CO-cities project is CO-Bologna, wherein the City of Bologna developed “The Regulation on the Urban Commons”⁸⁶ for the shared management and development of Bologna’s “urban commons.” The regulation reinforces the significance of ensuring that (a) there is sustenance of and access to common resources, (b) there is proportionality in protecting the public interest, (c) the “differentiated” public can use common resources, and (d) urban creativity can grow by encouraging urban and street art and the digital infrastructure. The regulation specifically seeks to empower social innovation and promote the collaborative/sharing economy. The City of Bologna has recently begun to implement these regulations, as evidenced by a series of pacts of collaboration. According to the regulation, these “urban commons” include public spaces, urban green areas, abandoned buildings, etc.⁸⁷ Though, the “commons”

⁸⁴ Fifty cities around the world are members of the Sharing Cities Network. Additional information is available at <http://www.shareable.net/sharing-cities>.

⁸⁵ Seoul Metropolitan Government Act No. 5396 (31 December 2012)

⁸⁶ In full disclosure, this regulation was drafted by the author.

⁸⁷ “Real estate in the City, the buildings of which are in a state of partial or total

reach further in scope:

Urban commons are 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*.

The regulation, signed by both citizens and the city, aims to accomplish these tasks through collaboration between citizens and local administration and sets out specific standards for collaboration, regardless of its length, among citizens or between citizens and other actors, including local government. Further, the local government is required to provide technical support and other assistance in order to accomplish the development and management tasks. The regulation, ultimately, is a critical tool of legal experimentation in polycentric governance, using the urban commons as a starting point in the commons transition plan for Italian cities, in which collaboration is a central tenet of governance.⁸⁸ First, it allows citizens, social innovators, entrepreneurs, civil society organizations, and knowledge institutions to co-design along with the city in the care and development of the urban commons. Second, it aims to foster a burgeoning sharing/collaborative as it relates to the urban commons.⁸⁹ The structure of this system, that of polycentric governance of the commons, can create a culture of collaboration and foster creativity, create a more effective means of conflict resolution, regulate urban development, and reduce gentrification. This can be accomplished through the establishment of an “agency for urban communing” in individual neighborhoods. The city of Rome will likely experiment with this shortly.⁹⁰

disuse or decay...suitable for care and regeneration interventions.” Regulation Section 16.

⁸⁸ The commons transition plan was developed by the Ecuadorian Flock project, commissioned by three governmental institutions to transition Ecuador to a 'social knowledge' economy and society. http://p2pfoundation.net/Commons_Transition_Plan.

⁸⁹ The regulation itself has sections on “social innovation and collaborative services,” “urban creativity” and “digital innovation.”

⁹⁰ This is inspired by the experience of the temporary uses

6.1 An agency for a transition to a sharing/collaborative commons – based economy: CO-Mantova

CO-Mantova has also begun to develop a co-city mechanism to run the city of Mantova as a collaborative commons, made possible with the support of the city's Chamber of Commerce, the City, local NGOs, and knowledge institutions including the Mantova University Foundation and local schools. The city took its first step in the co-cities protocol by initiating a seeding call for social innovation titled "Culture as a Commons," which seeks proposals for the commons from social innovators. Its second step of the protocol involved a co-design laboratory, "Enterprises for the Commons." This laboratory developed seven projects and identified potential synergies for said projects. Third, it engaged in a governance camp to draft a pact for collaborative governance, a toolkit for collaboration, and a plan for sustainability. Finally, it has begun the final phase of the co-cities protocol, prototyping, by initiating a public consultation on these texts. It has also created a roadshow to publicize the CO-Mantova process throughout the city and, ideally, find support from signatories within each of the categories for collaborative governance actors. CO-Mantova developed a prototype for a community interest company, whose governance and principles are outlined in the pact for collaborative governance and the toolkit for collaboration. These include rules for collaboration among social innovators (e.g., meetings with creative and the community, citizen involvement, engaging new members, etc.); using CO-Mantova to foster physical and economic collaborative services, and collaboration between partners and external entities.

6.2 The trilateral collaborative urban plan: public, private and civic collaboration as a strategic innovation in urban development through CO-Battipaglia

The city of Battipaglia, in the Salerno province of Italy, has begun an collaborative process to innovate on urban governance through urban development and urban planning. This prototypes a collaborative urban development plan and the first Italian community land trust. The goal, therefore, involves a cultural

ZwischenZeitZentrale model of Brema. <http://www.zzz-bremen.de/projekte/>

transformation to encourage bridging the gap between individual and physical land ownership or territory. CO-Battipaglia aims to create a synergistic alliance between the state as the public sector and the state as a community, the public as a subject and the public as the collectivity. This urban governance strategy will substitute the current system of top-down regulation with one focused on urban planning, collaboration, and consultation with stakeholders. It aims to solve urban development issues through collaborative governance of the Battipaglia territory, seeking results that are agreed upon by all relevant stakeholders. Co-Battipaglia also aims to introduce the first Italian community land trust. Henry George is often seen as the father of the community land trust. George, a prominent economist and philosopher in the nineteenth century, influenced economic reform during his time. Specifically, in his book *Progress and Poverty*, George criticized the fact that landowners become wealthy purely through land ownership (i.e., charging rent to the poor), without undertaking specific activities on the land that benefit the community in any way.⁹¹ The wealthy accumulate land, while the poor must pay rent in order to occupy land. He proposed the idea of a single tax on underlying land value, that is, the value of the land without any additional improvements taken into consideration. This, in effect, George argued, would redistribute land to all.

George is often seen as deeply connected to the concept of community land trusts because he recognized that land is a basic necessity for every individual, and argued that private land ownership promotes suffering. Community land trusts, therefore, are “an attempt to reclaim collective ownership of the soil, and in so doing, reduce the unfair, artificially inflated cost of accessing land for basic needs.”⁹²

A community land trust⁹³ can be seen as a governance arrangement able to foster the introduction of a new conceptualization of urban development. The community land trust is a “social invention”; mainly, the initiative comes from neighborhood/community development organizations, designed

⁹¹ Henry George, *Progress and Poverty* (1879).

⁹² UN Habitat for a Better Future, *The Community Land Trusts: Affordable Access to Land and Housing* (2012).

⁹³ J. Meehan, *Reinventing Real Estate: The Community Land Trust As a Social Invention* *Affordable Housing Journal of Applied Social Science* 8 (2014) 2.

to solve problems with land ownership⁹⁴. The community land trust, created as the governance output of a process that introduces collaborative devices in the urban plan, can be a structure able to promote collaboration between the five actors of collaborative governance. The community land trust has a proud history of involvement of the community in urban planning strategies including less tangible results such as leadership development⁹⁵. The idea behind this is that the community land trust should be able to ensure successful affordable homeownership goals and, more importantly, contribute to other neighborhood improvements. The community land trust, in almost all cases, has influenced positive community change⁹⁶.

6.3 Collaborative urban mobility ecosystem: CO-Palermo

CO-Palermo, in Palermo, Sicily, has chosen urban mobility as a mechanism of introducing collaborative urban commons governance in the city and developing urban services of common interest. Services of common interest include urban mobility, insofar as it utilizes public transportation and instruments of mobility (e.g. bicycles). They are of “special significance” for the community—real common goods, and work to improve the individual and collective wellbeing. In 2011, the city of Palermo saw a battle over a referendum on the management of public services, pitting those in favor of municipality against those in favor of privatization of general interest services, or services of common interest. Ultimately, in June of that year, the referendum succeeded.

6.4 The CO-city protocol and the urban commons transition plan

CO-cities are differentiated from CO-Cities also through the methodological approach: the co-city protocol. The seeding phase

⁹⁴ J. Meehan, 113, *Reinventing Real Estate: The Community Land Trust As a Social Invention* cit. at 99.

⁹⁵ Karen A. Gray and Mugdha Galande *Keeping “Community” in a Community Land Trust* in *Social Work Research* 4 (2011).

⁹⁶ Karen A. Gray and Mugdha Galande *Keeping “Community” in a Community Land Trust*, cit. at 95, 4.

involves research and investigation into the socio-economic and legal conditions of a particular city. It also involves encouraging the development of social innovation and the urban commons in that city. Second, the co-design phase involves co-working sessions analyze the potential for alliances between projects for the city and actors in the city. This phase is a “collaborative governance camp” that ends in a “collaboration day.”⁹⁷ The collaboration involved here could involve civic festivals and other events that temporarily use abandoned buildings or spaces as a vehicle to experiment and collaborate on ideas. Finally, the prototyping phase leads to the development of governance tools given the city’s particular needs and characteristics. A governance tool used in one city can be used as a template in another city, but it should be molded to be a perfect fit for that city’s conditions. After the prototyping phase, an amplification phase is necessary, to spread the governance output and generate interest in the process among possible signatories belonging to the five categories of collaborative governance actors. In conclusion, the governance testing and modeling. These phases combine to create the CO-city protocol, which is built to foster innovation, sharing, collaboration, polycentrism, and the urban commons. The protocol requires experimentation, whereby the city is a laboratory of democratic governance that outputs innovative regulatory mechanisms. This can reduce citizens’ indifference and encourage active participation and satisfaction; in turn, the result of active citizen engagement, is increasingly effective policies⁹⁸. The protocol would help in implementing an “urban commons transition plan”⁹⁹. Such a transition is not immediate and requires a mental and cultural change of attitude, in addition to specific training. The shift could involve (1) a regulation or entity focused on encouraging the urban commons; (2) a sharing or collaborative economy via complementary currency systems, community

⁹⁷ “Collaboration day” is modeled off of “deliberation day.” B. Ackerman and J. Fishkin, *Deliberation day*, (2004)

⁹⁸ B. Geissel, *Improving the quality of democracy at the local level: German experiences*, Paper for the Conference “Quality of Democracy, Participation and Governance: The Local Perspective”- Castello del Buonconsiglio - Trento (2008).

⁹⁹ This idea was inspired by the Commons transition plan: <http://commonstransition.org/>.

interest companies and local development agencies; (3) social innovation to drive the city away from a system of traditional urban welfare to one of collaborative welfare; and (4) collaborative mobility and collaborative land use. Through these means, the CO-city can foster just the setting required for iterating on the collaborative/polycentric urban governance scheme—a “collaborative ecosystem,” or “wind gallery”¹⁰⁰. Experimentation itself is key to develop urban governance and its juridical structure, as well as a citizen’s right to his city¹⁰¹. The importance of flexibility must be stressed; experimentalism cannot involve rigid applications of models¹⁰². The governance structure must be able to simultaneously foster sharing, collaboration, and polycentricity, and adapt to the constantly evolving relationships among various groups in the city.

7. Conclusions: need for direction for the social innovation and the urban regeneration.

The ambitious project outlined here inevitably requires the identification of an individual who facilitates this organic program of urban welfare regeneration by civic maintenance of the local common goods. The search for a subject-pivot able to undertake the change here proposed, focusing on the exchange, collaboration and systematization of all participants heads in two directions. The participants are the public ones with power, means and resources necessary for good care of common goods and the social ones available to field their energies, resources, knowledge, skills to take care of the community goods.

On the one hand, you need to concentrate on observing the local public administrations that in recent years have innovated or are innovating their organizational structures in order to govern with the network. In this respect it is important to set up organizational units dedicated to the function of facilitation. It has to do with an organization of listening and dialogue in the same

¹⁰⁰ The “wind gallery” was the innovative solution introduced by the Wright brothers, that allowed them to successfully experiment the first controlled flight.

¹⁰¹ G.B. Auby, *Droit de la ville : Du fonctionnement juridique des villes au droit à la Ville*, (2013).

¹⁰² Arnold, C.A., *Resilient cities and adaptive law*, in 50 *Idaho L. Rev.* (2014).

local administrative machinery among its different aspects and above all with the outside world. It is important to set up organizational units dedicated to the structuring of stable alliances between these aspects and community, through its active or even latent resources.

First, you need a government control room in the network placed as close as possible to the apical functions of the local authority and, if it is possible, relating to interdepartmental coordination. It would be transverse to the typical functions for homogeneous sectors of the administration organized in view of the features and services offered rather than the demands of these functions and services, according to topic, rather than needs. And then it takes a structure dedicated to the institutional communication of this deep organizational innovation and administrative action. You think of a "URP (Italian Office for Relations with the Public) of the government with the network," a public relations office that wants to activate itself for the public interest, a structure that facilitates meetings between administration and active strong-willed, citizens. You need a structure that brings the distant and inattentive citizens to the shared administration, leading them up to the gates of "one-stop-shop for active citizenship" and does not discourage or frighten citizens and loads on their shoulders the task of simplifying the inevitable administrative complexity that the general model of care brings with it. Control room, URP and one-stop-shop of active citizenship are the three elements of organizational innovation that a local administration needs in order to be able to administer with citizens and not only for the citizens. It is no longer enough to organize venues for listening and for co-determination of public administration decisions. Although under this aspect you record interesting innovations, you are still under the old bipolar paradigm. Maybe it has to do with a more open administration, but it still has to do with an administration that aims to preserve the monopoly of the general interest care and to interpret the last will of people.

Otherwise, you must look outside of the institutional circuit. Under this second profile, it is reasonable to imagine that a very important role can be played by the disbursement foundations or communities and by foundations of banking origin. These social institutions have already effectively

interpreted in several instances the role of "subjects of social freedom organization" (cf. the Italian Constitutional Court, 2003, no. 300) and they have covered the responsibility for institutional investors in the social innovation at the local level.

Therefore foundations should become promoters of civic maintenance local plans of local common goods. For example, foundations could provide support for civic small-scale projects like street furniture in the context of their activities for the benefit of local communities. In particular, they could facilitate the implementation of the provision on small-scale projects in two directions. The main action might be to launch local notice of competitions for selection of some proposals about small-scale projects that have to be supported economically and administratively. In this way, citizens could also be relieved from the immediate outlay of the "expenses for the proposals formulation and works implementation " and moreover they could benefit from the tax breaks. As an alternative, foundations could avail themselves of the related tax break. Of course it has to do with verifying the feasibility of either solution under tax profile.

In a second direction, foundations could carry out an action of moral suasion toward the local public decision maker in order to approve the implementing regulations necessary to give effective and immediate operation to the model of urban governance shown here. Reputedly, you might also imagine creation of institutionalized partnership forms between the local authority and the local foundations, to put at citizens' disposal the administrative and economic reforms necessary for the implementation of urban design small-scale projects.

The national character does not conflict with the necessary development of local level actions that should implement it. It comes from two needs. The first is that you establish nationwide a pattern of action through definition of general guidelines and, therefore, there must be a minimum level of uniformity in the activities of different foundations. This is necessary both for subsuming the good local practices (today already existing in this sector), within a basic model built on the virtues and defects noticed at the local level, and preventing escape by single foundations which may expose the entire plan to responsibilities, claims, and expectations that would prejudice the plan's success.

Therefore it has to do with foundations as subjects of social innovation. The second requirement is to maintain at a central level monitoring and evaluation on possible inequalities that the implementation of a plan of this type could generate among different communities or territorial areas. The consideration of these inequalities could lead to the adoption of adjustment measures such as the creation of a “national fund for the civic maintenance of community goods”, with the financial support of the central institutions. All this cannot mean at all that you should do without of the public authorities’ intervention or their administrative and economic resources. Nor this can legitimize their retraction. In fact, the disappearance of the “public” would prejudice the ability to mobilize these additional civic resources you want to motivate for the care of the local common goods, with this action. A large part of society rightly does not intend at all to act in substitution of public authorities to facilitate their institutional tasks neglect.

In conclusion, is possible to outline a research agenda with one core hypothesis: we are undergoing a transition from a subjecting or competitive state to a sharing, collaborative, and coordinating state—the Ubuntu state. Once, the Leviathan, subjecting state governed over subjects with a clear divide between the government and the people. The competitive state outsourced services in a way that placed these services in opposition to one another. Now, there is a new morphology of the state rising. Both the subjecting state and the competitive state allocated and divided people, subjects, and interests. It is one in which citizens and government share a collaborative relationship and experiment and iterate in order to develop solutions for the common good. Sharing, collaborating, cooperating, and coordinating have become recurring themes of the Ubuntu state. Many may argue that the state's malaises are the result of decentralization or economic crises. However, I argue that problems with the state are fundamentally a question of the distribution of power. As a consequence, the research question that is behind the agenda is the following: can urban assets and resources or the city as a whole be transformed into collaborative ecosystems that enable collective action for the commons? The main question that the line of reasoning exposed in this paper try to address is if the State is changing its morphology and

transforming itself into a commoning/collaboration enabling platform. Thus, I argue that the driving factors in facilitating the rise of a new “Ubuntu state” can be pinpointed to three key variables: (1) knowledge; level of public investment on knowledge and education in the City, (2) willingness to collaborate, that is to say the attitude to common and collaborate measured through the existence of co-working/collaborative spaces or other collaborative projects or initiatives in the City, level of trust towards the city government and urban peers. and (3) technology, conceptualized as the access to technology infrastructure. Social capital, the existence of collaborative public policies and institutional capacity might also be variables that should be taken into account in order to understand if a process of State transformation is ongoing.