The concrete Utopia of the Commons.* The right of *Civic and collective use* of public (and private) goods

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The right of civic and collective use of goods pertaining to the enjoyment of fundamental rights. My thesis is that local authorities and the State are to be considered exponential bodies of a particular community. Meaning that the law residually may confer to them the care of the interests of the entire community. Thus a new concept of space emerges: the space of the *enjoyment of life*, instead of the space of the *government of lives*.

The demonstration is based on three juridical concepts. *The first*: the constitutionalization of private and public property. The Italian Constitution prescribes that private property is limited and functionalized (social function). Public property is the space and the natural means for the exercise of basic freedoms. *The second*: the theory of the commons or the reform of the Civil Code relating to public goods. A ministerial commission (Commissione Rodotà) declared that common goods «express functional utility for the exercise of fundamental rights and for the free development of the individual and are shaped on the principle of intergenerational safeguarding of their *utilitates*». *The third*: the collective rights. These are goods, public or private, subject to collective rights of use and enjoyment. The best-known legal form of collective right are the *Civic Uses* and the *Right to Public Use*. On these theoretical assumptions since March 2nd, 2012 in Naples
a community of artists and cultural workers is practicing the civic use of a public building translating it into a new administrative practice through the elaboration of the «Declaration of civic and collective urban use».

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CONSTITUTION PROPERTY
COMMON GOODS COLLECTIVE RIGHTS CIVIC USES

I. Utopia and dystopia

In the history of literature – both classic and modern – the utopian genre represents a reality inherently far apart from what is strictly real. Nevertheless, this separation does not produce a space of escapism; instead, it tends to generate spaces that are suitable for opposing reality, springboards for "storming" tangible existences. A u-topia, in facts, should not be confused with an a-topia. An a-topia indicates no place. U-topia etymologically means another-place. It doesn't matter whether this place is real or not. The important part is that the structure of this place should differ, mark a differentiation, therefore making it possible to think of an alternative. The subject of utopias is what may be "unthinkable" rather than what is "possible". A utopia allows thinking the impossible, and thereby prepares another possible world. This feature of otherness – good for both contrasting and taking distances – is typical of any political utopia. Let's think of Plato's *Repubblica*, Tommaso Campanella's *La città del Sole*, or Sir Thomas More's *Utopia*: all those Utopias are normative, they seem to be a paradigm used to interpret the existing historical realities through a thought capable of some distancing. It is, eventually, a critique of the material world meant to transcend it.

In order to understand the creative power of a utopia we might want to recall Plato's speech concerning the parity between men and women in the government of the Polis (*Resp*, V, 455d).

We quote here from Plato's *Republic*, where he speaks of women's role in the city government, in order to understand the creative power of utopia:

> And if so, my friend, I said, there is no special faculty of administration in a state which a woman has because she is a woman, or which a man has by virtue of his sex, but the gifts of nature are alike diffused in both; all the pursuits of men are the pursuits of women also [...] (V, 455d).

Dystopia, by contrast, starts from reality, as it is, immanent in itself. Then, upholding the ultimate consequences of some negative aspects of it, it shows all the possible forms of decadence. There is no distancing, but a total identification with the reality we live in. Dostoevsky's *The Grand Inquisitor*; Aldous Huxley's *Brave New World*; George Orwell's *1984*; we assist to projections of trends, of already existing possibilities of our reality.

When, for instance, O'Brien explains the relationship between party and power to Winston Smith, the protagonist of Orwell's novel, he is actually talking about us, he is speaking of a real possibility: «The Party – Orwell writes – seeks power entirely for its own sake. We are not interested in the good of others; we are interested solely in power». «The purpose of power is power» (Orwell 1984).

We must ask ourselves how the current organization of power recalls Orwell's description, in order to understand the critical – and potentially revolutionary – character of dystopias.

So, utopia and dystopia are two different devices of critique and reversals of reality. Utopia does transcend reality; dystopia plunges into it. And at the bottom of each one of them, we find its reverse/opposite: the other one. At the bottom of a utopia we find dystopia, that is, an immanent critique of reality. At the bottom of dystopia lays the desire for utopia, for another possible world. If, in short, utopia produces a separate location in space and time from the real, and

dystopia radicalizes the existing trends examining their final consequences, in both cases it is all about rethinking our world, in order to make a better one.

II. The Constitution of the Republic of Italy between utopia and dystopia

The dialectic between utopia and dystopia, meant as a device of creative criticism, appears not only in literary and philosophical texts, but also in the constitutional texts following WWII. A paradigmatic case is that of the Italian Constitution which – I recall now Piero Calamandrei's works – was designed in part as a program for the future and in part as a criticism, a polemic against the past and against the society it was supposed to regulate.

To confirm this, Calamandrei brings up the second paragraph of art. 3 of the Italian Constitution: «It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country», implicitly pondering the stagnant injustice existing in society.

A polemical judgment emerges, subtly touching the social order, which should be changed through the implementation of the new constitutional provision.

> Only when this point will be achieved – Calamandrei writes– we shall consider that the *formula* contained in art. I – "Italy is a democratic Republic founded on labour" – corresponds to reality. For, until there is a possibility for each man to work and study and safely derive from his labour the means for living as a man, not only our Republic shall not be called founded on work, but shall not even be called democratic, because a democracy having no equality in the facts, but only in its law, is a purely formal democracy (Calamandrei 2007).

The Italian Constitution transcends the existing social reality, orienting it towards a model of society based on the ideas of democracy and social justice.

That's a constitution preparing the way for the future, aiming to transform society. It entails a utopian somewhat, a new society where legal and political freedom shall no longer be made useless by the economic inequalities and by the dystopian tendency of a society of unequal subjects. 1

III. The constitutionalization of the right of property

Exemplary is the category of "social function", associated in the second paragraph of art. 42 to private property: «Private property is recognized and guaranteed by the law, which prescribes the ways it is acquired, enjoyed and its limitations so as to ensure its social function and make it accessible to all». Thus the property is both limited and functionalized, somehow oriented.

In limiting property, it expresses a critique of a "dystopian" society based on ownership and individualism; in functionalizing and orienting it, we see

1 The programmatic and formal set of the Constitutions of the twentieth century represents the basic dynamics of the "constitutional democracy". The overall structure of this work follows this current of thought. For general orientation on this issue, see: Azzariti (2010, 2013), Bellamy (2007), Böckenförde (2006), Bongiovanni (2005), Ferrajoli (2007, 2012, 2013), Fioravanti (2009), Luciani (2016).

how it projects the concrete utopia of a society founded on the quality of the human being and his or her manifestation through labour (art. 1: "Italy is a democratic Republic founded on labour").

It was, in fact, the "fight to the bitter end against the privilege" that brought together communists, socialists and liberals around a new concept of ownership.

Over the works of the Constituent Assembly, Togliatti – speaker in the meeting of the "Prima sottocommissione" on October 16th 1946 – with concern to the "principles of social and economic relations", argued that:

> In these times, it is evident how the struggle we lead is not against free initiative and private property of the means of production in general, but against those particular forms of private property that are able to suppress the initiative of large sections of producers and, particularly, against monopolistic forms of private property, especially in the field of public services – which tend to generate wealth concentrations that jeopardize the freedom of a great majority of citizens, and are therefore to be considered detriment of both economy and politics of the country.

The Catholic side also converged on this position, involved in inverting the constitutional design against parasitic properties, declaring – the words are those of the *democristiano* Guido Gonella – the will to fight «the selfishness of the plutocrats, the economic hegemonies, the financial and industrial baronies, any agrarian feudalism, all enemies of an equitable distribution of goods» (Speech given at the 1st National Congress of the Democrazia Cristiana, held in Rome 24th to 27th April 1946).

The importance of Article 42 of the Italian Constitution lies in having opened, constitutionalizing it, a new type of property resulting from a concept meant in opposition to the liberal one – for which the right of property was the very core of the system of the inviolable rights of the person.

In the Constitution the right of property is recognized and guaranteed in order to allow everyone to have the tools needed to perform his own social function, and it is never designed as the absolute limit before which the other must stop, but rather as the material basis for forging social links with freedom.

The constitutionalization of property, therefore, allows to «restore the centrality to the social bond, questioning the individualistic model although not denying the freedoms of each person, which shall acquire more effective conditions of expansion and fulfilment of the fundamental rights» (Rodotà 2013, 478).

Also the recognition of public property as sanctioned by the first paragraph of Article 42 – «Property is public or private» – is a criticism towards the past; this statement opens a controversy with the contemporary time in a perspective of "utopian" transformation of the social relations.

It should also be recalled, in facts, that the presence of public property in the Italian Constitution – a notion for a long time «loaded with darkness and reserves» (Giannini 1971, 451) – is coordinated to the achievement of a variety of constitutionally relevant purposes, like the purpose «to remove those obstacles of economic or social nature» (Art. 3 of the Constitution).

This means overcoming the descriptive approach of the Civil Code of 1942, still in force, which merely shows the property of goods, their ownership, either owned by the state-apparatus or privately. After a long process of learning that lies beyond the scope of the present contribution, we came to a judgment

that opens the way to a new legal and political imagery. In facts, according to the Italian Supreme court (Court of Cassation) it is necessary to integrate the provisions of the Civil Code with the constitutional ones:

> «it's no longer possible to stop, with concern to the definition of public property or state-owned property, at the examination of the legislation of the code of 1942, it is essential to integrate it with the various sources of law and specifically with the (subsequent) constitutional provisions» (Court of Cassation, Judgment 3813/2011).

Public goods, in this way, are confirmed to be the place and the natural means of exercise of the basic freedoms, constitutionally guaranteed, predetermining any private interest, and allowing the constitutionalization of the entire discipline of the right of property. (Esposito 2008, 57).

In this perspective, the statement "Property is public" is no longer merely descriptive, as it has been for many decades, but rather, as illustrated by Massimo Saverio Giannini, a polemic value, whose terms of regulation are duty of the ordinary legislator:

> a politically polemic value, against those conceptions according to which property would be the private property [...]. For what concerns the content to be given to public property it is to be understood that the constituent legislator sends back to the ordinary legislator that could therefore adopt or adjust in different ways the concept of public property: collective property of the whole community or of minor collectivities, collective property administered by the State or other public bodies, property managed by a public body but bound to the use of controlled private business, property of a public body to be used for purposes of its own (maybe direct manifestations of sovereignty, whether the public body in object is the State). In one word, various ways of organization and regulation of public property would be possible, as long as, according to the here suggested interpretation, we do not reduce it to some marginal significance of law on state property or right of property of public institutions (Giannini 1971, 453).

IV. A new paradigm

The constitutionalization of public property makes "possible" to link public goods to the rights of the whole community and makes "thinkable" an extraordinary function that the immense wealth of land, sea, nature can play, along with the immense monumental heritage sprouted from both genius and civic passion of our ancestors, and eventually make all this available to the community, in order to expand the democratic regime.

Thinking of the social function that these goods are expected to play, it is legally and politically possible to claim for their collective use.

It seems to be also possible to reverse completely the interpretation of the right of property that is provided by the constitution and, moving forward from this statement, to understand the public body not as an "exclusive" user of the good in object but rather as «its administrator, on behalf of collectivities or as concern of any public interest» (Giannini 1971, 451-453).

This trend seems to emerge from the most recent doctrine and latest jurisprudence, assessing that when it comes to public goods, the reference should be – rather than to the notion of "state-apparatus", (public juridical person individually understood), to the

> State-collectivity, exponential and representative body of the interests of the whole citizenship (community) and responsible body for the effective implementation of those (Court of Cassation, Judgment 3813/2011).

To support this assessment, according to the magistrates of the Supreme Court, it is the idea of a "necessary feature of the public goods" or even a "constitutionalization of the public goods and of the private ones".

For years, by now, even in the doctrinal seats, a line of research has been pursued which abandoned the paradigm of "public property" intended as *dominium*, to focus instead on the characteristic element defining the legal status of public goods: the relationship established between public goods and the community (Iannello 2012, 112).

A new formulation, in short, of the public property: no longer seen as an exclusive means of the administrative activity, but rather as a set of assets, which, *for belonging* to the local authorities – the wealthiest owners of our time (Giannini 1985, 103) – embodies «material realities attracting fundamental interests of communities, either partial or general» (Caputi Iambrenghi 1987, 305).

V. The reforming challenge of the Rodotà Commission

In this perspective is to be intended the action of the Rodotà Commission – established in June 2007 – as an attempt to "constitutionalize" the Civil Code through the juridical construction of the very notion of "Commons". [2] That reform attempt, while remaining unfinished at an institutional level, is determining a wide jurisprudential production and has been feeding, since the very beginning, a vast movement of public opinion and civic action that gave shape and substance to the very idea of Commons through countless experiences of re-appropriation of both public and private goods; they were subtracted to the on-going privatization processes or to the selfishness of the owners. The commons, the Commission declared, "express functional utility to the exercise of the fundamental rights and to the free development of the person, and are shaped on the principle of intergenerational safeguarding of the *utilitates*" (Rodotà Commission 2007).

2 For a general orientation concerning Commons and current tentative reforming actions of the right of property, see: Rodotà (2008); Mattei et al. (2012), Cassano (2004), Cerulli Irelli, De Lucia (2014), Maddalena (2012), Mattei et al. (2007), Pugliatti (1954), Rodotà (2013), Giannini (1963). For a general orientation concerning Commons and current temptative reforming actions of the right of property, see: Nestor (2013), Pomarici (2012), Coccoli (2013).

From this statement we derive that their function is closely linked to the exercise of sovereignty and that their utility corresponds to the constitutionally protected rights. The commons are beyond the appropriative conception – and one of their attributes is to be open to the enjoyment of all.

This means that – especially because a good is common – everyone can have access to it, but at the same time, although everyone has the right to access it, it is also true that everyone has the duty to respect that integrity which is consistent with the principle of "intergenerational preservation of the utilities". The nature of the common good is therefore not in contradiction with the nature of the ownership of the good in itself, whether public or private. In this sense, applying the concept of Common Good to Public Property may give rise to a "reinforced public regime".

To provide just one example, if we say that the cultural and environmental

heritage, protected by Article 9 of the Constitution, is a common good, then this means that – for its being such – its enjoyment cannot be taken away from the community:

> ...it is not in the right of the owner, either public or private, the power to exclude anyone from the access to those goods. Public waters, for example, for they are "state property meant for the satisfaction of the needs of the collectivity, must be open to the use of all citizens (Constitutional Court, Judgment 157/1973).

Contrariwise, applying the notion of Common good to any private good could mean binding it to the right for public use, highlighting or strengthening the social function that the constitutional provision reserves to it.

So, we can only partially assume the notion of Commons as a legal category, being the category itself still under construction and being we still far from a reform of the Civil Code. But, I think, we have the duty to take it as a cultural and political paradigm (Capone 2013).

VI. Collective rights

The very paradigm of the Commons, which in my opinion is legally justified in an extensive interpretation of the Constitution, allows us to "radicalize" the notion of "public property" through the recovery of the concept of the collective rights – that is to say one of the three types of "exception" by which we build the notion of public property. Public property is characterized by its 'derogative regime', being it an exception to the common law, ruling any private law relationship.

The first order of derogation is the notion of "exclusivity", stating that some goods belonging to the state property are inalienable and imprescriptible (Cod. Civ., Art. 823, 1145). The second order of derogation is the notion of "public destination", binding the public assets to the public utility. The third order of derogation is represented by the "collective rights", considered, by those looking at them from a perspective of desperate exaltation of the individual property, as the "*mater malorum*" (Grossi 2006, 26). These are goods, either public or private, subjected to collective rights of use and enjoyment, properties belonging to a "community of citizens".

There are several categories of collective rights, but all do share the characteristic of being open to both use and enjoyment by the community.

> Collective rights – in the beautiful words of Vincenzo Cerulli Irelli – are classified in several categories. Sometimes they concern private goods (rights of public use, *Civic Uses*) or any other property not belonging to the community as by the right of enjoyment and use (the good can also be public). Sometimes they give form to a domination status of collective ownership. Sometimes it comes to rights whose content is given in the enjoyment of *utilitates* not immediately capital, provided by goods of others (the passage, aesthetic enjoyment, etc.), but rather relatable to the scheme of the collective uses of public property for enjoyment and collective use. In all cases, despite their apparent diversity, the goods subjected to collective rights have two fundamental characteristics accounting them in a common type (The Commons, or public goods). Those are goods open to enjoyment and collective use, which can be regulated but not excluded (Cerulli Irelli 1983, 422).

The best-known legal forms of collective rights are the ones connected to the "Civic Use" and to the "Right for Public Use". 3

In the first framework we inscribe the rights of grazing and the enjoyment of the woods, as well as the collective management of some areas and natural resources. These rights, dating back to a time preceding the Roman law system, had a peculiar customary and statutory discipline that, despite having different origins and local habits, have been kept in the legislation until today. Just in 1927, by the Law n.1766 and later by the Law n. 97 of 1994, a reorganization of the civic uses occurred, bringing back this intricate legal matter under a single discipline.

3 Noteworthy for a framework on the issue of civic uses: Cerulli Irelli (1983), Di Genio (2012), Grazzini (2012), Grossi (1977; 2006), Marinelli (2013; 2015), Ostrom (1991). We also suggest - for the actions and contributions they host, concerning civic rights and participation in government and management of the Common - the following sites: www.usici-vici.unitn.it and www.labsus.org.

Thanks to these laws and to the most recent jurisprudence, it is possible to retrieve a more extensive notion of the civic uses, also allowing us to recover a valuable conceptual framework.

First of all, they are included in the public right matter for the fact of being linked by general interests «for the general interests related to them that the state considers deserving special protection» (Constitutional Court, Judgment 67/1957); Secondly, they are set in close connection with the constitutional principles; Finally, crucial is their link with the democratic principle of participation.

Through several judgments a close connection has been established between civic uses and constitutionally relevant principles, such as the «preservation of the landscape» (Constitutional Court Judgment 310/2006) and «the constitutional preservation of the environment, as by Articles 9, 32 of the Constitution» (Constitutional Court Judgment 156/1995). Finally, the jurisprudence highlights how «there is a close connection between public interest in the preservation of civic uses and the democratic principle of participation in decision making at a local level» (Constitutional Court Judgment 345/1997). Therefore it is reasonable to consider the "civic uses" as an "expression of convenience" (Constitutional Court, judgment 142/1972) indicating various regulations on the whole territory and not only in rural areas or woodlands. Certainly those are juridical situations dating back to the past but, as the Constitutional Court states, «it is not licit, for this reason, to believe they are free from objective preconditions justifying their rational conservation» (Constitutional Court, Judgment 157/1973).

The second legal status resulting from the concept of collective right is known as "right for public use". This subject is "perhaps the darkest of all public property matters" (Cerulli Irelli 1983, 169) but it also had great fortune and a quite wide application. The best-known case is the one of Villa Borghese in Rome, dating back to 1885 and about which P. S. Mancini's coeval writings are still of extreme interest (Mancini 1886). In short: in 1885 in Rome, the Prince Borghese started the talks to sell the Villa. The City of Rome instructed the prince to take account of the rights of public transit due to the Roman population. The prince replied to the injunction by closing the Villa to any public use in order to reaffirm his exclusive dominion over it. The City brought him to Court. After the decisions of both the Court and the Supreme Court, an important verdict was issued on March 9th, 1887 – where the claim of the City of Rome was accepted, with reference to the right of public use of Villa Borghese.

From a purely conceptual point of view, both these institutions highlight the emergence of the same element: the "community of habitants" that comes to be a notion of public law and can «acquire rights of various kind and content that belong to the scope of interest attributable to a community (i.e., not merely related to the scope of individuals, or private groups)» (Cerulli Irelli 1983, 421).

Another aspect, crucial to our reasoning, is that in this perspective the local authorities are to be intended as exponential bodies of a particular community, to which the law may residually confer (i.e. in absence of autonomous organizational initiatives of the habitants) the care of the interests of the entire community.

VII. Urban civic and collective uses: the "Declaration" of the ex-Asilo Filangieri

On these theoretical assumptions, in Naples a community of artists, cultural operators and entertainment workers has been practicing for about three years the civic use – translating into action and in administrative practice the «Right for civic and collective use of a public good». This tangible utopia began on March 2nd 2012, when hundreds of workers in the fields of art, culture and entertainment, along with citizens, civic organizations and Neapolitans from all over Italy, gathered in the building called "ex-Asilo Filangieri". Initially, the building was meant to be the seat of the "Universal Forum of the Cultures" foundation and at the same time its guarantee fund. In a short time, one of the symbolic spaces of the «degeneration of the cultural system» (ex-Asilo Filangieri 2014) was progressively evolved into a Center of interdependent production. It was an artistic, cultural, and political experiment that since the very beginning has strived to combine «a symbolic re-appropriation of the spaces *and* an experiment of re-composition of workers in a new form of organization through radical practices, production and enjoyment of culture». With the intent to antagonize an "out-dated and artificial" cultural industry in which an overstated narcissistic individualism prevails and the decisions concerning art and science are increasingly compliant to «the logic of profit and short-sighted private management», we generated a process based on the principles of community and self-government: «on the one hand, the construction of an open, fluid, and potentially infinite community, on the other the experiment of a management based on the self-employment of workers of art, culture and entertainment according to the principles of cooperation, solidarity and mutualism» (ex-Asilo Filangieri 2014). Right away, through the establishment of a "working table for the self-government" open to the public, an intensive work was started in order to develop a *Dichiarazione d'uso civico e collettivo urbano* (ex Asilo Filangieri 2015). The Declaration drawn up by the community of workers, inspired by a broad interpretation of the civic uses, turns out to be «a model of management of public goods reviving their social function, guaranteeing accessibility, impartiality and inclusiveness in the use of both spaces and instruments of production. Those who use public goods recognized as Common are the ones entitled to manage them, through democratic and horizontal decisions. We propose, therefore, a model of 'civic use' by re-thinking the very concept of sovereignty and transferring it to new, radically democratic institutions, thus eroding the authoritarian way of any political and administrative discretion» (ex-Asilo Filangieri 2014).

Repositioning the value of use of a public space means undermining the idea – rooted in the current cultural and administrative practices – that in order to make available public goods it is somehow unavoidable to entrust them to a third party, the latter being not included in the civic administration or in the general community of citizens.

The basic idea is that the management of Urban civic and collective use should be a shared management: the government should be the manager of the property, therefore providing maintenance and creating the conditions for a social and cultural environment where the community would be able to exercise its self-regulated collective rights in order to use the property which, in many cases, they contributed to bring back to public enjoyment.

This conceptual and practical scheme has two important implications. On the one hand, the government changes its function: no longer involved in the authoritative sense, it creates the conditions for the self-generation of an environment of Civic development. Consistently with the constitutional principle, it should remove those material obstacles obstructing the free expression of the human person. Also, it should guarantee that in the collective management of the property the founding principles of civic uses are respected: impartiality, inclusiveness, accessibility, self-government and preservation of the property for the future generations. Essentially, as M.S. Giannini wrote, the civic administration comes back in order to administer for third parties. On the other hand, a misconception that often prevents the understanding of the rationale inherent to this process fades away: the erroneous overlap between the free use of a good and its regulated use, that this scheme solves by making a necessary distinction.

In 1968, in his famous essay *The tragedy of the commons*, James Garrett Hardin introduced the misunderstanding in the public debate between the two different ways of using the "Commons"; he established a relationship of identity between "free access" and "common goods", or "commons", by attributing to any common property the adverse effects that undoubtedly are related to the "free access" to natural resources. Nevertheless "common property" and "free access property", as Paolo Grossi (1977) tried to show introducing the concept of "another way of owning", are not strictly synonymous. The "Tragedy of the commons" is rather the result of any private use – without restrictions – of the shared properties; the very consequence of an abstract idea of freedom, which in the horizon of the owners results in the indiscriminate use of resources, in an unlimited use of assets, land and life forms.

The collective use of the ex-Asilo Filangieri is rather a regulated use, where the rules of both access and decision are made public – and all those who enter the space must follow them. In this way, the community of reference is not only in charge of «what in other times would have been described as the ability of self-management [...], but also the much more important opportunity [...] to independently define the basic rules of use-appropriation of the common good» (Ristuccia 2006, XI).

According to this model of collective enjoyment of the public spaces, accessibility, inclusiveness, impartiality and usability, it expresses the mode of operation of the organization regulating self-government. In other words, as the civic uses – for centuries – have guaranteed the collective use of certain goods, such as forests, rivers, mills, crushers, etc., so the Urban civic and collective uses are meant to ensure to the citizenship, and in the particular case of the ex-Asilo Filangieri to the community of women and men involved in art, culture and

entertainment, both the facilities and the production means needed to exercise their rights, their work and allowing a free development of the person.

Thus, the spaces of the property "ex-Asilo Flangieri" are constitutionally functionalized to the artistic and cultural creation, and the spaces once bounded to a temporary event – as large as ephemeral – are now turned into spaces for rehearsals, dance workshops, discussion seminars, etc.

In the ex-Asilo Filangieri something new is going on, the "public goods" become "commons" again and, as it is written in the *Preambolo* of the Declaration, they are attracted into the category of the Commons as their form of government is inspired by the direct participation of the local communities to the care and management of the property, through forms of organization and decision-making based on models of participatory democracy, generating a "special regime of publicity" (ex-Asilo Filangieri 2015).

VIII. A new type of institution

From the institutional point of view, the Town Council led by the Mayor Luigi de Magistris has chosen «not to further conflict with the autonomies on the territory», «the institutional representation as the aim to give a voice to the voiceless ones» to «diffuse the power» even to realize «agoras of proximity» (de Magistris 2015). With this attitude, substantial administrative acts were issued, unveiling these processes of "pooling" at an institutional level. The first of these was the resolution of the council n. 24 of 22nd September 2011, which amended in the Charter of the City the legal category of "common good" within the *Finalità e valori fondamentali* of that Chart; art. 3 states that «The City of Naples, also in order to protect the future generations, ensures a full recognition of the commons for they are functional to the exercise of fundamental rights of the human being in its ecological context». A year later, in agreement with the community of reference, on May 25th, 2012 with the Council Resolution no. 400 the property called "ex-Asilo Filangieri" was reconfigured as a real cultural workshop in order to «experiment and ensure the expansion and implementation of participatory processes, articulated through a program of activities and a subsequent use and management of the space by workers of the immaterial» guaranteeing «democratic form of management [...] consistently with a constitutional reading of art. 43 Const., in order to facilitate the formation of a constituent practice of "civic use" of the common good, for the community of those cultural operators».

After about three years the city has multiplied the spaces directly managed by the community. On March 9th, 2015 the City Council Resolution no. 7 concerning «Guidelines for the identification and management of real property assets of the City of Naples, unused or partly used, perceived by the community as Common and susceptible to collective use» states that «the City Council can proceed through appropriate regulations to any compensation expenses, where this is justified by the created social value, providing regulations for civic use or other form of civic self-organization to be recognized in special agreements» observing that «there are already, in the municipality, some real estates and/or areas owned by the City of Naples that are currently used by groups and/or committees of citizens according to the logic of experimentation of direct management of public spaces, demonstrating, in this way, the perception of those goods as places possibly bound to collective use for the advantage of the local

community; experiences configured as "people houses", i.e. places of strong sociality, thought processing, inter-generational solidarity, deep territorial roots».

Finally, in the past few months, we came to the definition of a resolution draft that should be soon approved that includes the spaces of the ex-Asilo Filangieri in the conceptual framework, both legal and operational, inspired to civic uses arguing that «the City, body of proximity to the citizen and exponential subject of the rights of the community, should ensure a public government, both participated and shared of public services, common goods and collective *utilitates*» committing to «the development of a new form of public law protecting and enhancing those goods that are functional to the protection and development of the fundamental rights, as goods of use, common civic, collective and social and as real civic development environments».

Stated and considered all of that, the Declaration was acknowledged as «a set of rules granting access, activities programming and functioning of the ex-Asilo Filangieri developed by the members of the civic community who have freely enjoyed *uti cives* until today» and the Administration «recognizing the high social and cultural values and the economic positive externalities generated by the civic and collective use of a common good involving not only the users of the space, but the entire district and the whole city", complies "to provide, within the limits of the available resources, covering of the management costs along with the maintenance of equipment and facilities necessary to make possible and then ensure the collective use».

If approved, this resolution could represent a true paradigm shift that could affect other experiences and other properties, in the knowledge that these uses are «not an abuse, nor a privilege, or an encroachment; it is another way to own, another legislation; another social order, which, unnoticed, came to us from the remotest ages» (Cattaneo 1956).

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