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ABSTRACT

Beni comuni: uno, nessuno, centomila.
Dallo ius excludendi omnes alios al paradigma solidale.

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Once a modern definition of “juridical goods” was shaped, the present dissertation has aimed to examine the so-called commons.

For this purpose, some of the most qualified definition of “juridical goods” have been examined, so that the “proprium” of this concept could be drawn from their interpretations; this “proprium” has been identified on the ontological destination to serve the whole community; therefore, it’s been affirmed that the “commons” are those goods whose essential utilities are functional to the fulfillment of certain collective needs that correspond with the exercise of fundamental rights, as well as to the free progress of the individual. So, in these goods ontological and teleological profiles mix up in an unextricable tangle, ending up – such as in the Aristotelic idea of “unmoved engine” – to coincide: an asset might be defined “common”, excluding all the other possible evaluations, if it turns out to accomplish the interests of the whole community. Hence, it’s been revealed how “commons” can ontically fulfill themselves only through the enlivenment of their own teleology: they need – so that they can abandon Plato’s hyperuranium, to concretely come to existence in our legal system – to put themselves at the service of the generality of the associates, that is the common good.

From this point on, we have asked ourselves about the compatibility between the structural architecture delineated by the theorists – that, outside of the typical public and private ones, have postulated the perspective dimension “of the Common” – of the aforementioned notion and the constitutional outline, locating a significant grade of convergence between the ideological background inherent in the aforesaid commons and the assiological hierarchy shaped by the Constituent: in this regard, it’s been outlined how the major support to the concept of “common” can’t be directly traced in the analysis of singular articles of the Fundamental Law, but mostly in its unitary project, in his scheme based upon the incontrovertible affirmation of personalism, in its solidaristic vocation. In fact, if it’s undeniable that in constitutional norms no explicit reference to the commons can be found, it’s likewise irrefutable that in the Fundamental Law the principles of participation and centrality of the individual are clearly ratified; also, the claim of social rights seems to be absolutely irrefutable, harmonically linked to property’s social function and the regulation of economic initiative to fulfill social utility.

Once this synchronicity was verified, we have inquired whether this “Commons’ Category” can be actually codified, ending up – due to certain unsurmountable doctrinaire issues – denying the possibility of inserting it in the legal system. Many argumentations

have been used on the basis of this conclusion: the impossibility to delineate – because of the *poietic relationship* existing between fundamental rights and commons, whose main consequence is that, anytime a new fundamental right will be recognized, it will be necessary to classify among the commons all those entities whose utilities turn out to be indispensable for the realization of this new-born right – a taxonomy of commons; the atavistic difficulty to plan paradigms of governance of common resources – particularly when they must guarantee the factual participation of a significant amount of individuals – that can both allow to reach a sort of “Pareto Optimum” in the management of those resources themselves and, simultaneously, avoid to misdirect them from their communitarian vocation; the dogmatic *vulnera* that would certainly connote the discipline of the retrieval process of the goods deemed to be common.

Provided this notion, it's been admonished that from this hermeneutical work can't be necessarily inferred the fact that the ideological humus on which the notion of *common* is erected and the social instances formed around it are not worthy of any safeguard at all. In fact, the smoldering pluridisciplinary debate generated by the aforementioned expression is nothing but a symptom of the widespread unease caused by a socio-economic crisis, in which all the legal system – and not only the Italian one – often sacrifice, on profit's altar, the undeniable right of the individual. So, postulated that forging another category of goods seems impossible, it stands the unavoidable need to remark that it's essential to ensure that the resources beneficial to the exercise of fundamental right are subtracted – partially, at least – from the tumultuous logic that feeds the *lex mercatoria*. This particular aim – far from assuming the bestowal of legal citizenship upon commons – can be pursued by submitting both the public and the private goods that match the aforesaid characteristics to certain specific limitations; for this purpose, the typical scheme of appropriation of public goods may be adopted, but only after having prepared some appropriate modifications, aimed to transform it in a suitable safeguard to citizens' rights.

Explicatively, at the conclusion of this argumentative path, it's been reached the conclusion that – in the *virtual age*, in which next to the natural reality stands the *digital* one; in which human life doesn't develop only along the narrow borders of materiality, but it's unraveled in the space of the endless web –the discussion around the perspective dimension of commons, as a third way between public and private, has to be rewarded with the merit of having offered to the interpreter the opportunity to cogitate about the undelayable necessity of reforming the applicable discipline of juridical objectivity, simulacrum of an extinguished society, existing today only in the history books, as well as

to identify normative solutions suitable to halt the always-increasing unequal distribution of resources.

At last, in a comparatistic spirit, other ownership's situations have been examined, based upon the absence of the mechanism of the so-called *ius excludendi omnes alios*, in order to demonstrate that the paradigm of *solitary property* does not represent – though, in the Western Legal Tradition, still dominant – the only instrument able to synthesize the relationship existing between man and *res*.

Precisely, this further study has focused upon the peculiarity of the discipline of the archetype of real rights in China, where – aside the public and private ones – it's contemplated the collective property, fulfilled expression of its own communist ideology, connoted by the criteria of participation and shared management, to which the legal system confers a distinct significance.

The final stage of this investigation has coincided with the examination of a typical Swedish Institute: the “*allemansrätt*”, habitual right that allows the generality of the associates to take advantage of the faculty, whenever the prerequisites may occur, to enter certain private estates.