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On Common Goods

In 2004, a distinguished Italian scholar, Franco Cassano, published a book whose title is Homo civicus. The reasonable madness of common goods. Why is citizenship seen as directly related to common goods? And why is this done with the help of a new eulogy of madness, indeed why are these goods referred to via an oxymoron – placing madness alongside reason?

Over the past years we have been witnessing an in-depth rehaul of the citizenship concept – it no longer defines the fact of belonging to a given country; rather, it describes the very condition of individuals in the world. The main Italian scholar in this area, Pietro Costa, summarised this change by referring to citizenship as “a crossroads of multifarious, complex suggestions involving a person’s political and legal identity, the mechanisms of their political participation – the whole gamut of their rights and duties.” Every individual is accordingly equipped with a “set of rights” they carry along throughout the world, and those rights can be exercised in different places. Thus, the whole world becomes “a common”.

However, two problems arise immediately from this prospectively boundless citizenship. The former one has to do with the very quality of citizenship. It is no longer a formal requirement – a set of rights and duties allocated in a static perspective. Rather, it is a set of powers and opportunities an individual should be in a position to turn into reality – using them to determine the mechanisms of participation in politics and, generally speaking, public life, which is exactly the life of the “city”. This is why the words “homo civicus” have been used – they highlight this active stance whereby every citizen is turned into the leading character. And this is why reference has been made to “strong citizenship” – i.e. to underline the need for making available the tools required to breathe life into this stance.

The latter problem has to do with the circumstance that the expansion of citizenship goes hand in hand with a marked trend towards the privatization of a growing number of goods. In October 1847, shortly before the publication of the “Communists’ Manifesto”, Alexis de Tocqueville drafted a political declaration he subsequently reported into his Souvenirs; he made the following considerations: “Soon the political struggle will be between the Haves and the Have-nots; property will be the great battlefield.” This struggle has continued without any interruption and is actually in progress – however, its focus is no longer land, but all living beings, intangible things, air, water, knowledge as such. The battlefield has become larger. It takes up the whole world and includes many other rights – and these rights are being re-defined, re-written; they are regarded no longer exclusively as the individual’s province, but also in terms of their being shared rights.

The common goods issue is fundamental. The rationale underlying the struggle mentioned by Tocqueville has changed considerably. It has not to do merely with struggling for scarce resources – water even more than land. In this world-wide scenario, one can witness the unrelenting creation of new goods – including knowledge, first and foremost; their scarcity does not result from natural events, but from purposeful decisions – from the inappropriate use of patents and copyrights, which is bringing about a “closure” attitude mirroring the movement that in England led to enclosing what was previously common land. Should we draw the conclusion that technology opens up the doors whilst capital is shutting them? It is a fact that the destiny of old and new common goods is the key stake in a game that impacts on freedom and democracy – and therefore on democracy.

Of late, with the help of various legal techniques, limitations have been imposed on the use of certain categories of goods that were freely available beforehand. Using what happens in the movie industry as a typical example, Lawrence Lessig refers in the starting pages of his book “The Future of Ideas” to the hindrances encountered in respect of various movies because an artist claimed a chair resembled a sketch of a piece of furniture that he had designed; because an architect demanded money before a film could be released showing an allegedly copyrighted courtyard;
because a sculptor had the same attitude having seen his art used in the background. And in a growing series of cases it was asked for money for films or pictures showing the facades of buildings in the street or very well known monuments (like the Tour Eiffel). As conclusion, Lessing reported the advice of a successful director to a young artist: “You’re totally free to make a movie in an empty room, with your two friends”.

These cases show not only that the misuse of copyright is narrowing the opportunities for using goods that were initially common – i.e., they could be exploited freely for certain purposes. Indeed, they also show that it is not enough to put emphasis on the coming of The Age of Access – to quote a book by Jeremy Rifkin – as if this were tantamount to getting rid of the conventional constraints of ownership. The expansion of access applies to a mechanism for using certain goods, in particular those that are not scarce and accordingly allow for non-competing uses. Still, access can be limited by the application of ownership-based approaches.

That this is the case is shown most clearly by the Internet and its operation. The Internet is the widest public space that humanity has ever known where a major redistribution of power is under way. A space where everybody can have their say, acquire knowledge, create ideas and not just information, exercise their right to criticize, to discuss, to take part in the polity, and thus to build a different world of which everybody can claim to be an equal citizen. But all this can become more difficult, if not impossible, if knowledge is sealed behind proprietary fences without considering the novel nature of the situation we are faced with, which requires us to view knowledge as the most important of all common goods.

This common goods issue is essential. New words are criss-crossing the world – open source, free software, no copyright – creating a sense of a change of age. For the conflict being waged today between proprietary interests and collective interests is not only over scarce resources, like water, whose scarcity is likely to become dramatically worse in future. At the worldwide level we are witnessing the constant creation of new goods, of knowledge primarily, whose scarcity is not the effect of naturally-occurring events but deliberate policies, and the improper uses of patents and copyright, creating a movement similar to what occurred in England with the "enclosures" of common land that had previously been freely accessible to all. This artificially-created scarcity, being contrived, threatens to deprive millions of people of extraordinary possibilities for their individual and collective growth, and of political participation.

A new challenge, for instance, has been posed to Parliaments, that not only refers to the need to work out new ways of balancing the rationale of private ownership against the rationale of common goods. It also has to do with the very concept of citizenship. The true democratic novelty of the ITCs is not that they give citizens the deceptive illusion of participating in taking great decisions through electronic referendums. It consists in the power given to each and every one to make use of the extraordinary wealth of materials placed at their disposal by technology, to elaborate proposals, control the way power is exercised, and organise themselves in society. It is with this vast world – in which democracy is manifesteed "directly" without being superimposed upon "representative" democracy – Parliaments must find new ways of communicating, also by holding informal consultations, placing proposals on the Internet for which they seek the opinions of citizens, procedures which make it possible for proposals to be laid before Parliament by groups who are also given the right to intervene in the legislative process. The contrast between representative democracy and direct democracy could thus be overcome, and Parliamentary democracy would gain new legitimacy by putting itself forward as a permanent interlocutor of society.

In this perspective, we have to look at democracy as a process and at the Internet as the new crucial public sphere, a common for interaction, for the production of public discourse, for the creation of an “espace citoyen”, a space for citizenship. The need to retain this feature of the Internet as a common is continuously challenged, in particular by market-driven approaches – since the commercial exploitation of the web prevails by far on non-commercial uses. This is giving rise to unbalances in the use of the Internet in a twofold perspective. Firstly, if one considers the web as an increasingly consumption-driven area – sort of a world-wide supermarket – one has to make it
“safe” for its visitors; this means not only ensuring security and reliability of commercial transactions, but actually showcasing the web as an aseptic, pacified area where no conflicts can ever disturb consumption-prone behaviour. The arguments relied upon to achieve this objective go beyond the need to fight against pornography. In fact, there is a trend towards doing away with anything that borders on the representation of unpleasant situations and more or less aggressive dissent – anything that departs from the “normality” model. Apparently, one still has to do with a common – in fact, a sort of creeping “market-driven censorship” is taking shape.

Secondly, payment- or fee-mediated access brings up the issue of the digital divide – the existing inequalities in use of the Internet – in terms of dual citizenship, since a direct relationship is set up between income and access to knowledge.

This is why one should also re-consider the equality issue. Equality is increasingly construed as equality in initial conditions rather than in terms of outcome. However, the access dilemma clearly shows that it is not enough to afford equal opportunities if only the happy few can make use of those opportunities. The underlying implications stand out especially at the crossroads between knowledge and the fundamental right to health. The issue of drug patenting has long been a real battlefield. Several countries – from Brazil to South Africa and India – have been claiming for the right to produce low-cost drugs required to treat millions of patients affected by AIDS or malaria, by also infringing the rights vested in major pharmaceutical industry stakeholders. Here, access by all to the fruit of knowledge becomes a precondition to prevent health from becoming the province of those who can afford to buy health on the market – whilst health should be everyone’s right. Access becomes a constituent part of citizenship.

The increasingly widespread awareness that knowledge is a “global public good”, as emphasized by Luciano Gallino, is bringing about the in-depth reconsideration of rules – starting from those that have to do with patents and copyright. There is a clear-cut demand coming up to prevent appropriation of the living, of biological diversity. This search for a new balance between the interests vested in authors, inventors and industry, on the one hand, and collective interests does not only result from a sort of rejection of market logic. There is actually a liberal stance that is much more radical and highlights the growing ineffectiveness of conventional tools – indeed, it goes as far as to propose the abolition of copyright.

Let me quote an example to clarify how access to knowledge is changing. The so-called free press, i.e. the newspapers that are circulated for free, is not a token of the publisher’s generosity or altruism; it simply stands for a different way to make profits. The huge potential of the Network, the richness of the Network, can only be used in full if the hindrances to the exploitation of such potential are removed – and those hindrances also give rise to a “non-market economy.” Novel legal approaches are already available and in use, such as those that have replaced the conventional closed logic of copyright by the open approach based on “creative commons”.

However, access to knowledge should always entail the possibility of getting “exposed” to the most diverse opinions so as to compare them and develop one’s sense of criticism. Of course, this means rejecting censorship along with any monopolistic or dominant positions; it also means getting direct access to sources and information transparency. This is the very root of pluralism and independence of judgment. This is the way out from the *arcana imperii* – to get rid of secretive, and therefore oppressive, powers.

Free knowledge for all and democracy are one and the same thing. Luigi Einaudi spoke about the need “to know in order to decide”. The great US justice Louis Brandeis remarked that “Sunlight is the best disinfectant.” Thus, knowledge is the very foundation of democratic decision-making and the precondition for a widespread control over participation.

This clearly shows the link between common goods and fundamental rights, common goods and free development of one’s personality – between common goods and public participation. However, the new surge of attention towards common goods – which have been termed “the opposite of property” – is not to be accounted for by the reference to institutional new medievalism as a way to describe the world in the Web age – i.e. a world without its centre, ruled by manifold institutions.
that are mutually connected via the Net. Several contemporary phenomena are tentatively assessed and accounted for mainly by drawing on medieval models – institutional polycentrism, lex mercatoria. However, apart from any criticisms one might level against this approach, talking about common goods is not a thing of the past. It is actually a marker of new mechanisms – it has to do with the coming up of entities and goods that cannot fit in with the categories used in the past.

The wide-ranging scope of common goods marks the boundaries of man’s existence. Regarding air and water as common goods is more than a prerequisite to ensure environmental protection; it has to do with protecting health and safeguarding peace – which has already been challenged by the “water wars”. Indeed, water has ever been used in power management and certain societies have been described as examples of “water despotism”. Appropriation of the living via patenting techniques deprives whole communities and cultures of the possibility to continue using, for free, knowledge and skills that had been a feature of their whole history. This is the new battlefield where individuals and their bodies as such must be protected against appropriation attempts. It is exactly to counter these attempts that Article 3 of the Charter of fundamental rights of the European Union, reflecting a common attitude of many international documents, prohibits the “making the human body and its parts as such a source of financial gains”. And the Universal Declaration on the human genome and human rights of the UNESCO states that human genome “in a symbolic sense [it] is the heritage of the humanity”.

“Humanity” and “mankind” are becoming buzzwords in legal documents, and “human” is the adjective used to refer to the dignity that is the starting point of the Charter of Fundamental Rights of the EU. Natural, historical and artistic goods are classed by UNESCO as “common heritage of mankind” – and this heritage includes the sea bottom and the moon, the Antarctic and the human genome. Crimes against mankind make up a new categories of offence, whilst the right of humanitarian interference has long been invoked in the presence of major crisis situations.

But what is humanity – this link between seemingly remote things such as the beauty of Venice and armed interventions in the Balkans; what is this thing that is the source of new categories of goods? It means hoarding memories of the past and gazing ahead at the future – being growingly aware that there is an increasing number of things in the world that should be kept away from national sovereignty, the overwhelming power of markets, and the instrumental use of individuals. Thus, mankind is about each and all of us, it is about intangibility and common goods – it reminds us that not everything can be boiled down to today’s events; it conjures up the vision of future generations and sets new rights before our eyes.

And then - who may take steps in the name of mankind or future generations? The concept of individual has ultimately attained concrete features, which has allowed identifying the stakeholders in rights issues immediately – whereas nowadays there is a real danger that we might fall back upon abstractness, which in turn may leave room for authoritarianism and the stepping in of entities that appropriate the power to represent mankind.

To avoid this danger, the reference made to mankind takes on different shapes and meanings. It is turned into the constraints imposed by international treaties that limit the appropriation power vested in States, which may not get hold of a portion of the moon or the Antarctic; it becomes an obstacle to the rapaciousness of economic interests that are keen to destroy the environment or patent the living in all its forms. It is turned into the solidarity commitment undertaken by most developed countries. It relies upon international courts having jurisdiction over crimes such as genocide. Thus, the abstract concept of mankind actually embraces rights, obligations, and responsibilities vested in tangible entities.

The common goods approach – the reasonable madness of common goods – challenges both foundations of modernity, i.e. ownership and sovereignty. Once these two reference categories are questioned, a new categorization is mandatory as based exactly on the primacy of common goods – which are freely accessible, but free from any exclusionary bias. Their protection should be shaped in such as manner as to go hand in hand with interests that are not focused exclusively on individuals but rather on our future – so as to be linked directly with safeguards for fundamental
rights. “Can trees have standing?” – this was the title of a paper raising the basic question as to who is entitled to step in to protect the environment. This question should be answered – in a broader perspective – by affording the right to take action in court – but not only in court – to any entity that has a vested interest in safeguarding any good whether currently or in future.

This new allocation of social and legal powers enhances citizenship and changes the standards applying to categorization and management of goods – thereby shaping the essential features of democracy.