

From commons to commoning: rethinking the quarries as a CPR. The example of Campania Region

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The renewed interest in the issue of the government of the commons, risen from the debate on CPRs, has recently known an unusual spreading. However, if the debate seems to run aground to the opposition ownership/management – public/private, the indistinct use of the term risks to weaken its significance. Among the plurality of theories and the emergence of experiences variously inspired to the idea of commons, this paper focuses on one peculiar aspect of the territorial governance in Italy: the case of quarries, with particular attention to the policy implemented by Campania Region. Quarries, although being common goods and public properties, assigned in concession to private stakeholders, once exhausted, are returned to the local communities. This practice contributes to the depletion of the territory, increasing phenomena of territorial injustice. In order to explore the relationship between legal forms and territorialisation processes, the practices concerning the use of a non-renewable resource, such as a quarry, reveals the contradictions inherent to the management of a good substantially-excluded from collective use of such environmental resources.

Key words: commons, quarries, Campania Region

1. Foreword

This article aims to contribute to the discussion surrounding the essence of the commons, its political nature and its proliferation, to be submitted in an international scientific debate². The ambiguous category of commons, generally not supported by juridical definitions in the different State-nations, give us the possibility to cast dubs on their adequate management and on the suitable evaluation of their good practices. What we want here to introduce is not only the state of art of the Italian multi-disciplinary approach to the commons; we would like to discuss the difficulties in approaching the territorial governance of common pool resources CPRs. So, in consideration of a specific case study, that we consider emblematic, such as the extractive industry in Italy, and specifically the quarries in Campania Region, on the one hand we would like to highlight in a critical way all the contradictions emerging from the practice of commoning. On the other hand, we would like to start a methodologic systematisation for the study of this issue.

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² University of Naples “L’Orientale”. This contribution represents part of the translation of a previous article, “Aporie dei beni comuni. Pratiche di governo del territorio e forme di gestione nel settore estrattivo: le cave in Campania”, in *Semestrare di Studi e Ricerche in Geografia* (XXVIII) 2, 2016, pp. 71- 89. Some evidences of the research have been presented during the “Quinta Giornata di Studio in Geografia Economico-Politica, Oltre la globalizzazione. Commons/Comune” (15/12/2015, University of Rome “La Sapienza”. All the Italian quotes have been translated by the Authors: the originals are presented in footnotes.

The debate around the topic of the commons has been living a season of extraordinary flowering in the last few years: that is a probable signal of the current international economic crisis, but also of the crisis of modern statehood and of the representative democracy. In any case, it offers us the possibility to rethink certain consolidated categories (Cerulli Irelli, De Lucia, 2013). To put it with Chirulli:

It is certainly not extraneous to the awakening of interest for commons, the perception of a deep crisis about the relationship between the individual and the institutions, witnessed by the re-proposition of alternative forms of democracy, others than the representative one, and specifically with reference to most concrete ways of general interest caring (2012, 2)³.

From theoretical reflections to empirical studies, the concept of “commons”, proliferated in various fields of human and social sciences in these years, has entered with particular emphasis not only in the political language, but also in daily lexicon, also in Italy⁴. The widespread expression seems to escape to any definition criteria (Rodotà, 2012a, 2012b, 2013; Arena, Iaione, 2015). Therefore, it tends to become meaningless, reducing its innovative values. In fact, it is sometimes reduced to a mere label of (even divergent) ideological views, which use the idea of “commons” as a *passé-partout*. Recently the Italian jurist Rodotà, has warned us from the risk of this drift, saying that:

The category of commons still remains nebulous, and it seems to include anything and everything. If it is entrusted with a sort of social elevation, then it can happen that it lacks in the ability to locate the situations in which the idea of “common” quality of a good can release all its strength (2012a)⁵.

In order to explore the reciprocal influence between theoretical assumptions and bottom-up initiatives based on the philosophy of commons (Pennacchi, 2012, Farinelli, 2015), the relationship between norms and territory stands crucial. Although the normative tradition has expressed, in many circumstances, little attention to the territorial specificities and the different dynamics that social

³ “Non è certo estranea al risveglio di interesse per i beni comuni la percezione di una profonda crisi del rapporto tra individuo e istituzioni, testimoniata dalla riproposizione di forme di democrazia alternative a quella rappresentativa e, con specifico riferimento, alle modalità più concrete di cura dell’interesse generale”

⁴ Stefano Rodotà, in a 2012 contribution on the Italian newspaper “La Repubblica”, *Il valore dei beni comuni*, declared the 2011 as the years of the “commons” (2012a), even if at that time in Italy the expression was almost absent in the public discussion and in the public opinion. In order to enhance the Italian geographic debate on the topic, Galluccio (2014) presented a contribution on the relation between contemporary cities and commons (with a specific focus on Naples) at the XXXI Congresso Geografico Italiano (Milan, June 2012). Considering Italy, in three years, not only in geography, the topic has become central in many fields. The growing attention on the issue, can be testified by the participation (in terms of presences and contributions) at the “Quinta Giornata di Studio in Geografia Economico-Politica, Oltre la globalizzazione. Commons/Comune” (cited in footnote no. 1).

⁵ “Se la categoria dei beni comuni rimane nebulosa, e in essa si include tutto e il contrario di tutto. Se ad essa viene affidata una sorta di palingenesi sociale, allora può ben accadere che perda la capacità di individuare proprio le situazioni nelle quali la qualità “comune” di un bene può sprigionare tutta la sua forza”.

realities create – in a sort of “indifference” to the territory - the juridical debate developed on the commons shows a crucial sensitivity to this issue.

Even if the incidence of legal forms of territorializing processes should be properly investigated with a solid interdisciplinary approach, between the plurality of theories and the sprouting of experiences that are inspired in various ways to the idea of commons, the debate seems to run aground in the juridical dichotomies: property/management and public/private (Mattei, 2011; Marella, 2012, 2013; Rodotà, 2012a, 2012b; Lucarelli, 2014). In comparison with the variety of disciplinary point of views and perspectives, the recent contributions from Italian and international geography on the issue of commons⁶, thanks to a range of empirical research conducted on various scales, can contribute to the identification of some legal categories of goods, always in evolution, that need to be considered as commons⁷ (and therefore as a collective asset) in public policies. For the problems in defining this wide range of goods, essential to the valorisation of the territory and to social cohesion, in our perspective looking at “the territory as the essence of the political nature of a community”⁸ (Cerulli Irelli, De Lucia, 2013, 20) some contradictions, between theories and social practices centred on the principles of the commons emerge from the interrelations between legal frameworks and government of the territory.

2. A controversial paradigm

The beginning of a specific attention to the problems arising from the common pool resources (CPRs) comes from, as everybody knows, by the seminal studies of Elinor Ostrom (1990 and 1999) elaborated in response to the classic work of Garret Hardin, *The Tragedy of the Commons*.

⁶ See in particular, Giordano, 2003; Harvey, 2011; Turco, 2014; Castiglioni, Parascandolo, Tanca, 2015; such as all the contribution of the “Quinta Giornata di Studio in Geografia Economico-Politica”; look at the book of abstract, available at: https://ssg2015commons.files.wordpress.com/2015/09/commons_book-of-abstracts_finale3.pdf.

⁷ At least the ones considered, as Cerulli and De Lucia (2013), like: “goods in juridical sense, instrumental in the exercise of fundamental rights and the individual free development. Even in this case, this instrumentalities linkage proposes the instauration of regimes able to ensure the collective use of those resources, in line with the safeguarding needs”. This significance is part of the classic debate on private and public property and their mutual relationships. [...] The concept may concern the portion of physical space (its morphology and its qualities) in which communities are established and live: the territory (and urban space), the landscape and the environment. The debate on commons concerns a number of themes of great interest: for example, it is translated into a criticism of those territorial management choices that undermine utility for the community in terms of health, freedom, sociality, dignity, happiness” (2013, pp. 5 and 8) “Cose in senso giuridico, strumentali all’esercizio di diritti fondamentali e al libero sviluppo della persona. Anche in questo caso, tale nesso di strumentalità consiglia l’instauratione di regimi che assicurino la fruizione collettiva di queste risorse, nel rispetto delle esigenze di salvaguardia. Questo significato si innesta sui temi classici della proprietà privata e di quella pubblica e delle reciproche relazioni. [...] Il concetto può riguardare la porzione di spazio fisico (la sua morfologia e le sue qualità) in cui le collettività sono insediate e vivono: il territorio (e lo spazio urbano), il paesaggio e l’ambiente. Il discorso sui beni comuni investe qui una pluralità di temi di grande interesse: ad esempio, esso si traduce in una critica a quelle scelte di gestione del territorio che sottraggono utilità alla collettività in termini di salute, libertà, socialità, dignità di vivere, felicità”.

⁸ “Territorio come l’essenza della natura politica di una comunità”.

With the aim of finding corrections for the imbalanced relationship between overpopulation and resources, Hardin had argued that the natural resources exhaustion, driven by over-consumption and individual exploitation, was the result of a free and indiscriminate use, which could be solved only by the limits posed by private property. “The tragedy of the commons as a food basket is averted by private property, or something formally like it” (1968, 1245)⁹. Although in a fully capitalistic market-led vision, seeking for a better use of resources and their profit, with a neo-institutionalist approach, Ostrom has been able to demonstrate, against Hardin view, that the individuals’ behaviour, aiming to maximize their profit are not unavoidable and are not often optimal. In her analysis, the US scholar has examined a number of empirical cases where the members of the considered communities, through collaboration and participation in the management of CPRs, establish efficient forms of regulation considering their access. In the Ostrom’s vision:

The commons are a system of rules which norm collective actions. What is “put in common” is not simply a good or a resource but a social behaviour. For this reason, the management, the protection and – most of all- the conservation of the good imply its awareness in social interactions, which are the requirement of its collective management, [while Hardin thesis would easily come true] if the resource’s users don’t know each other, don’t communicate to each other and don’t are aware about the consequences of their choices (Nespor, 2013, 6 and 5)¹⁰.

The controversial legal category of commons is still under debate and it is “susceptible to meet radical different approaches, if we consider the theme of the ownership and the role of the State in the constitutional order” (Mone, 2014, 63), overall in its broad meaning of socially-shared good aiming to cross fundamental rights, also in consideration of future generations. At the same time the definition of “common” do not exist in the Italian set of rules¹¹ (Mattei, 2011; Lucarelli, 2013). In this sense, it seems necessary to understand how this category – or, better, this interpretative paradigm – places the social function before the economic one¹², constituted and articulated in the binary

⁹ For a reconstruction of the different phases of the Italian evolution of the debate on the “Tragedy of commons” see Nespor, 2013.

¹⁰ “I commons sono dei sistemi di regole che disciplinano azioni collettive. Ciò che viene messo in comune non è semplicemente un bene o una risorsa, ma un modo di agire sociale. Per questo, la gestione, la tutela e – soprattutto – la conservazione del bene presuppone la presa di coscienza delle interazioni sociali che stanno alla base della sua gestione collettiva, [mentre la tesi di Hardin ha maggiori] probabilità di avverarsi se gli utenti del bene comune non si conoscono, non comunicano tra di loro e non hanno coscienza degli effetti delle loro scelta”.

¹¹ By contrary, in Latin America the commons have been included in different systems (Lauriola, 2011): the principal reference is to Brazil that has regulated the maintenance of the land rights for indigenous peoples (Brazilian Constitution, 1988, Title VII “The Indians). This type of normative order also affirms the notion of Pacha Mama, also linked to the African land laws, stating that “the earth cannot belong to a single man just because humanity belongs to the earth” (Mattei, 2012, 1124), “La terra non può appartenere ad un uomo proprio perché l’umanità appartiene alla terra”. So far, however, no reviews have been published on the CPR category analysis at the comparative level.

¹² See the critical review in Mone (2014, pp. 69 e ss.).

distinction between public good/private good (Lucarelli, 2013), also in consideration of the fact that “Not all forms of the commons are open access” (Harvey, 2011, 103).

In a world dominated by neoliberal public policies, more and more oriented to the privatisation of collective goods, of public goods and social goods, if the commons remain inscribed in a context of capitalistic accumulation they will be not able to overcome the structural contradiction between public/private ownership. Actually, according to Mattei, the concept of “common represents another gender, radically opposed to the previous exhaustive declinations: the public/the private or the State/the market”¹³ (2011, 81). In this view, the commons can be considered as “diffused ownership” goods that, being essential to human life,

belong to everyone and nobody, in the sense that everybody can access to them but nobody can claim exclusive pretension. [...] Not available for the market, the commons are, then, the essential instruments to allow the correct exercise of the citizen rights, the rights that belong to everybody, as persons (Rodotà, 2012a)¹⁴.

Starting from the exigence to critically reflect on those aspects, the contribution intends to examine the quarries’ issue: a peculiar example of territory governance in Italy, which a particular reference to the policies realised by Campania Region. This empirical case-study will be useful in order to understand the consequences of specific institutional policies on the territorial resources’ management in terms of protection/valorisation, but also in dismissal/degradation patterns. This analysis offers the possibility to delineate the intrinsic contradictions emerging in the management of a public good, that seems to be essentially excluded from the collective use¹⁵. If on the one hand, the opacity of the decisional processes in the management of the resources give us the possibility to face to the lacerating contradictions of the representative democracy crisis and the difficulties in the

¹³ “Comune costituisce un altro genere, radicalmente antagonista rispetto alla declinazione esaustiva del rapporto pubblico/privato o Stato/mercato”.

¹⁴ “Appartengono a tutti e a nessuno, nel senso che tutti devono poter accedere ad essi e nessuno può vantare pretese esclusive. [...] Indisponibili per il mercato, i beni comuni si presentano così come strumento essenziale perché i diritti di cittadinanza, quelli che appartengono a tutti in quanto persone, possano essere effettivamente esercitati”. The Ministerial Commission “Rodotà” on public goods, with the aim of a new definition of those categories of commons (as things expressing utilities functional to the exercises of fundamental rights and to the free development of the individual). Commons have to be defended and safeguarded by the juridical system, in consideration of future generation. The owners of the commons can be public and private juridical persons. In any case their collective use, according to the limits and the processes fixed by the law (art. 1, co. 3, “Commissione Rodotà per la modifica delle norme del codice civile in materia di beni pubblici del 14 giugno 2007, Proposta di articolato – Rodotà Commission for the modification to the Civil Code norms relative to public goods of 14th June 2007, Proposal”). See also Mattei, Reviglio e Rodotà (2010) and the more recent contributions of Giannini (1963) e Cassese (1969).

¹⁵ For an overview on the Italian debate on the juridical elaboration concerning the common/collective goods see Cerulli Irelli (1983). Public goods have not a peculiar “constitutional status” (Cassese, 2008, 3 ff.). The goods belonging to the State can be distinguished to goods belonging to the “public property and the State asset” (art. 426 Civil Code): those are the goods which can be used at the same time by the individual and by all the community.

affirmation of a “commons” culture, on the other hand, the presented case will be emblematic to understand how difficult is to plan organic policies (even in the actual normative context) and to see-through the subsistent aporia between the theories for the government of the CPRs and the practices that should be guaranteed in order not to exclude the local communities from the control and the management of the territorial resources.

What we are here trying to offer to the debate is an analytic indication (evolved within the confrontation to the difficulties and the limits of some experiences) to propose a decoder to understand the real nature of the commons that we can (or not) attribute to specific goods and follow the process towards the affirmation of a new model of social sharing, alternative to the market-driven policies.

3. The quarries: a common pool resource?

On the basis of the questions asked by Rodotà, which push to individuate in a more specific way the characteristics for which a good can be considered “common”, the heuristic perspective offered by the wider geographical reflexion on the commons, highlighted the value of a to-be-in-common essence of the territory from an “ecological, cultural, social, economic, and political”¹⁶ (Dematteis, 2012, 86) point of view¹⁷. From this perspective, with the objective to shift the debate from the conceptual definition to the affirmation (as institution) of the commons, to put it as Negri, we would tend to build specific juridical systems through:

the progressive extension of the use of the commons and in the meanwhile, to the affirmation of a new ownership, multiple rather than individual [..., trying]: 1) to proceed case by case for the affirmation of the “CPR” nature of a resource; 2) to re-define the concept of political subject no more as an auto-centred identity but as a crossing point between a bundle of social relations; 3) and, finally, to affirm the collective and/or participative management criterion in the governance of the CPRs (Negri, 2012, 10)¹⁸.

¹⁶ “Ecologico, culturale, sociale, economico e politico”.

¹⁷ In this contribution (because of unavoidable limits of space) we will limit to treat the problems that are posed by some extractive activities to the grass-rooted planning, the collective management and to the protection of the resource, essentially referring to the territory as CPR. We want be able here to focus on the central theme of the landscape as common. On this topic, in the geographic debate (such as in the other human and social science) a solid literature already exists. In this sense see: Raffestin, 2005; Prieur, 2006; Quaini, 2012; Olwig, 2013; Settis, 2013; Maggioli, 2014; Turco, 2014, Castiglioni, Parascandolo and Tanca, 2015.

¹⁸ “L’estensione progressiva dell’uso comune dei beni comuni e, nello stesso tempo, all’affermazione di una nuova titolarità, molteplice piuttosto che individuale, dei medesimi [..., cercando]: 1) di procedere caso per caso nell’affermare la natura di *commons* di una risorsa; 2) di ridefinire il concetto di soggetto giuridico non come un’identità autocentrata bensì come punto di incrocio di un fascio di rapporti sociali; 3) infine, di affermare il criterio di gestione collettiva e/o partecipata nell’amministrazione del comune”.

If the territory as CPRs is the “product of the human action of domestication: a complex of neo-ecosystems created by long-term co-evolutive processes, which reshaped a biggest part of the earth, depositing an enormous territorial ‘mass’”¹⁹ (Magnaghi, 2012, 16), the quarries, in our vision, can be ascribed to the category of the CPRs because exploiting the soil, the exercise of this activity shape and co-generate new ecosystems, generating strong impacts on the territory.

The case of the quarries, in relation to land-use²⁰, allows us to highlight the potentialities, but also the implicit contradictions, concerning the possibilities to reach a new form of a shared accessibility for a non-renewable resource, in the respect of the organisation and the needs of the local communities.

In the Italian legislative system, the quarries, since the origin of their regulation, presented lots of difficulties in terms of management, because they are goods that have “not only a use value but also an exchange value, in the sense that it is possible to exchange them on the market”²¹ (Ferrajoli, 2010, p. 66), and they can be considered as asset goods (in term of holdings)²².

The extractive activity in Italy is regulated under the concession system – according to the Civil Code (1942) definition –and the normative frame still refers to the Royal Decree of 29th July 1927²³. A text written in a period in which the extractive activity was considered as a strategic industrial sector to be developed, even exploiting soil and subsoil resources, with no attention to the environmental protection or the territorial communitys’ needs.

The normative frame remained unchanged even after the institution of the Republic. Later on, in 1972, the Presidential Decree on the Regional autonomies transfer part of the correspondent

¹⁹ “Il prodotto dell’azione umana di domesticazione: un complesso di neoeosistemi generati da processi coevolutivi di lunga durata, che hanno rimodellato larga parte della superficie terrestre, sedimentando nel tempo un’ingente ‘massa’ territoriale”.

²⁰ For a detailed analysis on the EU national, regional and legislation on the of land-use (as non-renewable resource) please see Gasparri (2016, 69-190).

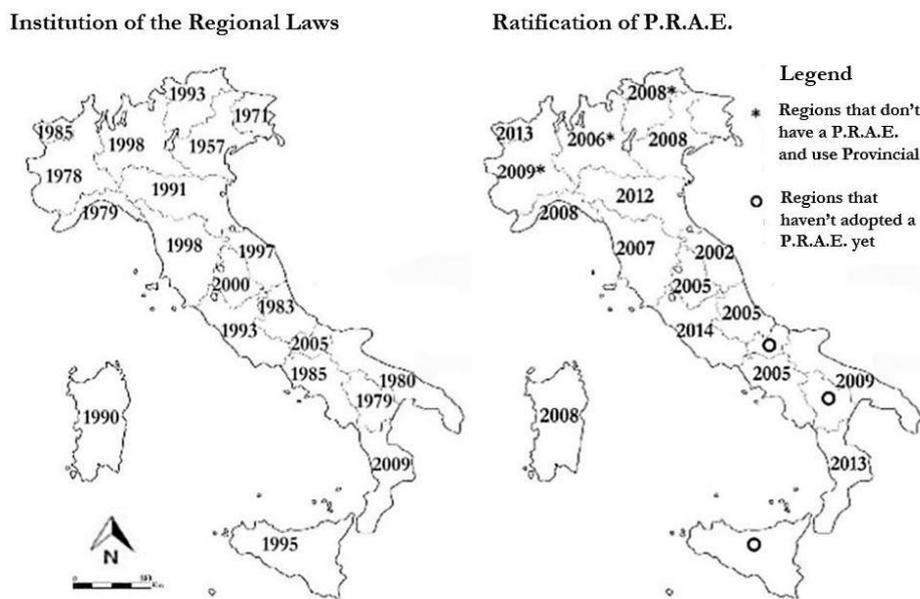
²¹ “Oltre a un valore d’uso, anche un valore di scambio, nel senso che è possibile disporne e scambiarli sul mercato”.

²² According to the art. 824 of the Civil Code, the holdings, such as the state-owned goods, cannot be subtracted to the public utility. The state-owned goods, can, in turn, be shared into available goods (just destined to the capital/revenue production) and unobtainable goods (“destined to a public service”), which maintain restrictions for their destination: “Part of the State unobtainable asset are the forests which constitute the “State-forestry”, the mines, the quarries and the moorland when their availability is subtracted to the plot owner [...]” (art. 826 Civil Code, co. 2). To the State and to the other territorial institutions (according to the art. 118 of the Constitution), in this sense the management but not the ownership, “Fanno parte del patrimonio indisponibile dello Stato le foreste che a norma delle leggi in materia costituiscono il demanio forestale dello Stato, le miniere, le cave e torbiere quando la disponibilità ne è sottratta al proprietario del fondo [...]”.

²³ Royal Decree n. 1443 (29th July 1927) “Norme di carattere legislativo per disciplinare la ricerca e la coltivazione delle miniere nel Regno” (Legislative norms to discipline the research and the quarry cultivation in the Italian Reign). This regulation system belongs to the public and administrative law. In this period, some authors (among the others Gilardoni, 1928) included the regulation of the ownership of extractive land in the minery law. By contrast, some others “it is a minority doctrinal trend: actually, the 1927 legislator abstained to pronounce on the juridical nature of the subsoil in order not to prejudice the in-progress work of codification” (Abbate, 1948, p. 8), “si tratta di una corrente dottrinale minoritaria: difatti il legislatore del 1927 si è astenuto dal pronunciarsi sulla condizione giuridica del sottosuolo per non pregiudicare i lavori di codificazione, allora in corso di svolgimento”.

administrative functions to the Regions²⁴, but only with the 1977 Presidential Decree, the topic becomes under the complete jurisdiction of the Regions²⁵. Despite the importance of the extractive sector from an economic and socio-environmental point of view, the Regional Legislations “Regional Plans for Extractive Activity” (from now P.R.A.E., see Image 1), even at distant periods, remain highly diversified.

Image 1: Legislation of the Italian Regions for mining activities (years of approval)



Source: our processing (data from Regional laws and P.R.A.E.).

²⁴ The Presidential Decree of 14th January of 1972, n. 2, “Norme in materia di acque minerali e termali, di cave e torbiere e di artigianato e del relativo personale – Legislation on mineral and thermal water, quarries and moorland, crafts and related personnel” lays down that the Regions can now legislate (art. 1) on “(e) the surveillance on the use of quarries and moorland, the expropriation of the soil in which the quarry or the moorland is located and the concession to third parties in the case of total or partial misuse of the field; (f) the constitution, the management and the dissolution of voluntary or compulsory consortia for the cultivation of quarries and moorland”, “(e) la sorveglianza sull’utilizzazione delle cave e torbiere, la sottrazione al proprietario della disponibilità della cava o torbiera e la concessione a terzi nel caso di totale o parziale inutilizzazione del giacimento; f) la costituzione, il funzionamento e lo scioglimento dei consorzi volontari od obbligatori per la coltivazione di cave e torbiere”.

²⁵ The Presidential Decree of 24th July 1977, n. 616, lays down (art. 82 on “Environmental good”) that even for the quarries “1. Regions are delegate for the administrative functions carried on by the central and peripheric institutions for the protection of the natural heritage in terms of their definition, protection and relative sanctions. 2. The delegation also concerns the administrative functions relative to: a) the identification of such heritage [...]; b) the concession for the authorisations and the permissions for their modification; c) the opening of streets or quarries [...]”, “1. Sono delegate alle Regioni le funzioni amministrative esercitate dagli organi centrali e periferici dello Stato per la protezione delle bellezze naturali per quanto attiene alla loro individuazione, alla loro tutela e alle relative sanzioni. 2. La delega riguarda tra l’altro le funzioni amministrative concernenti: a) l’individuazione delle bellezze naturali, salvo il potere del Ministro per i beni culturali e ambientali, sentito il Consiglio nazionale per i beni culturali e ambientali, di integrare gli elenchi delle bellezze naturali delle regioni; b) la concessione delle autorizzazioni o nulla-osta per le loro modificazioni; c) l’apertura di strade e cave [...]”.

Anyhow, with the reformation of Title V of the Constitution (Part II) in 2001, the local communities seem to regain a new centrality: in this sense, the authority responsible in coordinating specific activity - in this case the Region – organizes its administrative functions in coordination with the municipalities insisting on the areas destined to the extractive sector (Casetta, 2003).

The ones who wish to start such activity, whether on a public or private land, must apply for an authorization which is examined by each Region on the basis of a territorial planning, which must be planned and evaluated, in the short and in the long-term, considering the impacts of mining activity on the territory as well as the economic effects on the considered area²⁶. On the other hand, the regulatory profiles of the mining sector affect and intertwine with the different forms of land use governance, involving specific economic and productive interests at various scales. Although quarry reserves are subject to the concession regime on the basis of their social function (Rodotà, 1977, Lucarelli, 2013)²⁷, they are often controlled not considering the needs of the collectives²⁸; moreover, this mismanagement contributes to determine significant effects of environmental and heritage degradation, which can generate episodes of “locational” conflict (Turco, 2014, 170). Moreover, the territory, the environment and the landscape, rather than be considered as “what remains after territorialisation, or despite of territorialisation²⁹” (*ibidem*, 161) should represent the synthesis between the practices and visions, expectations, duties and rights of the citizens³⁰.

4. The management of the quarries in Campania Region

In the perspective aiming to valorise territorial CPRs, considering the local scale, we decided to focus on a case study that, even if it could seem limited, actually wants to offer a starting point in order to

²⁶ The Constitution (art. 117, co.2, lett. s.) entrusts to the central State legislation “the protection and the conservation of the environment, through the fixation of ‘due and relevant protection’ levels”, while the Region is has to control its use (Constitutional Court, 22th July 2009, n. 225, § 4), “la tutela e la conservazione dell’ambiente, mediante la fissazione di livelli ‘adeguati e non riducibili di tutela’”.

²⁷ As has been pointed out from jurisprudence, it should be emphasized that the mining activity is an entrepreneurial activity associated to a public interest. See what has been disposed by the Regional Court (from now T.A.R.) Campania-Naples, sect. IV, January 20th, 2010, no. 214: “the contribution associated with the quarrying activity provided by Campania Region no. 34/1985 is not directly related to the granting of public goods. It is, in fact, due either to the fact that the land on which the quarry is used is public property (where the concessional asset is foreseen) and where the activity is carried out on private land (where the qualifying title is just an authorization for the exercise of the activity)”, “il contributo connesso con l’esercizio dell’attività di cava previsto dalla Regione Campania n. 34/1985 non è direttamente attinente alla concessione di beni pubblici. Esso infatti è dovuto sia nel caso in cui i suoli su cui esercitare l’attività di cava sono di proprietà pubblica (dove sussiste un rapporto concessorio sul bene) sia nel caso in cui l’attività è esercitata su suoli di proprietà privata (dove il titolo abilitativo è quindi di natura autorizzatoria e riguarda l’attività)”.

²⁸ In accordance with art.43 of Constitution it would be necessary to ensure the management of collective goods through stakeholders. This social dimension must be considered not only through the provision of economic subventions, but also through the maintenance of a high level of employment, inclusion and cohesion of the most socially and territorially vulnerable people (Balboni, 2001).

²⁹ “Ciò che resta dopo la territorializzazione o, addirittura, nonostante la territorializzazione”.

³⁰ Among the different interpretative proposals, we here quote Cerulli Irelli and De Lucia (2013), which consider the environment, the territory, and the landscape as “primary and absolute constitutional values”, and which represent “the location of the collectivities” (32).

develop further researches, even in a comparative key, on the study of the quarries, considered as CPRs.

Rarely considered, even if particularly sensitive to a diverted use, the mining activities often contribute to carry out abuses and illicit practices in the national and transnational economic and financial chains, with enormous environmental and socio-sanitary consequences on local territories. The example of the Campania Region - and more specifically the province of Caserta, where congestion processes have been established, due to both legal and abusive edification of quarries and dumps³¹ - can be considered an emblematic photograph of the management of the mining sector in the country, which is largely conducted with great negligence from local authorities and institutions. Whole areas disused, abandoned, disqualified, even in peri-urban areas, represent a slash to the vision that considers the territory as CPR to be safeguarded. And this, as consequence, on the one hand, of the absence of formal institutions in regulating this strategic sector and, on the other, of the emergence of illicit activities that sink their roots in collective disinterest towards “public affairs”.

According to the P.R.A.E. of Campania Region: “The sector is functional for the preservation of environmental values, [...] of the entire concerned area” (P.R.A.E. Campano”, III, art. 21, co. 2)³². In fact, in Campania Region a substantial mining activity is often entrusted (even with not-clear procedures) for exclusive concession to “compulsory consortia” and very limited has been the attention to the environment and to the protection of the territory that looks devastated by the presence of numerous abandoned mining sites after the extraction³³.

But, despite the fact that the legislation emphasizes the value of environmental protection (specifying the condition for restoring the concerned areas) these constraints only remain a formal statement, with no imposition of any effective sanction for the environmental damages caused by such activities³⁴. The excessive concentration of mining sites in contexts that, by their nature, degradation or

³¹ The Campanian P.R.A.E. (2006) shows that in the province of Caserta were present 454 quarries (32.2% of the total in the Region). Of these, 29 were active and about 280 were abandoned (40.5% of abandoned quarries across the Region).

³² “L’estensione progressiva dell’uso comune dei beni comuni e, nello stesso tempo, all’affermazione di una nuova titolarità, molteplice piuttosto che individuale, dei medesimi [...], cercando: 1) di procedere caso per caso nell’affermare la natura di commons di una risorsa; 2) di ridefinire il concetto di soggetto giuridico non come un’identità autocentrata bensì come punto di incrocio di un fascio di rapporti sociali; 3) infine, di affermare il criterio di gestione collettiva e/o partecipata nell’amministrazione del comune”.

³³ For the purposes of this survey, for a comparative analysis, it was not possible to obtain up-to-date or up-to-date data provided by the various regional environmental protection agencies. The only data available on a national scale are those reported by the Legambiente (2014).

³⁴ In this sense we can read the disposition of the “Conferenza unificata” ex art. 8, d.lgs. 28th August 1997, n. 281 (art. 3, co. 1) introducing measures aiming to 'maintaining or improving the eco-systemic functions of the soil, minimizing the effects of fragmentation of agricultural, natural or semi-natural areas, and reducing the direct or indirect negative effects on Environment, agro-silvo-pastoral activities, landscape, hydrogeological and human well-being, and to recover, restore or improve soil functions”, “Mantenere o migliorare le funzioni ecosistemiche del suolo, a minimizzare gli effetti di frammentazione delle superfici agricole, naturali o seminaturali, nonché a ridurre gli effetti negativi diretti o indiretti sull’ambiente, sulle attività agro-silvo-pastorali, sul paesaggio, sul dissesto idrogeologico e sul benessere umano e a recuperare, ripristinare o migliorare le funzioni del suolo”.

environmental vulnerability appear so fragile and detrimental to not allow further withdrawals, in fact, has strongly constrained the economic development of the affected areas. Product damage has been so obvious and serious that it has led the Central Government to issue a Ministerial Order to raise awareness of the Region and Communes involved in more responsible management³⁵.

One of the most significant (and sadly known in the “Land of Fires”³⁶) examples is a fraction of Maddaloni (Masseria Monti di Maddaloni) in the province of Caserta, where in the former tufa quarry have been illicitly spilled over 200,000 tonnes of dangerous special waste, whose percolation has reached the ground floats with very damaging consequences.

Image 2: Masseria Monti di Maddaloni in the so called “Land of Fires”



Source: our processing (image from: radiopuntonuovo.it).

The investigative office, which used the declaration of politicians, local administrators, and justice collaborators, has opened an inquiry on “environmental crime disaster”, considering the exams made by the Campania Regional Environmental Protection Agency: according to the Agency, the gas

³⁵ In the P.R.A.E is reiterated that: “The environmental recovery of quarries requires mandatory interventions such as: a) Morphological remodelling [...and the...] preservation of soil reuse; b) Safeguarding the microclimate; c) Landscape restoration; d) Hydrogeological planning as defined in art. 9 of the Regional Law n. 54/85”, “La ricomposizione ambientale ai fini del recupero delle cave e del recupero dei siti e/o lotti esausti di cava, prevede interventi obbligatori quali: a) il rimodellamento morfologico [...] per la conservazione della possibilità di riuso del suolo; b) la salvaguardia del microclima; c) il risanamento paesaggistico; d) la sistemazione idrogeologica così come definite all’art. 9 della L.R. n. 54/85 s.m.i.; e) l’integrità della cresta collinare come esplicitate nelle linee guida del P.R.A.E”.

³⁶ The so called “land of Fires” is an area which extends from Naples and Caserta where is concentrated the maximum Italian criminal activity linked to the waste cycle. In this area is recorded a dramatic level of pollution in the soils, in the air, and in stratum with a relative great incidence of related diseases, such as cancers.

emissions due to chemical reactions in the underground are highly dangerous even because of the proximity of houses and agricultural funds³⁷. In 2013, the Parliamentary Commission on Investigation of Illicit Waste-related Activities 28 stated:

The problem is particularly felt because of the high number of quarries and the massive illegal use that has been made over the years [...] Abusive quarries, abusive cities, abusive landfills: in the Campania Region and in particular in the province of Caserta, every segment connected with the use of active natural and environmental resources enhance an illicit cycle, in relation to which the interests of criminal organizations become extraordinary³⁸.

Moreover, as evidenced by the penal inquiries of recent years (highlighted on several occasions by the Six-Monthly Reports of the Anti-Mafia Investigation Department), the Camorra and Mafia entrepreneurship is particularly involved in the management of the quarries for their enormous economic interests in the mining and construction sectors, which often become the storage facilities for toxic waste (Di Marco, 2010)³⁹. And thanks to the collusion with some local institutional actors, the criminal powers outlaw all the norms, competing potentially to increase the vulnerability of the area (De Crescenzo, 2009; De Crescenzo, Vassallo, 2016).

In the logic intending to protect collective interests, the assignation of the extraction activity management to private actors (profit-making business) is not justified. Differently, in order to promote local development experiences and local contexts valorisation in order to realise a better social and spatial justice, these activities could be entrusted to citizens cooperatives (Lucarelli, 2014), with transparent administrations, which could allocate part of the profits to the environmental requalification of the concerned areas⁴⁰, in opposition with forms of profit-oriented management, often controlled by criminal organisations. It would imply the activation of collaborative civic forms in order to transform the local public services in services with “common” interest, retrieving, as Mattei mentions, the “ecologic” relation between goods and persons (2011, 101)⁴¹. The

³⁷ Senate of the Republic, legislature 17 Act of Syndicate Inspection no. 3-01705, published on February 25, 2015, at session no. 398 (13th Permanent Commission Territory, Environment, Environmental Goods).

³⁸ During the 2000s Legambiente evaluated that there were 53 “Camorra” clans managing illegal or abusive quarries, with 7,115 illegal artefacts (Mancusi, 2003).

³⁹ For the reports and the statistics concerning the activity of the Anti-Mafia Investigation Department, see: http://direzioneeinvestigativaantimafia.interno.gov.it/page/relazioni_semestrali.html.

⁴⁰ According to the “Rodotà Commission”, the goods in the sense of juridical object “can be owned by public subjects (and they are inalienable and their management is reserved to public subjects, their concession is limited, and not prolongable) or private; in the second case the collective use should be guaranteed in any case. On the basis of the text of the Commission, everybody can start a legal process in order to preserve the rights connected to the protection and the collective use” (Cirulli Irelli e De Lucia, 2013, p.7).

⁴¹ From the more recent juridical debate two positions, representing the most advanced point of a theoretical issue, emerge and seem not to be overcome yet. On the one hand the ones who, with a functional approach, believe that there is a substantial assimilation between goods and services, considering that the management of a CPR cannot be confused with

democratization of the extractive activity should be oriented towards forms of communities' involvement in the planning procedures, aiming to rediscover the inalienability and the preservation of the use destination (Cerulli Irelli e De Lucia, 2013): a form of collective management which "refuses the concentration of the power and valorises its diffusion"⁴² (Mattei, 2011, 81), highlighting the CPRs and their destination nexus in the "respect of the relation between territory and person" (2015, 37).

5. For a different approach to the world

The aspiration to a new relation between local communities and territory give us the opportunity to rethink to the different forms of sharing useful to promote the potentialities given by the social diffusion of participation, management and preservation of CPRs (Settis, 2012). In this sense, in order to ensure new forms of ownership emerging from the idea of "commons" (in their social, political, cultural, juridical sense⁴³), a collective management should be ensured through the global access to the CPRs, as a collective and global interest.

Anyhow:

the participation, even in the more organised and shared forms, do not put all the subjects on the same level or eliminate the fact that the starting point are conflicts, not the convergence of interests. [In this sense...] talking about "commons" can be misleading. The work of differentiation and definition, the construction of differentiated institutional models (although unified in their aims), is therefore only at its beginning (Rodotà 2012a)⁴⁴.

the good in itself and referring to the US tradition (Berle and Means, 1932). On the other hand, more recently, with a more heterogeneous perspective, there are some authors (in particular Mattei, 2011, 2012, 2015) point out how these categories need to be reconsidered in order to promote a collective use of the CPR which definitively belong to the local community.

⁴² "Rifiuti la concentrazione del potere a favore di una sua diffusione".

⁴³ "One of the postulates of the debate on CPRs lies in the desire to overcome the individualistic structure of many sectors of the juridical frame. The framing of some of these goods in the context of collective rights could be transferred in the prediction of variously disciplined and calibrated forms of legitimacy to act on all components of a given community to protect fundamental interests, shared by all" (Cerulli Irelli and De Lucia, 2013, 34), "Uno dei postulati del dibattito sui beni comuni risiede nella volontà di superare l'assetto individualistico di molti settori dell'ordinamento. L'inquadramento di alcuni di questi beni nel contesto dei diritti collettivi si potrebbe tradurre nella previsione di forme – variamente disciplinate e calibrate – di legittimazione ad agire in capo a tutti i componenti di una determinata collettività per proteggere interessi fondamentali condivisi tra tutti".

⁴⁴ "La partecipazione, anche nelle forme più intense di cogestione, non mette tutti i soggetti sullo stesso piano, né elimina il fatto che il punto di partenza è costituito da conflitti, non da convergenza di interessi. [...] Pertanto, parlare di bene comune è fuorviante. L'opera di distinzione, definizione, costruzione di modelli istituzionali differenziati anche se unificati dal fine, è dunque solo all'inizio".

In complete opposition to any instance of sharing, invisible actors work, such as lobbies and criminal organisations which control capillary the territory and whose egoistic and individualistic behaviours of free riders⁴⁵ are driven by the instinct in land-grabbing, which make impossible their integration in cooperative operations (Pellecchia, 2013). As Magnaghi says: “The new community formed by the ‘constitutional’ conciliation of a future project in a complex, multi-cultural local society, with different degrees of innerness to the territory, necessarily born from conflicting interests” that can be pacified through “a culture of understanding and recognition of otherness as the fundamental value of the social relationships and as an incremental enrichment that can be lead only from the exchange of diversity and from the common interest” (2012, 68 and 69), but that is largely viable only at local scale. It is in fact extremely difficult - if not improper - to replicate the elaborated theoretical models from some experiences of managing CPRs at local scale, since it is not possible to ignore the problem of transcalarity in land management, also give the polyhedral typologies of goods to share. According to Harvey:

The possibilities for sensible management of common-property resources that exist on one scale, such as shared water rights between one hundred farmers in a small river basin, do not and cannot carry over to problems such as global warming or even to the regional diffusion of acid deposition from power stations. As we “jump scales” (as geographers like to put it), the whole nature of the common property problem and the prospects of finding a solution change dramatically. What looks like a good way to resolve problems at one scale does not hold at another scale. Even worse, good solutions at one scale (say, the local) do not necessarily aggregate up, or cascade down, to make for good solutions at another scale (say, the global) (2011, 102).

Harvey also argues that the problem of common goods needs to be redefined together looking for possible solutions. In his view, the accumulation of individualized, unregulated capital continually threatens to destroy the two basic common properties underlying all forms of production: the worker and the Earth. In addressing the spiral of degradation of the common work and of the common resources of the earth (including resources that are part of the "second nature" of the environment), what matters does not lie in the mix of possible institutional solutions, but in limiting the damage produced by the dismantling of regulatory frames and of the controls that have tried to curb predatory accumulation practices, triggering financial speculation (2011, p. 107). “In this perspective, the

⁴⁵ The free riders are considered economic actors which act opportunistically aiming to use a good or a service without contributing to their preservation (Vatiero, 2009).

generative process of a new ecologic right is entrusted to the social movement aiming to subtract to the private or public management the goods that they consider as CPRs” (Masullo, 2015, 12). The attempt that we have tried to formalize here (in the differentiation between theories and practices) is to critically question some local experiences disseminated at local scale, in a perspective that consider the territory as a collective heritage and historically built by social processes, in order to find an operative plot that places the “commons on the legal and political context, between the recognition of the common in itself and his production” (Negri, 2012, 10)⁴⁶.

Look at some specific traits emerging from the case study on Campania Region quarries, this first exploration on mining activity in Italy wants to contribute to the progressive extension of the use of commons associated to the interpretative paradigm of “commoning” (Negri, 2012). At the same time from empirical experiences, in local/global interactions, the limits or failed attempts of some practices of communing emerge, which seem to have exhausted their innovative contribution: because of the conflicts between institutional and informal actors in public/private management; because of the difficulty in consolidating, at larger territorial scale, a sense of belonging to an “imaginary community” based on abstract and impalpable ties, or even because of the contradictory coexistence of experiences of sharing inspired by the “rhetoric of the commons” affirmed in the last years, essentially in urban contexts, and inscribed in post-Fordist neo-liberal capitalistic transformations (as co-sharing initiatives, co-housing, the enhancement of the knowledge economy through ICTs). The problematic transition between good-management and restitution of the good to the community highlights the criticalities of this category of CPRs, whose use, in the present regulatory frame, is necessarily subject to advertising constraints, making the recognition of the legal status of this category of goods very complex. Starting from the proposed example in the tangle between CPR/service emerges the difficulties in imagining a management - public or private - of a good that would not involve in its governance the local communities for a different use of common resources. In the case of quarries, in fact, their exploitation not only has strong territorial impacts, but eventually the reuse of abandoned sites - as has been argued – could contribute to the growth of illicit activities in opposition to collective interests. Here we can find another aporia revealed from the territorial governance practices. The overlapping of different level of government, where often criminal organisation infiltrate in a colluded system, generating competence conflicts, rendering difficult the respect of “horizontal subsidiarity” respect. The perverse articulation between institutions and organised crime evidence the enormous difficulty in including quarries (and the rights on land and its use) between CPRs, as natural resources and focal point of enormous economic and eco-territorial interests.

⁴⁶ “Figura del comune sul terreno giuridico e politico, fra il riconoscimento del comune e la sua produzione”.

Thus, this specific issue of the quarries assumes a concrete value in order to rethink to this category of CPRs as good to be (re)build in an “ecological key” (Latour, 1999, 289), starting from territorial proximity and from forms of spatial socialization that, using unprecedented normative tools, see in the constitution of the “commons” an alternative way to the “republic of property” (Hardt and Negri, 2009, 249).

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