



(Re) -creating the commons: the social construction of new commons

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(Re) - creating the commons: the social construction of new commons.

Learning from the case of water management in the city of Naples (Italy)

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Abstract

There is currently an increasing interest to recover community management of resources, or even to (re-)create them as “new commons” (Ruiz-Ballesteros and Gual, 2012). The purpose of this communication is to explore, through the case-study of water management in the city of Naples (Italy), how new commons emerge. This purpose is composed on two sub questions: *how does the commons concept perform? What are the actors and the processes that make the emergence of a new common effective?*

The story of the institutionalisation of water as a Common in the city of Naples started with citizen movements. These movements blossomed after a general trend of privatisation during the 90s: this allowed a private agency to get the management of the integrated water services of Naples. After a series of political struggles lasting more than 10 years, a great numbers of stakeholders involved and a tremendously successful referendum, the movements succeeded in transforming the private water agency, S.p.A., into a special company, ABC (which stands for “Acqua Bene Comune”, in English “Water as a Common Good”). This was done in order to eliminate the incentives to the pursuit of economic short-term profit, and in order to guarantee water as a human right. Naples is the first city in Italy to have re-municipalized its water service and this case study is not only the story of an organisational innovation, but also the story of a larger scale legal tools innovation (Lucarelli, 2010; Bailey and Mattei, 2013).

This study contributes to the overcoming of the apparent dichotomy between material and immaterial commons by focusing on the social construction of the commons. By examining this social construction phenomenon, this paper underlines the struggles around the commons and pinpoints some pathways and recipes that can foster the setting up and the resilience of commons management systems.

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Introduction

Since Ostrom's contribution (1990) on Commons governance, great enthusiasm arose around bottom-up and self-organising governance (Dietz et al. 2003). A growing research community emerged to study the "commons" as governance systems (Aligica and Boettke, 2009; Araral, 2014). But this research community's focus on the common pool resource frameworks and the "common" concept was firstly centred on natural resources (Cox et al, 2010). Thanks to the spur in commons literature the term "commons" has recently evolved, stretching its meaning from a natural resources to one encompassing collective resources as well (Hess and Ostrom, 2003, Hess and Ostrom, 2007). This enlargement of the "commons" meaning renovate the whole paradigm and frameworks of the research on common resources and point at a blind spot in this research field, the one of the emergence of the common. The initial focus on commons merely intended as natural resources lead to a bias which drove us to consider the commons only as pre-existing resources. On the contrary, this new enlarged perspective enables us to pinpoint the issue of the social construction of the commons (Lascoumes and Le Bourhis, 1998; Labatut, 2009; Hannachi, 2011; Berthet, 2013).). Consequently a newly emerging issue concerns the emergence and construction process of the commons.

Many works (Dietz et al., 2003; Plummer and Armitage, 2006; Anderies et al., 2011) show that common resources and its related institutions are undermined by the evolution of the context and are deteriorated by the erosion of the organisational and institutional components. In response to this issue, there is an increasing interest in recovering a community management of resources, or even in (re)-creating them as "new commons" (Ruiz-Ballesteros and Gual, 2012). While "traditional commons" are considered as pre-existing (e.g. natural resources), and institutions and stakeholders have to adapt to global logics in order to ensure their permanence, "new commons" (e.g. open source software resources) are socially constructed and already born in global contexts where individualism, private and public property are the norm.

For these reasons, to deepen the analysis of specific cases that could be emblematic for the widening of our understanding about how commons emerge is nowadays deemed necessary. The aim should be not only to investigate how collective, complex and dynamic socio-ecological management schemes of commons emerge, but also which are the processes leading to the emergence of the commons itself. This is the purpose of this article, which analyses the emergence of water as a common relying on the case study the city of Naples, Italy.

The case study of the city of Naples is an emblematic case of emergence of water as new common (Bailey and Mattei, 2013; Mattei, 2013). The discussion is framed as follows: firstly,

the theoretical framework as well as the underlying methodology the paper relies on are illustrated; secondly, a historical overview of the process of remunicipalisation is provided; then, using an original interpretative framework on the commons based on scientific literature, we conclude by pinpointing some insights and recommendations for practitioners and scholars on the emergence of new commons.

Theoretical framework

Some interesting researches significantly contributed to the understanding of commons' emergence. The researches we refer to are generally focused on the community-building or on the transformation and the resilience of institutions. Works on community-building analyse the issue of development of a community-building *modus operandi* so as to ensure a common understanding built on shared objectives, trust and cooperation (Poteete et al, 2010; Ruiz-Ballesteros and Gual, 2012; Duraipappah et al, 2014; Raulet-Croset, 1998; Ohler and Billger, 2014; Lindahl et al, 2015). The works on the transformation and the resilience of institutions highlight the development of new collective organisations and governance schemes able to properly articulate and regulate community relations, shared objectives and context evolution (Olsson et al, 2004; Armitage et al, 2009; Hannachi et al, 2010; Vollar, 2012; Dedeurwaerdere et al, 2017). These two research fields shed some light on the issue of emergence of new commons.

The focus of this paper is on two issues we identified in the blind spots of previous literature around the emergence of the commons:

- 1) The performativity of the concept of commons: how the commons concept can create or shape institutions, cooperation and collective resources in the field.
- 2) Are there particular players who have a key role in the process of new-common emergence? In other words, are there "commons midwives"? If so, who are they and how do they relate with other players around the common?

Starting with the first point, the performativity of a theoretical concept can be defined as the process taking place when this theory is put into the world by practitioners and popularisers it reformat and the phenomena they intend to describe, in ways that bring the world in line with theory (Callon, 1998 ; MacKenzie and Mollo, 2003). In the case of economic theories, MacKenzie and Mollo (2003) underline that performativity carries the idea that "economic theory does not describe an existing external 'economy', but brings that economy into being: economics perform the economy, creating the phenomena it describes". Thus a theoretical concept performs when its assumptions become deeply rooted in procedures, organisation and in humans' beliefs (Ferraro et al., 2005; Muniesa and Callon, 2009). Moreover, researches on performativity show how practitioners can integrate scholar theories into their discourses, habits and behaviours (Feldman, 2003; Butler, 2010; Cabantous and Gond, 2011). Questioning the performativity of the commons' concept amounts to question the way this concept reaches human communities and inspires alternative management, as well as governance systems of propriety rights aimed at transforming goods and resources into commons -or creating them. Consequently, the concept of performativity appears as an interesting framework in order to study the emergence of the commons.

Moving to the second focus, scholars have identified and recognised many categories of players around the commons as the “Full owners”, the “Proprietors”, the “Authorised claimants”, the “Authorised users”, the “Authorised entrants” and differing roles as “Access”, “Withdrawal”, “Management”, “Exclusion”, “Alienation” (Schlager et Ostrom, 1992; Ostrom, 2003; Orsi, 2013). All these categories and roles, based on property right bundles, shed some light on the governance of existing commons as well as on the way institutions work. Nonetheless, they do not help to understand nor describe the emergence process of a given common. The existing literature fails to identify the players of the emergence a common.

Those two first topics (performativity and key players of the commons emergence) converge on a third point:

- 3) Are there particular categories of actors that impact on the performativity of the commons concept?

This question warrants consideration because nowadays, despite its spread, the commons framework is not the mainstream -neither for scholar nor for practitioner. In the current world, the norms (such as privatisation or regulation) that are mainly used in economics and politics rely on devices, recipes and believes that are different from the commons framework (Vivero-Pol, 2017). Therefore, this question can be reformulated by asking how could an alternative theory -such as the commons one- perform while their users and popularisers are underrepresented. More precisely, this question addresses which are the kinds of networks we could rely on to disseminate the commons frameworks and which are the characteristics of the actors who are backing the new commons emergence?

For this third issue, the Actor-Network Theory (ANT) (Latour, 2005) provides interesting insights. The ANT framework was shaped to understand how the growth and structure of knowledge could be analysed through the interactions of actors and networks. Initially created in an attempt to understand processes of innovation and knowledge-creation in science, the ANT does not necessarily focus on the description of networks (Latour, 1996). The idea is not to analyse actors and networks that disseminate theories without deformation, since, in ANT, every actor-network interaction involves a series of “translations” (Latour, 1996). The “translation” is the central concept of ANT which is a processual description of the way how theories are disseminated and how, at the same time, innovations emerge. The “translation” carries the idea that innovators already firstly attempted to create a *forum*, a central network whose meaning all the actors agreed on. Callon (1986) identified four steps for this translation process: problematisation (the definition of the problem is specific for each actor: in this step there is a series of inter-definitions of the actors in the network and a series of re-definitions of the problem), interessement (in this step, various devices are used to strengthen the association between actors by “locking” actors into the roles that were proposed for them), enrolment (definition and interrelation of the new roles that were allocated to other actors in the previous step) and mobilisation (ensuring that spokespersons are properly representative of relevant collective entities).

The ANT makes a distinction between intermediaries and mediators. Intermediaries do not make a significant difference on the on the problem or the theories and they don’t transform

them; mediators are key actors. Mediators induce the impetus that transform the reality and it is impossible to predict their outputs relying on their inputs.

For a better understanding of the process of new-commons' emergence, even after the analysis of the performativity of the commons concepts and after the identification of key actors of the emergence process, in depth case studies are needed. This is, therefore, the aim of this article: we analyse the case of the emergence of water as a common in the city of Naples in Italy. This case seems to us particularly relevant, because Italy is the only nation that have recently recognised and adopted in its constitution an explicit commons legal framework, and the water management system of Naples is today the only commons that had recently emerged in Italy.

Methodology

This research is based on a case study methodology (Eisenhardt, 1989; Yin, 2003) and a qualitative research design (Dumez, 2016). The case study methodology relies on different methods to illuminate the case from different angles (Johansson, 2003), and it allows in-depth, multi-faceted explorations of complex issues in their natural settings. Case studies using qualitative methods are most valuable when the question being posed requires an investigation of a real life intervention in details. The focus is shifted towards how and why the result can be a successful one or not, considering whether the general context will influence the outcome and whether researchers asking the questions will have control over events. According to those features, the case study methodology was proven to be the most suitable for our qualitative analysis on the emergence of water as a common in the city of Naples.

When undertaking a case study the crucial stages are four: defining the case, collecting and analysing data, interpreting them and reporting the findings. First of all, we defined the case by relying on carefully formulated research questions (*how the commons emerge? what are process and the key actors in the emergence on a new commons?*). Then we selected the case of water management in the city of Naples in Italy because of its uniqueness and revelatory connotation, which was of genuine interest to us. Later on, we started the process of data collection, using multiple sources of data so as to increase the internal validity of the study: public secondary sources (newspapers, professional reviews...), private secondary sources (institutions documents, activity reports...) and a series of semi-structured interviews. We have done 16 semi-structured interviews with past or present stakeholders. This kind of interview enables us to collect detailed information in a style that is somewhat conversational. We relied on semi-structured interviews to delve deeply into a topic and to understand thoroughly the answers provided: their flexibility gives room for exploring more complicated and sensitive questions.

Then, to make sense of the primary data we collected through the interviews, we relied on the coding method, which consists in labelling the elements present in the initial *corpus* so as to be able to compile and organise them (Paillé, 1994 ; Dumez, 2016). The codes obtained with this analysis are the building blocks on which the arguments rest. Implicitly or explicitly, they embody the assumptions underlying the analysis (MacQueen, 1998). Putting together the results of the analysis of primary and secondary data, a case history was drafted, from

which we developed the analysis to later establish "patterns" using the method proposed by Miles and Huberman (2003). Once we carried out the analysis by interpreting the data, we reported the findings in the shape of this paper.

Results

In Naples, in order to supply citizens with water, there is a complex system which combines natural resources with human infrastructures. With natural resources we refer to groundwater and watercourses which are of public domain. By human infrastructures we mean aqueducts, water-distribution networks (water pipe circuits), 12 pumping station and high-level tanks, sewage treatment plants and water quality monitoring stations. Some among those human infrastructures are really old and they can be considered as constituting a collective heritage.

The management of this complex system, which allows to supply Naples's inhabitants with fresh tap water, has been guaranteed, for a long time until 1994, by a municipal company as a public goods.

1994: On the move for privatisation and commodification of water

On the 5th of January 1994, a law called Law Galli, "Dispositions in the matter of water resources", was voted in Italy. This law triggered a reform of the water management sector in several respects, amongst which:

- a scaling-up of water management, from the municipality level to a higher one through the creation of regional ATOs (Optimal Service Areas, *Ambiti territoriali ottimali*), subdivided in municipal ATOs. These regional ATOs were meant to set tariffs, establish an investment plan and a business plan, and award a concession to one public or private water service provider;
- the introduction of the concept of Integrated Hydric System (called SII for *Servizio Idrico Integrato* in Italian) where one single manager is in charge of all productive functions for the whole water cycle, for each ATO;
- the creation of a new model of service and investments funding management, not based solely on public money when it comes to make up for continues losses, but aimed at obtaining the necessary financial resources within the same management systems;
- the determination of the tariffs according to economic criteria (e.g. cost of services provided, quality, investments etc). Therefore, tariffs, initially considered as a "fee", gained attention and became a price.

From a governance model tailored upon human-communities of users to one shaped on an single provider's profitability

This Law Galli caused a radical change in the water's management of the city of Naples. This disruption consisted primarily in an attempt of scaling up water's management. The governance scale was no longer defined according to a human size (such as the one of a community of users in a city or in a village) but it was defined following a hydro-geographical scale (of one or more hydro-geographical basins) as well as -and primarily- an economic-driven scale (whose size needed to be autonomous and economically profitable).

The governance at a city or village scale carried out by locally elected representatives has to be eventually scaled up into the ATOs (Ambito Territoriale Ottimale): optimal service areas, whose limits are defined according to hydro-geographical basins, resources localisation and mobility&transportation constraints. The main criteria used to define the ATO territory are the ones of efficacy and profitability (as stated on the art.91 of Law Galli) so as to make its privatisation attractive and appealing.

In the region Campania (whose capital is Naples), four ATOs are created. The city of Naples is included in the ATO 2 since 22 July 1997. A double integration process is launched. It consists of a horizontal integration (only one water operator for each ATO should be remain) and a vertical integration (drinkable water supply and purification as a single integrated service).

The Law states that once established every ATO is entitled to choose a governance form. For that, at that time, the choice is among the form of a public enterprise, a private operator or a mixed enterprise.

From a municipal management to a monopolistic management by a private company

Besides the modification of the water supply's management scale, the Law Galli caused an inflection in water's management forms in the city of Naples. The municipal enterprise in place, a society called AMAN (*Azienda Municipalizzata Acquedotto di Napoli*, which mean in italian the municipal enterprise of the aqueduct of Naples), is substituted by ARIN (*Azienda Risorse Idriche di Napoli*, enterprise of hydric resources of Naples) the 29th May 1995. The underlying idea is to pave the way for a privatisation of water's management. This idea was progressively implemented via a series of modifications in the end of 90's. Then the 1st January 2001 ARIN becomes a joint-stock company, with the Municipality of Naples as the only shareholder. Stocks are for sale and enterprises such as Veolia become shareholders.

In other cities in Italy, water management totally switched to a private management. This is the case of the city of Arezzo in 1999. In this city the water's management was transferred to *Nuove Acque S.p.A* (new waters joint-stock company) run by Gdf Suez, Acea and two Italian banks (Monte dei Paschi di Siena e Banca Etruria). In Naples this transition was intended during the 2000s.

The emergence of a citizens' battle against a private management and a commodification of water

During the 2000s, several manifestations took place in the city of Naples and almost everywhere in Italy. Slogans such as "*L'acqua è di tutti, non si vende*" (water belongs to everyone, it's not for sale) are shout out by the crowd of demonstrators, and "water activists" appear. This "water activism" is pursued in the first place by local representatives, syndicates, religious bodies as dioceses and missionary priests, environmental associations (e.g. Legambiente) or anti-globalisations ones already existing (e.g. ATTAC). Furthermore, water activists associations arise almost all over Italy (e.g. Forum Toscano Movimenti per l'Acqua; Comitato Acqua Pubblica Torino, Molise, Ferrara, Manziana, Genova and so on).

The 29th of November 2009, the Italian government and the Chamber of Deputies passed the decree Ronchi. This decree, named after the previous minister of the environment, aims at compelling the privatisation of water services and at accelerating its process. It implies that all the local institutions are summoned to transfer at least 40% of their actions to private enterprises for each of the joint-stock companies created by the Law Galli for the management of water. The local institutions have one year to transfer those actions. The aim is to make local or public institution's participation in water management only marginal or exceptional.

During the implementation of this governmental initiative, activists decided to come together into one single body, a Forum called "*Forum italiano dei Movimenti per l'Acqua*" (Italian forum for water activism). This gathering allowed them to coordinate and organise manifestations against water privatisation. Environmental and anti-globalisation associations were backed up by associations for the defence of open-source softwares. This adhesion of open-source software activists seems to be a tremendous asset. The battle against privatisation gained strength through the internet. Awareness-raising campaign were run with success and petitions were started.

«The war for privatisation was started by politicians in political arenas, but it has been won on the internet by the activists against private property» (a water militant)

By 2007, the "Forum Italiano dei Movimenti per l'Acqua" had already collected more than 400.000 signatures in favour of a new law for the management of water services, but this initiative was unfortunately not discussed at the Parliament. To gather and to collect mass discontent is certainly useful to fight against privatisation laws and processes, but in this case it was not enough. It became necessary to find other credible and viable alternatives. It was with the precise aim to build those alternatives that the movement against waters privatisation in Italy invoked the support of the Rodotà commission's experts.

On the 14th June 2007, a commission named after the previous vice-president of the Chamber of Deputies, Rodotà, was created. The mission bestowed on this commission was the reform of the Title II of Book III of the Civil Code, derived from the Napoleon Code (1804), on the legal framework of public domain and patrimony. Already since 2005, and before the establishment of this commission, there have been many reflections and academic works on public and private property regimes in Italy. Political figures as well as law and political researchers were part of this commission, and they initiated a reflection on the reform of the Civil Code with regards to property issues. The works of the Rodotà commission lasted until 2008 and culminated, after meaningful interactions with water activists, in the design of a regulatory innovation to define a new category of legal property in Italy, the one of "common good".

A bill is submitted by the commission to the Minister of justice. Among the propositions, this bill mentions two salient points:

- i) «[...] Establishment of three distinct categories of properties: public property, private goods and common goods.
- ii) Introduction of the category of "common goods", i.e. things that are functional to the exercise of fundamental rights and to a free development of human beings. Common goods should also be protected by the legal system to the benefit of

future generations. Holders of common goods can be either public or private legal persons. In any case they should guarantee the collective fruition of common goods in the ways and within the limits established by the law. If the holders are public legal persons, common goods are managed by public bodies and are located out of trade and markets; their concession/grant is allowed only in the cases provided by the law and for a limited time, with no possibility of extension. Examples of common goods are, among the others: rivers, streams, water springs, lakes and other waters; air; national parks as defined by the law; forests and wooded areas; mountain areas at a high altitude, glaciers and perpetual snows; seashores and coasts established as natural reserves; protected wildlife; archeological, cultural and environmental goods. The law concerning common goods should be in accordance with the existing customary law. Everyone is entitled to the jurisdictional protection of rights concerning the safeguarding and the fruition of common goods. [...] (text from the report of the Rodotà commission, translated from Italian)

«The same way you need to fight fire with fire, you need to fight laws with laws... And we have been able thanks to jurists to create some regulatory innovations»
(a local elected representative)

In 2010, water activists took up those definitions and formulated a bill to reclassify the resource "water". Water is no longer seen as mere merchandise or as collective resource, but it rather becomes a good tied to a human inalienable right, which gives rise to an easement right as well as to a collective responsibility

An internet petition and a massive awareness-raising campaign were launched by the Italian Forum of water activists. This petition called out for a referendum to modify water policies, since the Italian Constitution allows citizens to propose an abrogative referendum if 500.000 signatures are collected. Despite the lack of financial resources and media coverage, the water activists proved their cleverness by skillfully relying on the internet: they managed to collect more than 1,5 million signatures in three months. More manifestations and protests are held asking for a referendum.

After this success, the referendum date was set on the 12th and 13th of June 2011. According to the Constitution, in order to validate the referendum a quorum of 50% of participation is needed, and the Italian government refused to hold the referendum at the same time as the municipal elections of May 2011. The government then postponed the referendum date until the summer vacations. The activists started to campaign at the very same time for the participation in the vote and for the yes -yes to the modification of water management's laws.

«At the beginning of June the official campaign should have started, but the public television, RAI, didn't respect the standards laid down for an electoral campaign. Until the referendum, the information was derisory. It's in the street, in the schools, at the universities, by participating to all public events, by organising conferences, debates, forum, parties that we carried out this campaign without ever drawing the attention of

mass-media who, in the meantime, rather preferred to focus on other things.» (a water activist in Italy)

On the 13th of June 2011, the results of the referendum are published: 57% of Italian citizens voted, and 95% of them spoke against privatisation and commodification of water, and for water as a common good.

After the regulatory innovation, the organisational innovation

Three months after the results of the referendum, Naples became the first Italian city to implement its electors' will, which spoke out in favour of water as a common good as well as in favour of a water management distinct from the private sector and a profit-driven market logic.

On the 26th October 2011, the municipal Council of Naples, by majority, approved the transformation of the joint-stock company (ARIN) who administered the water distribution service in Naples into a "special enterprise" called ABC Napoli (*Acqua Bene Comune*, water as a common good).

«From a legal standpoint, there are clear measures to be followed to transform a public enterprise into a private one, but for the reverse path there are no clear rules» (an expert of the Rodotà commission)

ABC Napoli is an enterprise with a peculiar status called "special enterprise": it is a non-profit organisation, managed by the City Council. Its activities are structured following objectives and programs designed by the City Council with the participation of the citizens themselves. ABC Administrative Councils is composed of two categories of administrators: technical and civil ones. The civil administrators are appointed according to a designation process which starts from the civil society. A surveillance committee, where both users and enterprises' employees are represented, is created so as to guarantee accountability and transparency to the citizens³.

«[...] About the relations between common goods and citizens participation, I would like to define our action as the "laboratory of Naples", a laboratory which, following my ambitions, is meant to change the relations among politics, administration and citizens so as to improve the control and the management of common goods.» (one of ABC Napoli administrators)

According to the managers of ABC Napoli, the organisational model and structure of the special enterprise is yet to be defined. Fully aware of the challenge which is to build a

³ This transparency issue and the one of users' involvement was included at first into the process of joint-stock companies creation when they were to replace public institutions; but this commitment of transparency has been later on removed from the status (Lucarelli, 2010).

"collective and participatory governance", they prefer to advance "step by step" and by "experimentation".

«[...] we made some experiments of “participative democracy”: at the beginning of the last year (2015, N.d.T.) we allowed the spokespersons of citizens committee to participate to the Administrative Council to speak for themselves and interact with others technical advisers. That initiative was rejected by the technical advisers and in July all the advisers and the members of the administrative board handed on their resignations and quit... the experiments process was not an easy pathway.... After the leave of the technical advisers, I was mentioned Commissioner of the enterprise and I was alone trying to build up the new administrative council.....Now as a commissioner, I share with all the committees and it works. Nowadays the novelty is groundbreaking: here you don't have only the technocrats but the citizens and the activists who's have the same weight within the Administrative Council (the president of ABC Napoli)

The on-going organisational innovation process includes also some issues related to the governance of a collective resource which is at same time a pivotal right. The juridically adopted definition of common good includes an easement right. This is concretely translated into the adoption of a social tariff policy aimed at respecting users' rights and at taking into account social disparities. Every day, the first 15 liters of waters are free for all the users. Water cut in case of outstanding payment is not operated unless there is a court order. The enterprise aims at finding a way to assess tariffs proportionally to citizens' income. Some initiatives of cooperation with the tax services started but they are still facing hard times because of the unwillingness to cooperate of tax services.

«Costs are covered by water bills. Our national environmental code states the principle of “full recovery costs”, therefore all the management costs shall be covered by water bills. I do not personally agree with that, in the sense that it's not fair that water, which is something we need and we cannot live without, shall be paid in the same amount by rich and poor people: poor can be prevented from having water access for economical reason while rich people can afford to waste water. The systems shall be modified but that's the Parliament task. Since we're dealing with rights rather than goods, we shall split the costs into a standard tariff and a contribution to tax in general so that who's richer could contribute more, and the poorer could get access to water anyway.» (the president of ABC Napoli)

The organisational innovation process implies also some reflections on how to increase users' awareness of their common responsibility and foster their empowerment. Some educational initiatives took place, with the aim of making use of pedagogic tools to convey the complexity and the fragility of the socio-ecological system of water to the users. For example, a water museum has been created. Every citizen can track, on an interactive map, the trajectory of the water from the phreatic nap to his tap. This map allows to see the aqueducts sections which

are crossed (some of whom date back into the roman time), the tunnel dug into the rocks and some reservoirs among the most important in Europe.

The struggle for the legitimisation of a common management model

The battle against the commodification of the water resource has been translated into a legal innovation and an on-going process of organisational innovation. But this fight is not over yet and ABC Napoli is nowadays the icon of a battle aiming at legitimating the existence of a management model alternative to the one of private property.

ABC Napoli balance sheets for 2014 and 2015 counted about 8 millions of surpluses, nonetheless the ABC Napoli company faces several account and tax audits by the authorities (called IRS in Italy).

«In 10 years ARIN has been monitored once, while the I.R.S.co imposte agency sent us six control in three years for an overall amount of 60-70 millions€... We won the first and second grade recourse, we're waiting for the Court of Cassation. What is remarkable here is that when this enterprise was a private one, it received only one control: what an expensive source of pressure (layers and so on) to attack our survival!..» (the president of ABC Napoli)

From a regulatory point of view, in 2016 the Italian government proposed a bill called decree Madia (named after the Minister of the public administration). This decree aimed at preventing "special enterprises" (such as ABC) as well as local authority from managing the network services, such as water.

«The Madia decree provides for our extinction, from the moment when special enterprises will no longer be legitimated in terms of management of network services, it's a law tailor-made on us since Naples is the only city where there is a special enterprise to manages a networks service[...] We are attacked on multiple fronts, there are several from of pressure, and the enterprise is not equipped to face them, we would need a parallel organization to deal only with that!» (the president of ABC Napoli)

After a consistent internet mobilisation and multiple manifestations, the Madia decree was dismissed in November 2016. It seems that ABC Napoli, in order to defend and preserve its legitimacy, relies on the bonds developed with water activists.

«The interaction with activists is continuous. We discuss almost every day. They share the enterprise's journey, its management and its political orientation. A sporadic and impromptu interaction won't create nor awareness nor a shared, common understanding. Which, on the opposite, is what is substantially important, a concrete and daily sharing of the pathway. The approach is a conceptual one: the presence of

movements and activists is important because often within the structure itself there is a tendency to focus on the bureaucratic side of it and only look for bureaucratic solutions. To keep the focus on rights is not simple because this implies a broad vision and even when you have to face a very specific situation you always have to have a vision as comprehensive and encompassing as possible. [...] The approach then changes entirely. [...] Nowadays the Civic Council is made of activists and you also have an administrative board. But me (president of ABC Napoli, N.d.T), I am also the expression of activists, I am not a distinct unit from activists.» (the president of ABC Napoli)

Thanks to these linkages ABC Napoli managed to arise the adhesion of activists and the relay of the neighborhoods committees. Concretely speaking, this resulted in the launching of actions aimed at legitimating the common good management model of ABC Napoli. This is also how the restoration campaign of historical fountains and public fountains took place, as well as the awareness-raising campagne "good to drink" on the quality of tap water in Naples. Those projects were implemented through participatory workshops thanks to the involvement and commitment of neighborhoods committees and users.

Moreover, pedagogy is often mobilised to socially institutionalise the common good management model and rule out a private management. This pedagogic method sometimes happened to recourse to mythology and beliefs. In 2016 for example a graphic novel is published under the title "Mammacqua. Venderesti tua madre?" (Motherwater. Would you sell your mum?). In the end of 2016, the Christmas nativity scenes of San Gregorio Armeno (a famous church in Naples) were decorated with waterfalls and water illustrations symbolising "water as a common good".

Discussion

The story of water management in Naples is the story of the emergence of a Common. Behind this emergence, takes place a social construction of the Common. This social construction is composed of a struggle against the dominant property and management models, but it is also made of the invention of new models of property and management.

Through the analysis of the case study of Naples, several stages of the construction of a new common were elicited. First of all, in order to fight against the dominant model, it was necessary to federate and empower users and stakeholders in relation to the common good. To ensure those users' federation and empowerment actions, a key category of actors appeared: Commons activists, a sort of "Commoners". Those activists militate in favour of open-access property regime and against the pursuit of short-term individual profits in the management of collective goods. In the case of water in Italy, a large number of activists, mobilised by the battle for water as a common good, did not have any experiences nor direct interest in the water domain. They came either from anti-globalisation movements or from

associations for the defense of open source software resources. Many among them went back to their own field right after the success of the referendum, leaving room to the emergent water activists in Italy.

These commons' activists play a maieutic role toward the community of users and work on different step of the common emergence (figure below).

Figure 1 : stages of the construction of a new common

<i>Process</i>	<i>Key players and actions</i>	<i>Steps</i>
Raising awareness among users and federate them	<u>Activists</u> propaganda, develop and deliver mass communication and public awareness campaigns	Community building started
Shaping a shared definition of the common and requalification of the collective resource	Experts and <u>activists</u> ' interactions	Common concept re-appropriation
Legal protection of the common	Politics and <u>activists</u> lobbying (referendum and constitution change)	Regulatory innovation
Shaping the governance system of the common	Innovative entrepreneurs and <u>activists</u> ' interactions (experimentations and adaptive management)	Organizational innovation
Enlarge empowerment of users and transformation of the community (strengthen the legitimacy inside the community)	Entrepreneurs and <u>activists</u> launch popular education (museum, educative comics book, water festival...)	Set of new institutional arrangement
Struggles for the defense of the commons (strengthen the legitimacy outside the community)	Lawyers, politics, <u>activists</u> and entrepreneurs	New common raised

To fight against dominant property models, it was necessary to federate and empower users and stakeholders against the commodification of water, but it also took to define new property models as well as requalifying water as a common good for the users community in Naples. This requalification calls for an inter-subjectively shared definition of what water is. And prior to that, a commonly agreed definition of what a common good is.

According to Ostrom (2008), scholars are still in the process of developing a shared definition for the broad set of things called "the commons". There is frequently confusion about similarities and differences across concepts such as "common-pool resources", "common-property resources", "open access resources" and "commons" in general. Ostrom (2008) considers that "commons'" refers to systems, such as knowledge and the digital world, in

which it is difficult to limit access, but one person's use does not subtract a finite quantity from another's use. This polysemy of the "Commons" concept seems to leave room for local re-appropriation of this concept. Moreover, it seems that it enhances its performativity (Callon, 2007; Muniesa, 2014). Performativity is a process within which socio-technical arrangements are being modified and redesigned to enable the existence and relevance of a new statement, concept, image, theory or model (Muniesa & Callon, 2009). Performativity shall therefore be distinguished from (neo)-institutionalism since the notion of institutions is too static: it can explain how an economic state can reproduce itself, but not how it can evolve (Dumez, Jeunemaître 2010). In Michel Callon's view, old as new institutionalism lacks explanatory power. And institutions are stuck: they do not explain how they can evolve themselves. To use Callon's words, *«l'expérimentation à la fois comme creuset où s'élabore la théorie et comme cadre qui permet à cette théorie d'avoir des effets, est devenue selon moi un enjeu majeur»* [«experimentation is at the same time the crucible in which theory is elaborated, and the framework allowing this theory to have effects; today, experimentation has become a major challenge»] (Callon, 2006, pp. 26-27). Therefore, the polysemic definition of the Commons underlined by Ostrom (2008) goes hands-in-hands with the power of performativity as a socially transformative, imaginative and collective political engagement that works simultaneously as a space of social critique and as a space for creating social change (Houston and Pulido, 2002).

The open theoretical definition of the commons enables the Italian actors to formulate their own operational definition of water as common, and to shift from a struggle against the commodification of water to a struggle for water as common. This local definition of the commons enables the emergence of water as a new common through the rise of language, social norms and institutional arrangements (Ferraro et al. 2005).

At the base of this emergence, there is the concerted contribution of law experts and political scientists, and all their interactions with water activists. Those Italian opponents of water supply privatisation formulated their own definition of water as a Common that refers to a human right. This connotation of water as a human right gives rise to an easement right which allows to rule out the commodification of water. And this definition of water as a Common joined the qualification of water as a human right supported by several opponents of water supply privatisation around the world (Gleick 1998; Hukka and Katko 2003; Morgan 2005; Trawick 2003). Meanwhile, the peculiarity of this definition is the integration of the concept of Commons, and of the formulation of a new property right into the Italian constitution. Those common goods are opposite to private property and to public property. They are goods for which the alienation (right to sell) or the exclusion (right to prevent someone's usage) rights are proscribed. This new form of property right, inscribed into the Constitution after a long battle, is a major regulatory innovation. This regulatory innovation is a sound base to allow the emergence of new Commons.

Nonetheless, the case of water management in the city of Naples shows that this regulatory innovation alone, despite being necessary and fundamental, is not enough. There is a need to invent a model of governance which enables to manage, in a sustainable and effective way, the water network and without exclusion nor alienation. Some academic works on the Commons already showed that this collective governance model can be efficient and effective (Schlager et Ostrom, 1992, Orsi, 2013). Nonetheless, the way this collective governance model can be implemented in a context which was, and still, is hostile to this type of approaches and initiatives (Mattei 2013)

To bring out this "common good management" model the stakeholders in Naples decided to put into place what they call a "Laboratory". This laboratory is a special organisation with a status which is neither public nor private, and the idea is to proceed empirically by testing and adopting organisational innovations which are suitable for the local context and make it possible to develop an effective management.

Some attempts at integrating different stakeholders (citizens, activists, employees, locally elected representatives) into the governance (Administrative Board) and into the surveillance (Oversight Board) phases of the management of water are launched. Prolific reflections are still taking place to design the best possible way to put in place a water tariff based on users' income, so as to avoid any exclusion.

Many scholars and the commons literature have pointed at the relevance of this experimental and adaptive method. As Vincent Ostrom (1980) argued, a given organisation solves problems but also creates new problems. Humans have to adjust to them through learning and making new choices. Aligica and Boettke (2011) underlined that the very solutions create, in turn, new problems and challenges. And thereby the cycle continues, through the dialectic problem-solution which endlessly evolves into a new problem. Social organisations become increasingly complex. Yet, precisely because they are the outcome of several choices which, in turn, engender new choices, social organisations are always fluid and vulnerable to ongoing challenges (McGinnis, 1999, Michaux et al, 2011).

Those experimentations are not only circumscribed within the boundaries of the ABC enterprise but they cover also its surroundings. Some initiatives of popular education are launched with the aim of transforming the behaviour of the users' community. Water museum are inaugurated, water festivals are organised. The overall objective is to make users aware of their responsibilities and to contribute to their empowerment. At that time, this process of organisational innovation which consisted in socially institutionalising the common good seemed to be the toughest step. But it is not the last one.

The case of Naples shows that more than regulatory and organisational innovations, what is crucial for the emergence of a new Common is its defense. Existing commons are generally situated in an environment where the institutions and the stakeholders are already

accustomed to the commons as a right, and to the consequent way of working and respect them. Conversely, the new commons are embedded in an environment where individualism, private or public property are the norm. As a consequence, the new Commons need to be defended and enforced.

The emergence of water as common in the city of Naples has given rise to many scepticisms, and this newly-born common had to face many attacks. Some of these attacks are targeted on the legal property regimes of the commons newly adopted by the constitution in Italy. As Elinor Ostrom (2009) underlined *“A further reason for the lack of awareness about property systems developed by local users was that many scholars presumed that unless users possessed alienation rights – the right to sell their property – they did not have any property rights (Alchian and Demsetz 1973; Anderson and Hill 1990; Posner 1975)” (Ostrom, 2009, p419)*. The Italian case shows that this lack of awareness about commons property systems is still consistent with some politicians’ ideas. Other attacks derived by the emergence of water as a common are the ones directed against the efficiency of the Commons management systems. Just to mention one example, the ABC Napoli organisation faced six accounting and tax audit by the authorities while the previous joint-stock organisation had one audit over ten years of existence. These attacks and the responses of the various stakeholders show that, after the emergence of the common, there is a whole process of legitimisation which need to take place, in order to set up the Commons’ legitimacy outside, as well as inside, the community.

Conclusions and perspectives.

The historical study of the emblematic case of water management in the city of Naples provides many insights on how the commons emerge.

First, on the analysis of the performativity of the concept of commons, the case of Naples shows that in the emergence of a common there is a re-appropriation and a transformation of the concept of commons (in Naples the new common definition include a definition as a human right with an easement right). This re-appropriation and transformation of the concept of commons engenders organisational and regulatory innovations. It plays a crucial role in the emergence of water as commons in the city of Naples and in the process of empowerment of concerned stakeholders. This enables us to highlight the importance of an open definition of the commons. Scholars and practitioners have to be vigilant not to make the definition of the commons too restrictive in order to enhance the performativity, the creativeness and the operational capabilities imbued into the concept of common.

Secondly, among the key players of the emergence of the commons, we distinguish and propose a particular category of actors that are particularly novel in respect to the commons literature: the institutional entrepreneurs. The term institutional entrepreneurship refers to the “activities of actors who have an interest in particular institutional arrangements and who leverage resources to create new institutions or to transform existing ones” (Maguire et al, 2004). Austin (1962) himself regularly refers to the fact that performative utterances cannot

be held by a solitary being. As shown in the Naples case study, the social entrepreneurs are numerous and come from different backgrounds (environmental, anti-globalisations or open software activists; researchers in law; local representatives; politicians...). These institutional entrepreneurs adopt the role of “common midwives” by playing a mediator role (Callon, 1998). They carry the commons concept but they also transform, translate, distort, and modify its meaning to engender new commons. An interesting perspective would be inferred by analysing other cases of emergence of new commons, in order to grasp the polymorphism of the new commons and how the common concept evolves in practice in differing contexts. It would be particularly interesting to compare the emergence of new commons in the context of collective resources or goods that are the subject of an enclosure with the context of new collective resources that had not been exposed to attempts of enclosure.

Thirdly, on how the key players impact the performativity and the emergence of the commons, the Naples case study shows that these social entrepreneurs triggered the emergence of a “Social Movement” which is « a network of informal interactions between a plurality of individuals, groups and/or organizations, engaged in a political or cultural conflict, on the basis of a shared collective identity. » (Diani, 1992). This social movement frames the emergence of the common. As underlined by Snow and Benford (1992): “frames define the grievances and interests of aggrieved constituencies, diagnose causes, assign blame, provide solutions, and enable collective attribution processes to operate”. In steps with this, Rao and Kenney (2008) pinpointed that “frames are theories that justify an organizational form—an incarnation of goals, authority, technology, and clients, as indispensable, valid, and appropriate”. Frames are devices of discreet impact and can shape human’s “perceptions, cognitions, and preferences in such a way that they accept their role . . . either because they see or imagine no alternative to it, or because they view it as natural” (Lukes 1974). Similarly, Pfeffer (1992) argued that “much the same way that pictures are framed, questions and actions are framed, and the context in which they are viewed and discussed determines what gets done . . . setting the context is a critical strategy for exercising power and influence” (Pfeffer, 1992). After launching the social movement and framing the common problem, the innovations take place. The frame is translated into a regulatory innovation and the organisational innovation process is started. The aim of this last step is to create a new organizational form that enables the management and the governance of the new common. The case of Naples shows, as the neoinstitutionalist literature underlined, that organisational forms are “incarnations of beliefs and values” (Haveman and Rao, 1997; Greenwood and Suddaby, 2006).

This third issue -on how do key players impact the performativity and the emergence of the common- we show that the commons emergence is a complex phenomenon and a social construction. Furthermore, whereas the common appears in theory as an alternative and complementary to other governance systems (Ostrom, 1990), the Naples case study shows that, in reality, the co-existence of differing governance systems may be conflictual. In such cases, the emergence of new commons will probably need to pass through a social movement. This last inference calls for future investigation in order to make progress in relation to the understanding of the emergence of the commons

Finally, this research has some limitations. Initially we tried to focus the case study on the city of Naples which is the only city in Italy where water management system was transformed

into a common. But our investigation shows that many steps of the common emergence are related to upper layers. This phenomenon is usual in the commons framework where scholars showed that for larger common-pool resources, organization systems are in the form of multiple layers of nested enterprises, with small local common-pool resources at the base level (Ostrom, 1990). In our case the regulatory innovation of water as commons took place at the scale of the whole Italy. Yet, Naples is the only town which applied this regulation to create a local governance system. Therefore, for this narrative, we have preferred to make some infringements to the case study methodology in order to epitomize the complexity and the multilevel configuration of the described phenomenon.

Another limitation is linked to the in-depth case study methodology used. This methodology enables "grounded understandings" of the common emergence but these understandings remain embryonic premises. The generalization of these findings must be cautious even if they convey a potential to generate theory. They need additional investigation. Further research could consider the emergence of other new commons in order to test or deepen these findings. An intervention-research can be a fruitful method to test and understand the commons emergence. Participative research, between academics, aiming to understand commons emergence, and actors, aiming to establish sustainable local management of a common, can be a suitable research design in order to push the boundaries of the knowledge on the commons.

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