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Collective Property in Italy: A Story of Resilience and Rebirth

Własność zbiorowa we Włoszech: historia odporności i odrodzenia

Abstract: The concept of collective property in Italian law has undergone significant changes, reflecting broader sociopolitical and legal developments. From its marginalisation under the individualistic paradigm of private property – embraced by post-unification codification – to its contemporary resurgence as a model for sustainable ownership, collective property represents a resilient institution that is the subject of renewed interest in the face of today's environmental challenges. This paper examines the historical trajectory of collective property, its legal recognition and its potential role in fostering a new paradigm of property ownership that aligns with ecological sustainability and solidarity. Recent legislative developments and scholarly debates indicate a growing interest in collective property as a means to reconcile property rights with ecological imperatives, positioning it as a viable alternative to the classic liberal conception of private property.

Keywords: collective property, rural commons, sustainable property, Italian property law

Abstrakt: Koncepcja własności zbiorowej w prawie włoskim uległa znaczącym zmianom, odzwierciedlając szersze przemiany społeczno-polityczne i prawne. Od marginalizacji w ramach indywidualistycznego paradygmatu własności

prywatnej – przyjętego przez kodyfikację po zjednoczeniu – po współczesny renesans jako model zrównoważonej własności, własność zbiorowa stanowi prężną instytucję, która budzi nowe zainteresowanie w obliczu współczesnych wyzwań środowiskowych. Niniejszy artykuł analizuje historyczną trajektorię własności zbiorowej, jej prawne uznanie oraz potencjalną rolę w promowaniu nowego paradygmatu własności, zgodnego ze zrównoważonym rozwojem i solidarnością. Ostatnie zmiany legislacyjne i debaty naukowe wskazują na rosnące zainteresowanie własnością zbiorową jako sposobem na pogodzenie praw własności z imperatywami ekologicznymi, pozycjonując ją jako realną alternatywę dla klasycznej, liberalnej koncepcji własności prywatnej.

Słowa kluczowe: własność zbiorowa; dobra wspólne na wsi; własność zrównoważona; włoskie prawo własności

1. Introduction

Property law in Italy has historically been shaped by the tension between possessive individualism and the public interest. Indeed, the Constitution of 1948 reflects an attempt to balance this concern through the notion of the social function of property. The dominant legal paradigm, however has remained rooted in the individualistic ownership structure embodied in the Civil Code of 1942. In this framework, collective property – an institution whose historical roots go back to the Middle Ages – has not disappeared, although for a long time the legislature largely neglected its importance.

The resurgence of collective property in contemporary legal discourse stems from its potential to address pressing ecological concerns. In fact, the importance of collective property in ensuring sustainable land use and environmental protection has been recognised in Italian constitutional case law and legislation, most notably from the 1980s onwards.

Collective property has recently attracted renewed interest from legal scholars as well. The quest for a "new" form of property is part of a wider debate about the relationship between private law and the environment – a debate that began to develop in the 1970s, when the environment entered the domain of law and collective morality,[1] one that first developed from the prospect of private-law

[1] It is now conventional to regard the 1972 Stockholm Conference as the moment when the international community became aware of the problem of biodiversity loss and environmental degradation

instruments contributing to environmental protection, and only then went on to examine how the main institutions of private law are changing – or need to change – to allow environmental objectives to be "incorporated into private law".[2]

In the following section, a brief exposition on the notion of property rights in the Italian legal system is presented. The article then goes on to offer the reader a reflection on collective property in a diachronic context. The proposed analysis indicates not only a crisis of property law within the framework of classical liberalism, but also a more fundamental crisis in the conception of the relationship between the individual and the world in which they live.

2. The Modern Concept of Property in the Italian Legal Order

The foundation for the modern concept of property in the Italian legal order was established by the Civil Code of 1942 and the Constitution of 1948. Despite their starkly divergent political underpinnings, both texts have been influenced by the debate on the social dimension of law that was reaching its conclusion during the historical period in which they were drafted.[3] The most compelling evidence of this can be found in Article 42 of the Constitution, which protects both public and private property, in addition to the right of succession. This Article stipulates that limitations on the right of property may be enforced in order to fulfil its social function, thereby establishing a point of intersection between the individual and general interests.

in general, and recognised the "special responsibility" of humankind to protect and conserve the natural heritage. See in particular Principle 4 of the Stockholm Declaration and Plan of Action on the Human Environment of 16 June 1972.

[2] M. Pennasilico, *Manuale di diritto civile dell'ambiente*, Edizioni Scientifiche Italiane, Napoli 2014; M. Pennasilico, *La "sostenibilità ambientale" nella dimensione civil-costituzionale: verso un diritto dello "sviluppo umano ed ecologico"*, "Rivista quadrimestrale di diritto dell'ambiente" 2020, no. 3, p. 4–61; M. Giorgianni, *Climate Change e analisi ecologica del diritto. L'apporto del comparatista all'emergenza climatica*', "Rivista di BioDiritto – BioLaw Journal" 2023, no. 2, p. 85–101; M. Meli, *La centralità della questione ambientale e le ricadute sul diritto privato*, "Diritto costituzionale: rivista quadrimestrale" 2023, no. 3, p. 99–122; N. Lipari, *Premesse per un diritto civile dell'ambiente*, "Rivista di diritto civile" 2024, no. 2, p. 209–228.

[3] As A. Iannarelli (A. Iannarelli, *Funzione sociale della proprietà e disciplina dei beni*, in: F. Macario, M.N. Miletti (eds), *La funzione sociale nel diritto privato tra XX e XXI secolo*, RomaTre-Press, Roma 2017, p. 34) points out, the debate on the so-called "socialisation of law" emerged in the late 19th and early 20th centuries. This debate developed from two perspectives: firstly, the pursuit of greater equity in the distribution of wealth, and thus in the spirit of social justice, and secondly, the limitation and regulation of property rights with a view to ensuring the satisfaction of collective interests alongside those of the owner.

With regard to the Civil Code of 1942, it was presented as the code of the producer, namely a person who takes an active part in promoting the strengthening and economic growth of the nation.[4] This represented a departure from the French tradition of regarding the Civil Code as the code of the citizen – that is to say, the holder of innate, intangible inalienable rights.

Therefore, as has been highlighted, private-law relationships, as delineated in the 1942 Civil Code, are regarded as inherently public. It can thus be posited that each right, duty, interest or individual power is inextricably linked to the overarching interests of the State.[5]

> According to this political perspective, the legal order is not designed to prioritise the self-interested concerns of the individual, but rather to ensure the safeguarding of the national interest, whether directly or indirectly. Property rights were therefore regulated in accordance with the corporative concept of solidarity, entailing the coordination and sacrifice of individual interests for the benefit of the nation as a whole.[6]

The ideological emphasis on the functional link between the individual and the community to which they belong can be explained by reference to the social nature of law and the subordination of individual interests to the greater social interest. It follows that the right of ownership is no longer "the untouchable myth" that it was in the Napoleonic Code.[7] Indeed, Article 832 characterises the owner as the rightsholder, thereby conferring upon them a full and exclusive right over property, provided that they respect the limits and observe the duties established by the legal order.[8] This means that this right is not absolute in nature,

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[4] See *Disposizioni per l'attuazione del libro del codice civile "Della proprietà" e disposizioni transitorie: illustrate con la relazione al Re Imperatore*, Giuffrè, Milano 1941, p. 42–43, point no. 13.

[5] G. Cazzetta, *Nel groviglio costituzionale del fascismo: lavoro, sindacati, Stato corporativo*, "Giornale di storia costituzionale" 2022, no. 43, p. 272.

[6] For a detailed analysis of the articles of the Civil Code that convey the notion that the right of property is imbued with a social function, namely the enhancement of national production, see A. Donati, *La concezione della giustizia nella vigente costituzione*, Edizioni Scientifiche Italiane, Napoli 1998, p. 334–341.

[7] R. Nicolò, *Codice civile*, in: *Enciclopedia del diritto*, vol. 7, Giuffrè, Milano 1960, p. 248–249. Nicolò places particular emphasis on the fact that the individualistic nature of the right of property has been the subject of substantial critique from a variety of perspectives, including those of sociologists, politicians, philosophers and jurists.

[8] The full text of Article 832 of the Italian Civil Code reads: "The owner has the right to enjoy and dispose of things fully and exclusively, within the limits and with observance of the obligations established by the legal order."

but is rather subject to both negative and positive limits. The latter derive from the concept of a duty, which – as opposed to the concept of a limit – implies a positive obligation on the part of the owner. And so, for instance, while Article 834 acknowledges the State's eminent domain power to further the public interest, Article 838 expands the grounds for expropriation to encompass the taking of private properties that are abandoned or unsatisfactorily used.[9] This suggests that owners have a duty to use their property efficiently to satisfy the general interest and to meet their correlative responsibility towards the State.

Notwithstanding this tendency towards what might be termed the "socialisation" of private property, the notion of ownership in Article 832 of the Italian Civil Code is still founded on the individualist paradigm, at least insofar as a property is regarded as having but one owner. Furthermore, the code contains no specific provisions on collective property.[10] Nonetheless, some scholars have posited the argument that State property (*beni demaniali*) could be regarded as a form of collective property,[11] on the grounds that it is intended for collective utilisation.[12] In fact, the failure to recognise collective property in the Civil Code did not result in that form of property ceasing to exist.

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[9] Article 838 of the Civil Code provides for the expropriation of properties that are affecting national production, in cases where owners have abandoned the maintenance, cultivation or operation of such properties. This provision is also applicable in instances where the deterioration of the property has a significant impact on the aesthetic appearance of cities or on considerations of art, history or public health. There is a prevailing consensus that the ideology embodied by this Article finds its genesis in a fascist conception of property, coupled with a corporative understanding of the State. In this ideological framework, the enhancement of property productivity and the promotion of economic solidarity are deemed to be of utmost significance in the pursuit of national interests.

[10] In this regard, a salient distinction emerges between the Italian and French civil codes. Chapter III of Title I of Book II of the French Civil Code, entitled "Des biens dans leurs rapports avec ceux qui les possèdent", contains a provision that is fundamentally at odds with the individualistic concept of property that the code advocates: Article 542, which states that "Les biens communaux sont ceux à la propriété ou au produit desquels les habitants d'une ou plusieurs communes ont un droit acquis".

[11] Chapter II of Title I of Book III of the Civil Code (Articles 822–830), which regulates publicly owned goods, distinguishes between State property (*beni demaniali*) and State assets (*beni patrimoniali*). The former comprises properties that are held by the State in direct connection with a general or public interest of the community, including, by way of illustration, beaches, rivers, works connected to national security and defence, roads, highways etc. The latter includes properties which are owned by public entities, but which are not subject to a general interest limitation or constraint. An example of this would be real estate hosting public offices.

[12] P. Maddalena, *L'ambiente e le sue componenti come beni comuni in proprietà collettiva della presente e delle future generazioni*, "Diritto e Società" 2012, no. 2, p. 357.

3. Collective Property in the Aftermath of the Unification of Italy

In order to better understand the modern history of collective property, it is essential to briefly look at how collective property was dealt with from the time of the unification of Italy in 1861 until the advent of the constitutional republic in 1946. Due to the dominant liberal political ideology of the time, the post-Unitarian era, the Italian Civil Code was significantly influenced by the *Code Napoléon* and its individualistic conception of the right of ownership.[13] Having said that, the legislature could not ignore the widespread presence and various form of collective property throughout the Italian peninsula.[14] Indeed, collective property played a significant role in local economies, particularly within the agricultural sector, which in that epoch was far from marginal.

Thus, in accordance with the prevailing liberal principles concerning private property, the post-Unitarian legislature initially implemented measures designed to abolish collective property;[15] however, by the late 19th century, a partial reversal of this trend occurred, as the significant economic role of collective property became increasingly recognised, prompting the adoption of protective measures.[16]

The course of collective property in Italy again appeared to be coming to an end during the two decades of Fascist rule, when the Fascist government enacted Law No. 1766 of 1927, in response to demands from World War I veterans, who had been promised significant benefits – including the subdivision of unexploited agricultural land.

The underlying framework of Law No. 1766/27 was the most general expression of the Fascist regime's agrarian policy, which aimed to establish an agricultural production system based on small-scale peasant ownership.[17] To

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[13] Article 436 of the Civil Code of 1865 defined ownership as the right to fully enjoy and dispose of things in an absolute manner, subject only to restrictions imposed by laws or regulations.

[14] Recalling the historical development of collective property, it is observed that this notion emerged during the Middle Ages as a result of the interplay between the Roman legal concepts of ownership and the customary laws of barbarian populations. See R. Pennazio, *Riflessioni sugli usi civici tra storia e rinnovata attualità*, "Rivista di diritto agrario" 2023, no. 2, p. 113–144.

[15] See G. Corona, *The Decline of the Commons and the Environmental Balance in Early Modern Italy*, in: M. Armiero, M. Hall (eds), *Nature and History in Modern Italy*, Ohio University Press, Athens 2010, p. 89–107.

[16] For an overview of the various laws enacted during that period, see F. Marinelli, *Gli usi civici*, Giuffrè, Milano 2022, p. 48 ff.

[17] For further details, see U. Petronio, *Gli usi civici. Dalla legge del 1927 al disegno di legge quadro: problemi storico giuridici*, "Giurisprudenza agraria italiana" 1989, p. 525–539.

achieve this goal, the law provided for the liquidation of all collective property and its transformation into private or public property. The legislature intended the law to remain in force only for the few years necessary to complete the transfer of collective property to private or public owners through the compulsory action of specially appointed commissioners.

However, the practical implementation of the legislation in question was hindered by a number of factors.[18] The primary factors were the selection of the commissioners, who were drawn from among high-ranking magistrates ill-suited and reluctant to undertake the necessary administrative tasks, and the evolution of Italian society during the post-war period. With regard to the latter, it is important to note that the accelerated process of economic development that began in the 1950s led to the diffusion of wealth in rural areas and an increase in the level of education, which eventually led to the depopulation of land that was considered less profitable for agriculture. Collective property thus came to symbolise an agrarian society grounded in values that were no longer aligned with contemporary realities, and it received scant attention, even from the commissioners entrusted with surveying and liquidating it – due to a combination of a lack of both commitment and resources.

4. From a Relic of the Past to a Sustainable Ownership Model for the Future: The New Old Collective Property

As has been keenly observed, collective properties in contemporary Italy constitute "a living archive of ways of life and of moral economies that are still little known by many jurists".[19] Although collective property has been the subject of legal research since the 19th century,[20] it is only in the last three decades that the debate has gained significant momentum, thanks also to the impetus of innovative research and the activity of the Centre for Studies and Documentation on Civic Property and Collective Properties set up by the University of Trento.

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[18] For in-depth insight into this issue, refer to F. Marinelli, *Gli usi civici…*, p. 94 ff.

[19] M. Graziadei, *Urban Commons in Italy*, "FIU Law Review" 2024, vol. 18, no. 4, p. 823.

[20] For more on the Italian and European debate on collective property that emerged in that century, see P. Grossi, *An Alternative to Private Property: Collective Property in the Juridical Consciousness of the Nineteenth Century*, University of Chicago Press, Chicago 1981. The first original Italian edition was published in 1977, and following a period of 40 years, an updated edition of the book was released in 2017, incorporating supplementary materials.

The concept of collective property is thus undergoing a process of reinterpretation, drawing on recent contributions from the social and economic sciences.[21] This evolution is further shaped by the rising prominence of environmental concerns in public discourse and jurisprudence, alongside the expanding debate on commons (*beni comuni*). Nevertheless, the term "collective property" – which includes both customary land rights (*usi civici*) and customary collective ownership (*domini collettivi*)[22] – remains an elusive notion. Collective properties are, in fact, alternative forms of community-administered land management that can vary significantly from one another.[23] Essentially, these forms of ownership have been shaped by history and the evolving needs of the communities that have succeeded one another over time in a given territory.

As mentioned above, the primary function of collective property was economic; however, this role has gradually diminished over time due to the economic and social transformation of communities and the economy. In particular, traditional subsistence practices (such as grazing, gathering fruit and wood etc.) have declined, resulting in a loss of cultural and ecological knowledge. It is noteworthy that the Constitutional Court has repeatedly remarked that the profound changes which took place after the Second World War led to the erosion of the economic dimension of collective property, while at the same time highlighting its relevance to other dimensions – especially the environmental one.[24]

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[21] For bibliographical references, see D. Cristoferi, *Da usi civici a beni comuni: gli studi sulla proprietà collettiva nella medievistica e nella modernistica italiana e le principali tendenze internazionali*, "Studi Storici" 2016, vol. 57, no. 3, p. 584 ff.

[22] Customary land rights are defined as rights belonging to a community (the so-called *cives*) over certain public or private lands. More specifically, they consist of particular rights of use granted to the community over private lands or, as some legal doctrine suggests, even over State-owned or inalienable public lands. Conversely, customary collective ownership constitutes a genuine right of ownership held by the community over specific lands. A fusion of private and public law elements characterises both customary land rights and customary collective ownership. The foremost public law aspect lies in the fact that these rights belong to a specific community, whose members exercise them not as individuals – *uti singuli* – but as members of the community: *uti cives*.

[23] G. Spoto, *Usi civici e domini collettivi: "un altro modo" di gestire il territorio*, "Rivista giuridica dell'edilizia" 2020, no. 1, p. 3–14. According to a recent ruling by the Court of Cassation, these alternative forms of land administration affect one fourth of the national territory. See Judgment of the Court of Cassation of 10 May 2023, Case No. 12570; F. Forte, P. Cupo, *The Collective Domains in the Ecological Transition: A Preliminary Analysis in an Inner Area in the Campania Region, Italy*, "Land" 2024, vol. 13, no. 5, p. 711, https://doi.org/10.3390/land13050711. These authors emphasise the lack of a comprehensive estimate of the current extent of collective property across the national territory and present data on their distribution. For a regional survey of present customary land rights, including legislative references, see D. Casprini, A. Oppio, F. Torrieri, *Usi Civici: Open Evaluation Issues in the Italian Legal Framework on Civic Use Properties*, "Land" 2023, vol. 12, no. 4, p. 871, https://doi.org/10.3390/land12040871.

[24] See Judgment of the Italian Constitutional Court of 10 April 2018, Case No. 113, IT:COST:2018:113.

The legislature finally acknowledged the potential of collective properties to serve as a tool for environmental protection by adopting Law No. 168 of 2017, thereby incorporating a jurisprudential orientation that had become established over the preceding 30 years.[25] Collective property, recognised under the law in question, is defined as a right *in rem* reserved for a community giving its members the prerogative of using and exploiting a piece of land or a body of water, either collectively or individually, in accordance with norms that predate the establishment of the Italian State.[26]

From a general point of view, the regulatory framework for collective property established by Law No. 168 of 2017 has been noted as constituting a "third civil property regime",[27] which is subject to the Constitution and founded on Articles 2 (which recognises social formations where individuals express their personality), 9 (which entrusts the Republic with the protection of the landscape and the nation's historical and artistic heritage), 42(2) (which recognises the social function of private property) and 43 of the Constitution (which provides that certain enterprises related to essential public services, energy sources or monopolies, and those of predominant general interest, may be originally reserved for or transferred to the State, public entities or communities of workers and users).[28]

As has been noted elsewhere, a "peculiarity of this «third type of property» is that its subject, the community, is considered to be a «natural entity» rather than a legal person (…). The owner of the common land, to whom the new Italian law also grants autonomous regulatory and managerial power, is the community of residents, or in some cases the group of families, that had been entitled by ancient law to use of the land".

If we consider the precise wording of the law, Article 1 defines collective property as a "primary legal order of the original communities" (ordinamento

[25] For a survey of this jurisprudential and legislative chronicle, see A. Jannarelli, *Passato e presente degli "usi civici" nel diritto vivente: dalla legge del 1927 a quella del 2017. Brevi cronache di un'evoluzione incompiuta*, "Rivista di diritto agrario" 2022, no. 3, p. 121–174.

[26] According to D. Casprini, A. Oppio and F. Torrieri (D. Casprini, A. Oppio, F. Torrieri, *Usi Civici: Open Evaluation…*, op. cit.), collective property exhibits characteristics akin to the commons as defined by Elinor Ostrom, in that it grants the right of use to the entire community rather than to specific individuals. This implies that a plurality member of the community may simultaneously exercise their rights over the shared resources. However, the use of a particular portion of land or its resources by one member inevitably restricts access for others, thereby limiting the total resources available to the community as a whole.

[27] R. Volante, *Un terzo ordinamento civile della proprietà. La l. 20 novembre 2017, n. 168 in materia di domini collettivi*, "Nuove leggi civili commentate" 2018, no. 5, p. 1067–1115.

[28] E. Conte, *The Many Legal Faces of the Commons. A Short Historical Survey*, "Quaderni storici" 2021, no. 3, p. 626.

giuridico primario delle comunità originarie), which means that the rules of substantive law which make up this legal order originated before the creation of the Italian State, which can only recognise them but not establish them, and are inseparable from the community that occupies the territory in question. Its defining characteristic is therefore its dependence on title: while private and public ownership derive their content from statutory law, collective domain is shaped by long-standing customs through which a community has historically asserted exclusive rights over specific land and immovable property. As a result, each instance of collective property entails a distinct set of rights that cannot extend beyond those authorised by the original title and must be concretely ascertained.[29]

The entitled community enjoys a kind of monopoly over the goods that are the subject of collective property. These assets, as stated in Article 3, are inalienable and not subject to acquisitive prescription; they are therefore taken out of free circulation for the achievement of purposes of general interest, including enhancing the national natural heritage, preserving stable components of the environmental system and safeguarding the cultural heritage – not only as artistic or archaeological testimony, but as an enduring manifestation of a specific cultural relationship with the territory. Finally, Article 1(2) of the law provides that "the exponential bodies of the communities owning collective property shall have legal personality under private law and statutory autonomy".

5. Property and Nature: Can the Twain Ever Meet?

At first glance, the regulation of property rights under the Italian Civil Code may appear to be incompatible with the (growing) ecological ethos. As a leading property law scholar has noted, it is essentially a "code of individual interests" and serves as a "basic source of private law, regulating the rights of

[29] An illustrative example is provided by the Regole of the Ampezzo Valley, an archaic institutional manifestation of collective property rights in natural resources, which is governed by detailed customary rules for common use. As typical of Alpine communities, the Regole emerged in the Middle Ages when village associations federated and formalized self-governance through common charters (laudi), especially in remote border areas. The Ampezzo Regole comprise 11 village-based associations that collectively manage shared forests and pastures. Families retain rights to timber, firewood, pasture, and foraged goods, allocated according to traditional rules. Despite state centralization from the Napoleonic era onward, this customary legal system endured and remains recognized by modern Italian law. See F. Minora, *The collective properties in the 21st century. Long–standing models, brand–new views*, https://euricse.eu/wp-content/uploads/2015/02/territoriality_of_the commons_minora.pdf [access: 4.03.2025].

a utilitarian or particularistic order".[30] Within this framework, nature – in its various components – is considered only to the extent that it constitutes a property.[31] Such an approach fails, however, to reflect the evolving social and legal consciousness surrounding environmental protection.

In fact, a constitutional amendment was passed in 2022 to include in the part of the Constitution devoted to Fundamental Principles, under Article 9, the duty of the State to protect the environment, biodiversity and ecosystems, also with regard to the interests of future generations.[32]

This process of "constitutionalising" nature has come about after a long jurisprudential evolution, during which landscape protection and environmental protection have often overlapped and the recognition of nature as an autonomous value worthy of protection in itself has faced significant challenges.[33] However, Article 9 of the Constitution now lays the foundation for an

[30] A. Gambaro, *Il tramonto della proprietà limitata e l'avvento delle proprietà conformate nelle letture del codice civile*, in: L. Vacca (ed.), *Il codice civile ha 70 anni ma non li dimostra*, Jovene, Napoli 2016, p. 76.

[31] It is important to note that the Italian Civil Code differentiates between property (*bene*) and things (*cosa*). According to Article 810, property consists of things that may be the object of rights.

[32] See Article 9, which further provides that "State law shall regulate the methods and means of safeguarding animals". Amendments were also introduced to Article 41 of the Constitution, which governs the exercise of private economic enterprise. Notably, the revised text now establishes that private economic activity may not be carried out to the detriment of health and the environment, adding these constraints to the pre-existing limitations of safety, freedom and human dignity. Moreover, the amendment expands the legislature's authority to direct and coordinate economic activity – both public and private – not only for social purposes, but also for environmental objectives.

[33] Without undertaking a full review of the relevant case law, the essential milestones may be summarised as follows. Since the 1970s, the Constitutional Court has repeatedly been called upon to assess the constitutional legitimacy of restrictions imposed on private property for environmental protection purposes. On multiple occasions, the Court has affirmed that the environment constitutes a fundamental (*primario*) and absolute (*assoluto*) constitutional value. In the absence of an express constitutional principle on environmental protection in the original text of the Constitution, the constitutional jurisprudence on the matter initially revolved around the principle of environmental protection. This principle was developed by the Court through a combined reading of Article 9 – which explicitly provides for the protection of the landscape – and Article 32, which safeguards human health. The distinction between the concepts of nature and environment began to emerge in the Court's jurisprudence concerning the interpretation of Article 117(2)(s) of the Constitution, which grants the State exclusive legislative competence over the "protection of the environment, the ecosystem, and cultural heritage." In particular, in judgment of the Italian Constitutional Court of 23 January 2009, Case No. 12, IT:COST:2009:12 the Court clarified that while the terms environment and ecosystem express closely related values, "the former primarily refers to matters concerning the human habitat, whereas the latter pertains to the conservation of nature as a value in itself." This conceptual distinction was ultimately formalised with the 2022 Constitutional reform. As the Constitutional Court explained in judgment of the Italian Constitutional Court of 13 June 2024, Case No. 104, IT:COST:2024:104 "[t]he 2022

eco-friendly interpretation of the Civil Code, including the provisions governing property rights.[34]

Furthermore, in 2022, a legislative proposal was advanced that sought to amend Article 810 of the Civil Code during the constitutional revision of that year.[35] This proposal would have redefined the notion of property (*bene giuridico*) by incorporating the concept of the "biotic community", understood as the complex network of ecosystems that constitute the "web of life". Consequently, property (*bene giuridico*) would no longer be confined to "things" that can be "objects of rights", but would encompass everything that is protected by the legal system. These may be either material or immaterial, and are essential to the realisation of fundamental rights as outlined in the Constitution, such as, for instance, clean air, biodiversity, energy sources, and so forth.

This proposal was a continuation of previous initiatives aimed at reforming the Civil Code's provisions on property. The best known and most debated of these initiatives is undoubtedly the one advanced by the Rodotà Commission. This Commission, named after its chairman, was specifically appointed by the Minister of Justice to revise the articles of the Civil Code governing the classification of property. In particular, the proposed legislation sought to introduce a novel fundamental category into the Civil Code: that of "common property" (*beni comuni*).[36] According to the bill, common property encompasses goods and services that are essential for the exercise of fundamental rights and the free development of the individual. The legal framework was then designed with the purpose of ensuring the protection and safeguarding of common property for the benefit of future generations. Ownership of this property could be vested in either public or private legal entities; however, it was to be guaranteed

reform directly enshrines in the text of the Constitution the mandate to protect the environment as a unified legal good, encompassing its specific components – namely, the protection of biodiversity and ecosystems – while recognising it as distinct and autonomous from both landscape and human health protection". A detailed study of the legal significance of the protection of the environment in constitutional jurisprudence is provided by G. D'Alfonso, *La tutela dell'ambiente quale «valore costituzionalmente primario» prima e dopo la riforma del Titolo V della Costituzione*, in: F. Lucarelli (ed.), *Ambiente, territorio e beni culturali nella giurisprudenza costituzionale*, Edizioni Scientifiche Italiane, Napoli 2006, p. 3–69.

[34] For more on this theme, see A. Pisani Tedesco, *Tutela ambientale e transizione ecologica: itinerari del diritto privato*, "Rivista giuridica dell'ambiente" 2023, no. 2, p. 473–527.

[35] Senate Act No. 2610 of 12 May 2022, https://www.senato.it/leg/18/BGT/Schede/Ddliter/testi/54988_testi.htm [access: 4.03.2025].

[36] Delegation to the Government for the amendment of the Civil Code regarding public property No. 2031 of 24 February 2010, https://www.senato.it/service/PDF/PDFServer/BGT/00462665.pdf [access: 4.03.2025].

that collective enjoyment of these assets was in accordance with the limits and modalities prescribed by law.

Notwithstanding the fact that the bill was never debated or enacted by the Parliament, the United Sections of the Court of Cassation issued a landmark ruling that attracted considerable attention from legal scholars, thereby affirming the opportunity to recognise the new category of common property. More specifically, the Court acknowledged the "interpretative necessity of considering public property beyond a purely patrimonial proprietary perspective and towards a personal-collectivist approach" and held that "where an immovable property, irrespective of its ownership, is, by virtue of its intrinsic characteristics – particularly environmental and landscape features – dedicated to the realisation of the welfare State, such property must be regarded, beyond both the now-outdated Roman legal concept of dominium and the traditional concept of ownership under the Civil Code, as 'common'; this is to say that irrespective of ownership, the asset is to be considered instrumentally linked to the fulfilment of the interests of all citizens".[37]

The proposal advanced by the Rodotà Commission was subsequently revisited in a legislative initiative introduced in 2020,[38] which sought to incorporate a new article into the Civil Code, aiming to grant legal recognition to a category of property characterised by the need to remain accessible for public use. The proponents of the bill emphasised that this new category would not be limited solely to natural resources, but would also include the so-called "urban commons", because – as the bill's drafters pointed out – urban commons are playing an increasingly significant socio-collective and generative role in fostering social cohesion, thereby counteracting the depersonalisation characteristic of the global era.

6. Some Concluding Thoughts

Although the aforementioned legislative proposals differ from one another, they share a common thread in that they all challenge the exclusive forms of the use of goods which underpin the current privatistic and contractualistic perspective on property. All of these proposals call for a reinterpretation of the relationship between things and individuals, shifting the focus away from

[37] Judgment of the Court of Cassation of 14 February 2011, Case No. 3665. The case in question was about determining the ownership of a fishing valley in the Venice lagoon.

[38] Senate Act No. 1999 of 9 March 2021, https://www.senato.it/leg/18/BGT/Schede/Ddliter/53445.htm [access: 4.03.2025].

an exclusive emphasis on exchange value and utilitarianism, and instead prioritising collective use value grounded in practices of care.[39]

The idea that it is now necessary to rethink the relationships between human beings, non-human beings and things is gaining ground and has led some legal scholars to affirm the need for a radical rethinking of property law in the light of the awareness that there is a "natural continuity" between people, things and ecosystems, i.e. a mutual dependence that the law must take into account.[40]

According to some authors, the current anthropocentric paradigm that underpins modern law should thus be abandoned in favour of an ecocentric approach. Under the ecocentric perspective, human beings are considered part of the biotic community and placed in a relationship of "natural correspondence" with the environment, whereby "on the one hand, humans must protect nature, and on the other, nature must be enabled to provide its benefits to humanity".[41]

Within legal systems rooted in Roman law, this would entail a reassessment of the principle of the "whole–part" relationship, a fundamental tenet of Roman law. This reassessment would involve repositioning individuals within the broader universe to which they belong.[42] In other cultural contexts, the shift towards the ecocentric paradigm is being driven by indigenous traditions, which embody "alternative cosmologies that offer an alternative conception of human dignity to the Western notion, whereby nature has inalienable rights and the false dichotomy of humans being separate and superior to the non-human world is rejected".[43]

There is a commonly accepted viewpoint that the indigenous world-view interprets the relationships between human beings and nature as horizontal, and founded on respect and solidarity. Such relationships are said to occur across species, within species and between generations.[44] Should this alternative approach to conceptualising the human–nature relationship be taken seriously, it has the potential to provide the foundation for a different understanding of property rights, as demonstrated by the case law of the Inter-American Court

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[39] For in-depth consideration, see N. Capone, *Lo spazio pubblico come luogo per riabitare mondi in comune*, "Diritto e questioni pubbliche" 2022, p. 157–178.

[40] R. Míguez Núñez, *La proprietà ecologica. Teoria e strumenti civilistici per una gestione responsabile del suolo*, Edizioni Scientifiche Italiane, Napoli 2025.

[41] P. Maddalena, *L'ambiente e le sue…*, 338.

[42] Ibidem, p. 347.

[43] M. Raftopoulos, *Contemporary Debates on Social-Environmental Conflicts, Extractivism and Human Rights in Latin America*, "International Journal of Human Rights" 2017, vol. 21, no. 4, p. 397.

[44] F. Cerulli, *Antropocentrismo vs ecocentrismo nella giurisprudenza della Corte interamericana dei diritti umani*, "Diritti umani e diritto internazionale" 2023, no. 2, p. 282.

of Human Rights. Indeed, this Court, in defining the scope of property rights, has moved beyond the approach centred on economic utility that underlies the corresponding jurisprudence of the European Court of Human Rights.[45] This shift is precisely rooted in the indigenous narrative of the relationship between humans and nature.[46]

With specific reference to the Italian Civil Code, this would require a shift from the current concept of solidarity, which is mainly orientated towards production and economic interests, to a broader concept of solidarity that includes ecological solidarity, reflecting the notion of the intrinsic interconnection of all living beings (both human and non-human) within the biosphere. This would be the first step in moving away from a notion of property centred on the extraction of economic value from all appropriable things and towards a model of "generative" property rights.[47] From this standpoint, collective property – which can be described as a "particular form of ownership whose rationale transcends the direct and immediate utility of the individuals who own it",[48] as well as "the expression of an original form of social solidarity within specific territorial communities"[49] – could provide a valuable basis for further reflection.

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[45] For more on this issue, see S. Praduroux, *(Un)defining the Right to Property in the Light of the Case Law of the European Court of Human Rights*, in: M. Durovic, C. Poncibò (eds), *The European Convention on Human Rights and Private Law: Comparative Perspectives from South-Eastern Europe*, Hart Publishing, Oxford 2024, p. 37–54.

[46] In the seminal case of *Mayagna (Sumo) Awas Tingni Community v. Nicaragua* (judgment of the Inter-American Court of Human Rights of 31 August 2001, Case No. 31/2001, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, IT:COST:2001:31) the Inter-American Court of Human Rights established a precedent by declaring that, in interpreting and applying Article 21 (right to property) of the American Convention on Human Rights, it shall be considered that "for indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations" (para. 148). Moreover in the judgment of the Inter-American Court of Human Rights of 17 June 2005, Case No. 125/2005, *Yakye Axa Indigenous Community v. Paraguay*, IT:COST:2005:125 it was explicitly stated that "the close ties of indigenous peoples with their traditional territories and the natural resources therein associated with their culture, as well as the components derived from them, must be safeguarded by Article 21 of the American Convention". For an in-depth analysis of the cases, see S. Di Benedetto, *La funzione ecologica della proprietà collettiva sulle terre ancestrali: un nuovo modello di rapporto tra diritti umani e tutela dell'ambiente?*, "Diritti umani e diritto internazionale" 2016, no. 3, p. 587–608.

[47] The reference is to the categorisation of ownership models elaborated by M. Kelly, *Owning Our Future: The Emerging Ownership Revolution*, Berrett-Koehler Publishers, San Francisco 2012.

[48] R. Louvain, *La funzione ambientale dei domini collettivi*, "Rivista quadrimestrale di diritto dell'ambiente" 2022, no. 3, p. 216.

[49] A. Jannarelli, *"Beni collettivi" e "beni comuni" nel pensiero di Grossi: brevi riflessioni*, "Rivista di diritto agrario" 2022, special issue, p. 58.

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