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Territories of Life in Europe

Towards a Classification of the Rural Commons for Biodiversity Conservation

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Abstract

International awareness has grown about the relevance of considering indigenous and local communities as agent of eco-compatible territorial governance. This is today fully acknowledged in the context of the IUCN (International Union for the Conservation of Nature) and the CBD (United Nations Convention on Biological Diversity). Notions like "territories of life", "ICCAs", "community-based OECMs" (Other Effective area-based Conservation Measures) and voluntarily "conserved areas" have become central in international conservation discourse, but they are not equally considered in the EU environmental and agricultural policy. The Italian case here presented shows that rural commons have survived and are re-emerging as relevant factor of biodiversity conservation. The specific political and juridical histories of the process of recognition in Italy deeply affected the modality of Common Pool Resources (CPRs) governance. Given the high level of the regulatory function by the State in Europe, it is recommended that the EU develops ad hoc policy attention for the environmental value of the rural commons. To this aim more studies are needed at European scale. Building on the criteria adopted for the Italian classification of rural commons, it is here suggested that careful methodological design may help to address the complexity of CPRs and Common Action research and high intra-European diversity, for constructing meaningful interdisciplinary, multi-method and policy-oriented research.

Keywords: Commons; Governance; Territories of Life; Biodiversity Conservation; Europe.

Introduction

EU agricultural and environmental policies have deep but often poorly understood repercussion on the conservation of biodiversity at the local, national and European level. Internationally, awareness has grown about the relevance of considering indigenous and local communities as agent of eco-compatible territorial governance. This is today fully acknowledged in the context of the IUCN (International Union for the Conservation of Nature) and the CBD (United Nations Convention on Biological Diversity). Notions like "territories of life",

"ICCAs" (box 1), "community-based OECMs" (Other Effective area-based Conservation Measures) and voluntarily "conserved areas" have become central in international conservation discourse, but they are not equally considered in EU policy. In Western countries, the study of practices that are relevant in terms of community-based initiatives for biodiversity conservation is prevalently framed at the crossroads of Common Pool Resources (CPRs) and Common Action (CA) theories. Under the strong push for the sustainable use of natural resources, that in various ways and degrees tend to be under conditions of common use or public utility, today the debate on the commons has grown strong in Europe. CA and CPRs theories were indeed built around the central concern over the depleting action of "free riders" on common pool resources (Olson 1965), studying the process of institutionalization of mechanisms of community's control and the factors influencing them (Ostrom 1990). It might be useful to recall here the main qualifying features of CPRs institutions as meant by Ostrom:

> clearly defined groups of individuals who, while defining a set of rules regulating their use of the resource in accordance with local conditions, create a long-enduring local institutional arrangement capable of monitoring the actions of members vis-a-vis the resource, resolving conflicts, and administering sanctions to offenders. (Gerber *et al.* 2006: 223).

Ostrom's general theory, as well as much of the theoretical contribution on the commons, were built by comparing processes of institution building in different contexts and around different types of resources, but anyhow generally related to specific, tendentially localized contexts, user groups and communities (Agrawal 2001: 1649). However, it is enough to rapidly review the range of topics addressed at the IASC Commons conferences to understand that the field of application of CA and CPRs theory has grown much wider in scope, scale and relevance, up to include "commons" whose featuring overlaps with the idea of public goods, heritage and values[1]. An article dedicated to reconsider Hardin's "tragedy of the commons", published in *Science,* includes the global oceans, common knowledge, and antimicrobial commons (Boyd *et al.* 2018). In other perspectives, the process of "communing" has been considered for its implications in building new social and property relations, a socio- and eco-compatible alternative to the neo-liberal model of development (García López *et al.* 2017; García-López *et al.* 2021). In dealing with biodiversity conservation, it seems necessary to narrow the field down by focusing on commons ontologically related to the context whereby ecological interaction specifically takes place, hence down to localized physical space, subject to multiple governance factors, in spaces that are in some way territorialized through human interaction and culturally qualified as "places" (Lawrence-Zuniga 2017; Torre 2021a). The European rural commons – both rooted in pre-modern times or newly established through legislation that is rapidly developing in several European countries (Moor 2015; Gerber *et al.* 2006; Bravo, De Moor 2008; Caliceti *et al.* 2019) – perfectly fit this picture.

A study coordinated by Gerber on the Swiss CPRs shows that policy objectives play an important role in catalyzing common action, while CPRs institution strongly contribute to

[1] In the Italian context, this perspective is well represented within the school of thought developed out of the 2007-2008 work of the Rodotà's Commission on Common Goods, including elements such as lakes and other water bodies, different types of natural patrimony and cultural heritage. They are relevant to people regardless of actual property (in this they differ from the Italian legal category of "public goods", owned by public institutions) and should accordingly be considered subject to common rights (Mattei *et al.* 2007).

strengthen the coherence and effectiveness of the natural resources management policies (Gerber *et al.* 2008). Yet, more systematic and inter-disciplinary studies are needed at European scale to understand and support the ongoing processes. This operation needs to be done keeping into account Agrawal's warnings about the difficulties of conducting CPRs and CA research, due to the presence of too many and diverse variables that affects resource management and the viability of the CPRs institutions (Agrawal 2003). Given the intra-European high diversity in term of legal processes, political history and administrative culture, this complexity is subject to increase if we attempt to bring under a unified framework research at EU level.

In this article, I will refer to the Italian case with the correlated aims to show the compatibility of extra-European and intra-European discourse on biodiversity conservation, and to identify criteria for developing a classification of rural commons that may help to reduce the complexity of planning and implementing meaningful interdisciplinary and policy-oriented research for biodiversity conservation in Europe[2].

Methodological note

It is generally assumed that the flow of knowledge moves from the developed to the developing countries, from North to South of the World, or Western to non-Western societies. The argumentation I am here presenting on the Italian Territories of life is the result of research implemented in Europe, applying global concepts and awareness that were built on experience and reflections from non-Western countries. In methodological terms, this article is strictly bound to engaged anthropology. All originated decades ago, with classic anthropological participant observation research among Eastern African pastoralists, a form of livelihoods requiring complex mechanisms of territorial governance, with interdependent common rights of access to land, to pasture, and to water sources, articulated at different societal levels and types of social groupings, often in poly-ethnic environments. As the living conditions of these people drastically degenerated, mainly due to a sequence of territorial abuses, I started to collaborate with a group of activists and advocates operating around the International Union for the Conservation of Nature (IUCN) and the United Nation Convention on Biodiversity (CBD). During the Nineties, biodiversity conservation was one of the few receptive international arenas in terms of local communities' and indigenous peoples' territorial rights. I participated in research on community-based biodiversity conservation in East Africa[3], thus getting acquainted with global-level elaborations of terminology, concepts and sector policy. Over the years, I was invited to explore the Italian and European context, progressively engaging with the European activities of the ICCA Consortium[4]. By turning my at-

[2] This article is derived from a presentation given at the XVI Biennial Conference of the International Association for the Study of the Commons (Utrecht 2017), which was in turn built with insights gained at the "Community Forests and Forest Commons in Europe" (San Vito di Cadore, 15-18 June, 2014), organized by TESAF, University of Padua. The final update of the research was funded by the University of Palermo, FFR2021 "Marco Bassi". Writing up and editing of this article was made with financial contribution of the National Biodiversity Future Centre (NBFC), a PNRR Project with Identification Code CN00000033 and CUP B73C22000790001.

[3] «Community-based conservation arises from within the community – or at least at the community level – rather than internationally or nationally» (Western, Wright 1994: 1). This approach is often conventionally indicated in the short form "community conservation", or, more recently, "peoples oriented approaches to conservation" (Jeanrenaud 2002). This notion was articulated in policy discourse, but most scholars and experts operating in this field acknowledge that attention for the sustainable use of natural resource is as ancient as human being and embedded into local culture, a theme specifically addressed by several anthropological schools, especially in ecological anthropology.

[4] The ICCA Consortium is a global association of indigenous people's organizations and federations, community or-

tention from applied and engaged research in East Africa to the European context, with other engaged researchers and activists of ICCA Consortium I realized that community-based conservation was in Europe better represented by the old but still existing institution of the rural commons, and by practices related to mobile, mostly transhumant, pastoralism (Bassi 2012; Couto, Gutiérrez 2012). Yet, the ways these topics are dealt in the European tradition differ from the theoretical approaches I have applied in non-Western countries, including political, environmental, juridical and development anthropology. The process of getting acquainted with juridical studies in their classic declination and, later, CPRs and CA theory was long and difficult.

A new international paradigm for protected areas

Since the 1970s, in parallel to the to the rise of the participatory approaches to development, engagement by civil society and human rights activists in conservation of biodiversity led to a substantial shift of the conservation paradigm, towards growing involvement and inclusion of people and local communities (Jeanrenaud 2002; Phillips 2003). Awareness grew about occurrence of serious abuses in developing countries: local communities that for centuries had sustainably used natural resources were displaced in consequence of the authoritative legal establishment of official protected areas. Eviction from customary territories and exclusion from access to natural resources were often affecting the livelihoods of the poorest communities in the world, while by establishing protected areas new leisure and economic opportunities were created for the best positioned local elites and or the benefit of external actors. Political opposition to such dynamics was particularly effective in regions and countries where indigenous rights had been recognized, but equally affected were many voiceless local, ethnic and tribal communities in Asia and Africa.

In the Western countries, characterised by a tradition of respect of human and political rights, the conflict of interests between conservation and natural resource use emerged in the form of local opposition to the establishment of new official natural parks, setting limits to the potential to conserve biodiversity through conventional protected areas.

Issues of equity and social justice were strengthened by growing concern among natural scientists about the effectiveness of protected areas, designed as isolated pockets of biodiversity protection. The debate focused on increasing the global coverage under measures of protection and on establishing conservation networks consisting in protected areas mutually linked by buffer zones and green corridors outside natural parks. Buffer zones and corridors are necessarily based on the idea of compatibility of biodiversity with livelihoods and human activity, an element which was already considered under the IUCN protected area category No. 5, Protected Landscapes/Seascapes (Phillips 2002). Awareness about the need to extend the surface under measures of protection, in areas where human activity also takes place, has progressively changed the approach to conservation. The UNESCO Biosphere reserves and the EU "Natura 2000" programme are good examples of the new trend.

In line with this shift, from the 1990s new approaches have emerged in the attempt to mitigate the conflict of interest between local communities and conservation, by advocating for a growing involvement of the affected local communities in the management plans of the pro-

ganizations at various level and civil society organizations working with them. It was legally established in Switzerland in 2010 to consolidate the movement that grew around the activities of various inter-commission working groups of the IUCN. https://www.iccaconsortium.org/ (last accessed 29/08/2022).

tected area. "Community-based conservation" is a broad denomination for these experiences (Western, Wright 1994), while "collaborative management of protected areas" is a methodological tool to be applied in conventional protected areas, either already established or in the designing phase (Borrini-Feyerabend 1996).

In the period 2000 to 2008 a group of committed experts, acting in various commissions and working groups of the IUCN, played a key role in developing, promoting and mainstreaming the concept of ICCA. The IUCN Commission on Environmental, Economic, and Social Policy (CEESP)[5] and the Theme for Governance, Equity and Rights (TGER)[6], by their own mandate were dealing in the field of human rights related to conservation. In the year 2000, the new Theme on Indigenous Peoples, Local Communities, Equity and Protected Areas (TILCEPA) was established by including members of both CEESP and the IUCN World Commission on Protected Areas (WCPA)[7]. TILCEPA linked natural scientists and social activists, enabling the group to holistically address the emerging concerns.

ICCA stands for "territories and areas conserved by indigenous peoples and local communities" (box 1), an abbreviation that links the indigenous peoples' itinerary with local communities' experiences worldwide[8]. In conservation circles speaking about ICCAs implies a more radical shift of paradigm, since it consists in acknowledging the local and indigenous communities' role of in conserving biodiversity in their own territory, for their own initiative and on the base on their culture and governance, in compatibility with livelihoods and independently of the official system of protected areas.

Box 1. Defining ICCAs or "Territories of life".

A close association is often found between a specific indigenous people or local community and a specific territory, area, or body of natural resources. When such an association is combined with effective local governance and conservation of nature, we speak of an "ICCA". ICCA sounds like an acronym, but it is not. It is an abbreviation for "territories and areas conserved by indigenous peoples and local communities" or "territories of life".

The following three characteristics identify an ICCA:

1. There is a close and deep connection between a territory or area and an indigenous people or local community. This relationship is generally embedded in history, social and cultural identity, spirituality and/or people's reliance on the territory for their material and non-material wellbeing.
2. The custodian people or community makes and enforces decisions and rules (e.g., access and use) about the territory, area or species' habitat through a functioning governance institution.
3. The governance decisions and management efforts of the concerned people or community contribute to the conservation of nature (ecosystems, habitats, species, natural resources), as well as to community wellbeing.

Source: ICCA Consortium website (last accessed 06/10/2022)

[5] In those years Mohammad Taghi-Farvar was the Chair of CEESP. *Policy Matter*, the regular publication of CEESP, illustrates the issues that have shaped the emergence of the ICCA concept.

[6] TGER, chaired by Grazia Borrini-Feyerabend, was operating within CEESP.

[7] TILCEPA was co-chaired by Ashish Kothari and Grazia Borrini-Feyerabend.

[8] While both indigenous peoples and local communities systematically act in interrelation with the local natural resources, only the indigenous peoples' agency could be articulated with reference to a dedicated set of existing rights that includes consideration for territory, common land holding and customary governance.

The new awareness about the important role that local and indigenous communities can have in conserving biodiversity and the need to strengthen this capacity has been mainstreamed in conservation through the elaboration of the concept of "governance" of protected areas (Borrini-Feyerabend *et al.* 2013; Borrini-Feyerebend, Hill 2015). The IUCN has revisited its classic classification of protected areas, originally developed for areas listed as part of a country protected estate. The list of protected areas types has been developed into a matrix whereby different conservation objectives can be met under four different governance types: A) governance by government (the classic protected areas); B) shared governance (collaborative management and other arrangements); C) private governance (including areas owned by non-profit organizations); D) governance by Indigenous Peoples and local communities (Borrini-Feyerabend 2002; Dudley 2008: 27; CBD 2018b). The inclusion of the type D governance implies that it is now internationally acknowledged that conservation of biodiversity can also be achieved independently of the official protected area system, in areas that are *de facto* "conserved" by indigenous peoples and local communities according to their own will and modalities.

Promoting ICCAs mainly means to recognize and valorize alternative governance enhanced by identifiable communities of well-defined and well-conserved territories. Such governance is often based on customary practices and local cultural values, but it can also be revived in new forms or established as an entirely new initiative. The study of these processes does therefore correspond to the field on interest of CA theory and fits into the general anthropological theory of agency, articulated in the context of multilevel, polycentric, formal or informal, existing or developing governance[9].

In the following decade, the ICCA movement consolidated its experience by forming the ICCA Consortium, a self-governed global association that could operate independently of the IUCN. ICCA – with the terminological emphasis on "area" and "conservation" – is a technical abbreviation that makes sense in the international policy environment that has generated it. The members of the ICCA Consortium felt that they needed a denomination capable to express the intrinsic value of those natural areas for their livelihoods, daily experience, identity and spiritual life, and for humanity all. They have accordingly adopted "territories of life" alongside ICCA[10].

It is today estimated that the coverage of ICCAs is larger than the one of governments' terrestrial protected areas, being about 21% of the world's lands (UNEP-WCMC, ICCA Consortium 2021: 10-12).

Such relevance has fully been considered in the context of the Convention on Biodiversity, a binding international treaty, with a series of provisions to support communities and their alternative governance modalities (CBD 2018a; CBD 2018b). Starting from the "Programme of Work" (SCBD 2004) and from the "Strategic Plan on Biodiversity 2011-2020" (including the Aichi Targets) adopted the COP 10 of the CBD, new consideration for alternative governance came to be addressed under the emerging denomination of "other effective area-based conser-

[9] The concept of polycentric governance in relation to the commons was introduced by Ostrom (2005) (Carlisle and Gruby 2019). For an example of the application of the concept to Italian rural commons see Favero *et al.* (2016).

[10] https://www.iccaconsortium.org/ (last accessed 04/09/2022). This terminology is strongly related to the *Plan de Vida* approach formalized in Latin American countries since the early Ninety.

vation measures" (OECMs)[11]. The same attention for OECMs has been transferred to the Sustainable Development Goals (CBD 2018a).

The EU has not yet come to an agreement and/or adoption of a territorial governance classification aligned with the emerging international trends. Indeed, community-based conservation is barely considered in the "EU Biodiversity Strategy for 2030", with just the acknowledgement of OECMs in relation to the "Natura 2000" network. If this can be attributed to a fundamental difference between the European and the non-Western contexts or if it is the result of political practices is a matter for open for debate.

ICCAs in Europe

In line with decision x/31 of the CBD COP 10 in 2010, the CBD Executive Secretariat has commissioned a global study of ICCAs in support of the implementation of the CBD "Programme of Work on Protected Areas" (PoWPA) (Kothari *et al.* 2012). This study was organized by a core group of experts[12] that commissioned research on 19 country-level case studies, including five European countries: Craotia (Beneš 2012), Italy (Bassi 2012), Spain (Couto, Gutiérrez 2012), England (Newing 2012) and Russia (Laletin 2012). The involved researchers were invited to look into their respective countries, applying the same format developed out of experience in the rest of the word (Kothari *et al.* 2012: 12). The European country cases reveal that, despite strong intra-European differences due to the national political histories, strong interrelation between local communities and natural resources occurs in Europe too, and that such link is rooted in cultural elements and local identity. These European practices share with non-Western countries the fundamental feature of being based on clearly demarcated communities, sub-communities or occupational groups with common rights of access to specific territorial sections (rural commons) or sets of natural resources (pastoralism). Accordingly, the European territorial and social realities that correspond to the international ICCA category are for the largest part territory based CPRs, that in a way or another survived or were revitalized or created under a number of different historical and current circumstances. Not only commons are relevant in terms of both territorial coverage and effectiveness for biodiversity conservation, they are also often based on customary-derived modes of governance. Yet, in the European context there are also peculiarities in terms of historical processes and about the current supporters, as I could clearly perceive by comparing my experiences of research on these topics in Italy and East Africa (Bassi 2006; Bassi, Tache 2011). In developing countries, the non-governmental organizations (NGOs) are key actors of change. There is a growing number of indigenous organizations, NGOs and community organizations with umbrella networks capable to influence policy. However, such actors are often externally supported or driven in the context of the UN or other international organisations, and they have only been active over the last decades (Bassi 2017). With reference to land tenure, the penetration of land reforms has been incomplete and fragmentary, especially in the economically marginal lands where most biodiversity is still

[11] Aichi Target n. 11 states the following: «By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes». https://www.cbd.int/aichi-targets/target/11 (last accessed 06/12/2022).

[12] TILCEPA provided background support (Kothari *et al.* 2012: 6).

found. After the fall of the Berlin Wall, several countries have shifted from socialist regimes to private tenure, increasing pluralism, uncertainty, fragmentation and inhomogeneity in land holding. The stratification of different tenure systems left some room for the survival of customary and common rights, often at the informal level. In regions of the world where indigenous rights are recognized, customary land rights were legally enforced, revived, or redefined[13].

In Europe, the development process and inherent decision making is more systematically rooted in juxtaposition of interests, expressed through various types of associations and regulated through the representative democratic system. This is the result of the endogenous processes of emergence of the modern State, marked by a long history of wars, civil wars and internal class conflicts, either violent or, more recently, ritualized and regulated by electoral politics in the frame of recognized and properly enforced political rights.

The second key difference in western Europe is the capillary penetration of the juridical regulatory mechanism – also a feature connected to the long process of construction of the modern State. The dominance of the juridical discourse leaves no space for ambiguous or undefined land holding status, unless ambiguity is rooted in the norms themselves. In Europe the debate on pluralism is neither about informal survival of customary modalities, nor about legal recognition of customary rights, but rather about the different juridical layers in historical perspective. In many cases European communities base their claims on customary practices by showing how their rights were already recognized under previous State formations. Such ancient legal recognition – rather than *the facto* customary use – provides the legitimate juridical claim to obtain the required legal status in the contemporary national arena. The juridical field is therefore the terrain on which the struggle takes place and public discourse is articulated.

Legal recognition of rural commons under the unitary Italian State

Until the 2017 confluence of elements expressed in Law 168 (box 2), recognition of the rural commons took place in Italy through contradictory processes. It is possible to identify two interdependent legislative lines. The oldest one was dedicated to the "liquidation of civic uses" (Table 1), while the second one originated in reaction to the first one, with reference to the ancient commons. Since ancient commons have maintained social and identity value mainly in the mountain and marginal areas of the country, this second legislative line found expression in legislation dedicated to the mountain territories and in the *agro-silvo-pastorale* sector (table 2). The third important element to keep into account is the process of administrative and legislative regional devolution that progressively took place in Italy from the 1970s (table 3).

The Italian territory has been subject to a multiplicity of State authorities until its unification during the second half of the 19th century. Unification occurred in result of a progressive process of annexation (1848-1918). The Napoleonic phase (1802-1814) and the establishment of Napoleonic States in northern and southern Italy are considered the turning point for administrative modernization, with strong negative impact on the commons. In Northern

[13] This difference has motived the double acknowledgment of indigenous peoples and local communities in the ICCA abbreviation.

Italy – especially in the Alps – the establishment of the municipalities undermined the autonomy of the local communities that had previously enjoyed relevant degrees of autonomy. In Southern and Central Italy, the attempt to intensify agricultural productivity required the suppression of the still prevalent feudal system. With it, also the inherent practices of multiple land use were considered an impediment. Under the feudal system local communities could in fact enjoy formal or informal access to fiefs and large estates to graze, collect wood and mushrooms, to hunt and for other livelihoods services, and to cultivate in dedicated areas with the consent of the landlord. In the Italian legal system, such customary land use came to be acknowledged under the denomination *usi civici*, "civic uses". Civic uses then literally refer to the local communities' secondary rights of access to land owned or controlled by somebody else.

Land policy under the Napoleonic States, in the early unitary State and during the Fascist time aimed at "modernizing" agriculture, dismissing both large estates and the secondary "civic uses" land rights. The land reforms considered the need to compensate the local communities for their lost secondary access rights, a process known as "liquidation" of civic uses (Table 1).

Table 1. Main legislation on the liquidation of civic uses

Legislation	Region of concern	Process of attribution of collective land title	Legal attributions of the land
Law n. 5489/1888, on the abolition of the community rights to access pastures, collect wood and grasses and to cultivate in land owned by others (civic uses) in the *ex-Pontifical Province* Law n. 397/1894 (Boselli) on collective domains in the ex-Pontifical province and Emilia	Ex-Pontifical Province and Emilia, approximately corresponding to the following current regions: Lazio, Umbria, Marche and Emilia-Romagna	Statute required, fitting normative guidelines	Owed by an association formed by all citizens (individuals) resident in a specific municipality or a fraction of it (hamlet) Provisions may exist in the Statute to include membership of newcomers only a certain number of years after registering as resident
Law n.1766 of 1927 (Legge 1766/1927) on liquidation of civic uses	Italy	By an administrative and judiciary agency, competent on "civic uses"	Land under forestry use: "demanio civico" formally owned by the resident local community, but administered by the municipality under a variety of arrangements.

In the ex-Pontifical State (Central Italy), where land reforms were not introduced at earlier times, this was done by compensating the local communities granting them full collective title on portions of the territory from which civic uses were abolished. This is the case with law n. 5489 of 1888 (*Legge* 5489/1888). It was promulgated with the specific purpose to abolish the community rights to access pastures, collect wood and grasses and to cultivate in land owned by others, but it contained provisions for the community to get full control of

the land if customarily used, or of a portion of the property to compensate the abolishment of their secondary rights on larger estates. This possibility was better regulated through law n. 397 of 1894 (*Legge* 397/1894) on collective domains in the Ex-Pontifical Province and Emilia, better known as *Legge Boselli*. This second law established the procedure for recognition, requiring the establishment of an association with a registered statute as pre-condition. In this way land that was previously commonly and customarily used was for the first time legally recognized under the unitary Italian State, with exclusive collective rights attributed to the local community, but on portions of land much smaller than the previously accessed land, and under new and ultimately State-regulated governance. Most of commons that have been recognized under this legislation should accordingly be considered new commons, both in term of physical demarcation and governance[14]. The prevalent local denominations are *università agrarie*, *comunanze* and *partecipanze*[15]. With the adoption of a statute defining both the community of reference and the modality of management, a Common Pool Organization (CPO) is legally associated to the CPR (the land). In the process, the CPR has been changed both in extension and in its governance modalities.

The process of liquidation of civic uses was extended at national level during the early Fascist period (1922-1943). Law n. 1766 of 1927 (*Legge* 1766/1927) on liquidation of civic uses and the implementing regulation by Royal Decree n. 332/1928 tried to rationalize at national scale the diverse situations inherited from the pre-unitary States, with the objective to progressively eliminate the civic uses. This legislation was inspired by the pre-unitary southern State legislative model on liquidation of common rights and civic uses (Cervati 1990).

According to law 1766/1927, land was classified into two categories:

a. Rangelands (woods, scrublands and grasslands). This category was supposed to remain undivided and to be inalienable; the law introduced innovation on its management, with the plan to progressively assign it to the State Forest Agency as regulated by the 1923 law n. 3267 (*Legge* 3267/1923), known as *Legge Serpieri*.
b. Land potentially productive for intensive agriculture, to be allocated and divided among those claiming rights.

Rangelands and forests were registered with the legal attribution of *demanio civico* (civic domain), sharing with the legal category of *demanio pubblico* (public domain) the feature of being indivisible and unalienable (with no possibility to change land use), but with ownership formally assigned to the local community based on residence in a municipality or a fraction of it (a hamlet), rather than owned by the State. In this sense, rangelands and forests under *demanio civico* status differ from rangelands and forests that are directly owned by the State or the municipalities.

[14] However, some of such new commons correspond to or incorporate portions on which the local community could already claim collective land titles based on written documentation of grants accorded by aristocrats since the Middle Ages. Most grant-based commons are in the Po Valley, in reward of collective work of flood control along the river banks, but some cases are documented in Central Italy as well. Several local communities are today promoting archive research to historically document their titles in court cases.

[15] The Italian commons are indicated under different local denominations. Such denominations are sometimes included in the legally registered name of the common, but they do not necessarily correspond to juridical status or history of recognition. They do not therefore provide a good basis for classification.

The administrative and judiciary mandate on matters related to the "civic uses" was entrusted to the new Office of Commissioner for Civic Uses *(Commissario agli Usi Civici*). Systematic recognition and registration of the land under civic or common uses took place at national scale. However, the implementation of the 1927 law proved to be very difficult due to the different realities in the different parts of Italy, and to contrasting claims leading to several legal disputes. The process has never been concluded[16].

By the process activated by the 1927 law, the management of the *demanio civico* and of the newly demarcated "civic uses" portions were assigned to the municipalities for the benefit of all residents, a practice that was also applied to the older rural commons, with the only exclusion of those recognized under law 397/1894 in Central Italy. This started a legal tradition of including all commons under the domain of public law (Grossi 1998: 22-23).

Over time, the efforts of the commoners and their advocates led to the adoption of a variety of forms of land administration, ranging from *demanio civico* being administered by the municipality without any distinction from the public *demanio*, to keeping a separate accounting by the municipality, up to establishing a separate elective management board (table 4).

All land recognized under the provisions on "liquidation of civic uses" came to be generically denominated "civic uses lands", with a shift in the meaning of the expression from "land subject to secondary land rights" to "land that is legally derived from secondary land rights and that is subject to CPRs modalities". It includes the newly formed rural commons whose administration is entrusted to a dedicated CPO with membership consisting in the local community.

The commons of the Alps are characterized by persisting CPRs practices inherent the woods, timber use, and high elevation pastures. During the Middle-Ages the rules of access (*regole*) were often written down for the purpose of getting respected by aristocratic authorities. Decisions over the use of natural resources were collectively taken by the heads of family, with title of access transmitted to the new generations through the male line. These communities have been struggling for centuries to retain their autonomy and have often achieved variable degrees of recognition under the different State authorities and in different historical periods (Torre 2021b). From 1927 the Alpine commons were also tendentially considered part of the "civic uses" lands, with management again transferred from the community to the municipality. Some commoners – especially in the Eastern Alpine section – revived their struggle to regain control over their local territory. They have adopted (and still use) different strategies, ranging from long court cases against organs of the public administrations to friendly advocacy with key politicians and decision makers. They started to achieve relevant legal results after the Republican turn at the end of World War II.

[16] The Commissioners for Civic Uses are still the competent agencies for mapping and for juridical matters concerning civic uses land, but they are today re-organized into regional offices in accordance with later legislative and constitutional regional devolution.

Table 2. Main relevant legislation on mountain territories and agro-silvo-pastorale sector (Sources: Romagnoli et al. 1992; Tomasella 2001; Grossi 2002: 20)

Legislation	Main feature	Additional comments
Legislative Decree n. 1104/1948	*Ad hoc* for the Regole della Magnifica Comunità Cadorina (Cortina d'Ampezzo): reference to the ancient '*laudi'* and statutes, and recognition of juridical personality in terms of public law for the conservation and improvement of the agro-pastoral patrimony	Registration of Statute with registry of members required. Closed membership allowed
Law n. 991/1952 on Mountain Territories and implementing regulation DPR n. 1979/1952	Recognition of the "family communions" regulated by customary statutes	It builds on the previous decree, extending it to other mountain commons having ancient records. The implementation was difficult and contradictory, due to continuity in legal interpretation of civic uses legislation
Law n. 1102/1971 on new norms for the development of Mountain Areas	It clearly differentiates "family communions" from "civic uses" land. It devolves the competence to emanate regulations for the "family communions" to the regions.	The notion of "patrimony" is explicitly introduced to qualify the CPR, binding the land to agro-forestry and pastoral activities and making it indivisible and inalienable. This law was introduced at the time when Italy engaged in a process of regional devolution
Law n. 97/1994 on New Directives for Mountain Zones	Explicit recognition of the juridical personality of the communities in the Alps and central Italy in terms of private law, by assigning the competence to the regions	The regions where slow in legislating, only a few moving in the direction of strengthening the capacity of the CPOs to sustainably manage and conserve the associated CPRs. This law builds on experience made with regional legislation (see table 4)

As shown in table 2, the struggle has been focusing on achieving recognition of the juridical personality for the community of reference, a process that also implies the legal formalization of the CPO, with a registered statute. This was first granted to single commons (1948), then extended to all mountain regions (1952). Yet, their recognition in terms of public law, as derived from the juridical doctrine of legislation on "liquidation of civic use", was considered by activists of the ancient commons too limitative regarding the decisional and administrative autonomy. Only in 1971 the ancient commons (the "family communions" that are documented in terms of written records) were clearly differentiated from common lands derived from legislation on liquidation of civic use, with explicit recognition in terms of private law achieved in 1994.

The presence of a well-defined community of reference, clear norms for the governance of the CPRs and historical struggle locate these commons in the field of relevance of CPRs and CA theory. Differently from the rural commons derived from legislation on liquidation of civic uses, they have been subject to variable degrees of recognition by higher State authorities in the dif-

ferent historical phases, while the territory of reference has remained constant through time. The criteria of the CPO membership are also different. In the case of the ancient commons, we should in fact speak about "close" membership, since the historical record of membership and transmission through the male line inheritance tend to exclude newcomers and women that marry outside the community from access to CPRs, as opposite to membership open to all residents in a municipality or hamlet, as required for the registration of the statutes of the CPOs derived from legislation on liquidation of civic uses.

Table 3. Selected cases of regional legislation directly relevant to environmental conservation

Legal resolution	Main feature	Additional comments
Regional Law (Veneto) n. 21/1990	It establishes the Regional Natural Park of the Ampezzo Dolomites. It assigns its management and administration to the *Comunanza delle Regole d'Ampezzo*	It builds on Legislative decree n. 1104/1948 (table 2). It is the first case in Italy of a CPO directly managing an official protected area, whose territory includes the CPR land but also expands beyond it, incorporating both private and public land (Lorenzi, Borrini-Feyerabend 2010). The area is also part of the Dolomites UNESCO Biosphere Reserve
Regional Law (Veneto) n. 26/1996	It contains provisions for the re-constitution of the ancient '*regole'*. Registration of statute is required, with registry of the families. The common land is declared indivisible, inalienable and it is very restrictive on change of land use. It explicitly binds the common land to environmental protection	It builds on national legislation on "family communions". It allows "closed" membership. It restores the community's management capacity over the common land (that was historically lost)
Provincial Law (Trento) 6/2005, n. 6 on ASUC *(Amministrazione separata dei beni frazionali di uso civico)*	It establishes the administrative modalities for civic use lands, by forming a registered CPO whose members correspond to all resident in a hamlet or municipality. It contains special provisions for some well-known ancient commons. The common land is declared indivisible, inalienable and it is very restrictive on change of land use	It adopts the "open" membership model. It allows the formation of CPOs on "civic uses" lands. It binds the CPOs activity to environmental protection

As mentioned, from the 1970s, Italy engaged in a process of devolution. The administrative competence on territorial, environmental and infrastructural matters was assigned to the regions. However, the process leading to actual decentralization of political authority took decades, with a key passage achieved only with the 2001 Constitutional reform. Different regions have taken different legislative approaches concerning commons and civic use lands, some still informed by the "liquidating" philosophy, up to allowing change of land use and alienation of common land under growing urbanization pressure or for other developments, some oriented towards conserving the common patrimony but favoring eco-compatible productive activities, some explicitly oriented towards strengthening and reviving the CPOs. Table 3 lists selected

cases of regional legislation that has strongly contributed to valorize Italian commons and civic use lands for environmental conservation.

Italian rural commons as territories of life

So far, I have outlined the legal processes through which ancient CPRs have emerged with well defined, legally enforced, CPOs, and new, compact, and fully fledged CPRs have developed with equally well-defined CPOs out of the "civic use" tradition. I have focused on two out of the three qualifying features of ICCAs, or territories of life: the presence of a well-defined area and of a clearly identified custodian community, capable of making and enforcing decisions and rules over it (box 1). I am here summarizing the elements that lead us to acknowledge that the identified governance of the Italian rural commons also strongly contributes to the conservation of nature, thus also fitting the third qualifying characteristic of ICCAs.

Both the legislation on civic uses and on the ancient "family communions" have mainly concerned mountain areas and marginal lands. These correspond to the most relevant remaining areas for wild and domesticated biodiversity, forest and ecosystem services. Both legislative lines have granted recognition and legalization of clearly demarcated common lands along with restrictive provisions assuring inalienability and indivisibility of the land asset, and restrictions on land use change (Tomasella 2001: 56-76). Such provisions, where properly enforced, have assured the maintenance of eco-compatible agro-forestry practices and the integrity of the land and its eco-systems. Legal enforcement for conserving the environmental value of the commons came as an additional and strengthening element of a modality of governance that – as clearly shown in CPRS and CA theory and by practices related to the international ICCA concept – is by its intrinsic characteristics value-oriented and finalized to preserving the natural resources for future use or inter-generational transmission (Nervi 2008; Bassi 2016).

The relevance of the Italian commons for biodiversity, ecosystem services and landscape conservation is also shown by the high incidence in Italy of official protected areas or "Natura 2000" sites overlapping with commons and civic uses lands (Bassi 2012)[17]. From 1990 regional level legislation explicitly binds recognition of CPRs/CPOs to environmental conservation (table 2). The explicit legislative association of civic use lands and ancient (mountain) commons with environmental conservation originated at subnational level, but had an important antecedent in the 1980s with Law 431/1985 (*Legge Galasso*), and Legislative Degree n. 157/2006 (Code on Landscape and Heritage): rural commons and civic uses lands were bound to measures of landscape protection (Postiglione 2007). Progressively, the notion of "liquidation" as a underlying objective associated to CPR land has then been replaced by "environmental conservation"[18], a trend reinforced by a number of important sentences of the Constitutional Court (Di Genio 2004; Di Genio, De Vita 2005; Tomasella 2001). In this perspective, we can consider Law 168/2017 as the arrival point, a unifying and national level legislative resolution summing up decades of juridical history in the sector of civic use land and ancient rural commons (Caliceti *et al.* 2019).

[17] Unfortunately, this overlap has never been quantified.

[18] Anthropologically speaking, we may note that this shift reflects a change of values within the larger society, from the imperative of development at all costs to get out of trapping poverty to the environmental awareness and sustainability culture of the post-industrial society.

Box 2. Selection from Law 168/2017 on 'collective domains'

Art.1. Recognition of collective domains

1. […] The Republic recognizes the collective domains, independently of their [specific, local] denomination […]. b) They have capacity to self-regulate […]; c) They have capacity to manage the natural, economic and cultural patrimony associated to their common territory, that is in turn considered as common inter-generational property; d) [A collective domain] is characterized by the presence of a collectivity exercising common land rights […];[…].
2. The governing organs have juridical personality in terms of private law and have statutory autonomy.

Art. 2. Competence of the State

1. The Republic protects and valorizes the common goods [land, patrimony] because: a) [They are] key elements the life and development of the local collectivities; b) [They are] key instruments to assure the conservation and valorization of the national natural patrimony; c) [They are] permanent elements of the environmental system; d) [They are] territorial basis of historical institutions that have safeguarded the natural and cultural patrimony; e)) [They are] eco-landscape structures of the agro-forestry-pastoral landscape; […].

Art. 3. Common goods

1. Collective goods are: a) Land that is originally common property of the inhabitant of a territory of a municipality or a fraction of it [hamlet] […]; b) Land with pertinent physical asset that has been assigned as common property to the inhabitants of a municipality or a fraction of it [hamlet] in result of the process of liquidation of civic rights […]; […]; d) Land owned by private or public entities on which the inhabitants of a municipality of a fraction of it [hamlet] exercise civic uses that have not yet been liquidated; e) Collective land, independently of their [local] denomination, owned by descendants of the original inhabitants […]; […]
2. […]
3. […] The juridical status of the common goods is subject to inalienability, indivisibility, impossibility to apply adverse possession and to permanent destination to agro-forestry-pastoral use.

(Author's translation)

The selection presented in box 2 shows that the latest legislation brings under the single legal category of *dominio collettivo* ("collective domain") the heterogeneity that was derived from the legislative lines on civic use lands and the ancient commons. The qualifying features of the collective domains correspond to the territories of life, implying a portion of territory on which a specific community autonomously exercise collective governance. The State grants recognition and support because of their environmental and cultural value. The qualifications of "common goods" and of "self-regulated" communities with their governing organs fully brings the "collective domains" into the realm of CPRs and CA theory, with the possibility to adopt the related concept of CPO for those communities.

A governance-based classification of the Italian rural commons

The diverse legal processes by which the Italian territory-based CPRs (the rural commons) were recognized produced a variability of governance mechanisms. In turn, governance modalities

influenced the organizational capacity of CPOs, and their effectiveness in conserving biodiversity. There is no dedicated support or policy to sustain rural commons, but the CPO's organizational capacity gives them the opportunity to access standard EU funding in the agricultural, forestry and biodiversity sectors. The most effective CPOs are those large enough to afford a management board with the competence to administer funds, projects and financial transactions. Most of them are local aggregations of smaller commons that came together for administrative reasons. Financially successful CPOs not only do promote environmental management and rehabilitation, they also engage in social and cultural activities, often connected to local identity and community's wellbeing (Bassi 2012).

Table 4. Classification of Common Properties and Civic Use Lands in Italy (Source: adapted from Bassi 2012)

<table>
<tr><th colspan="6">Civic uses lands</th></tr>
<tr><td></td><td colspan="5">CPRs</td></tr>
<tr><td></td><td colspan="3"></td><td colspan="2">Self-administered CPRs (with Statute) (with fully fledged CPOs)</td></tr>
<tr><td>Land owned by the government or private entities</td><td colspan="3">Land formally owned by the community</td><td colspan="2">Land owned by the community with the legal status of association</td></tr>
<tr><td>Undemarcated land still under secondary civic uses rights exercised by the local community</td><td colspan="3">Land demarcated in result of liquidation of civic uses after 1927</td><td>Derived from liquidation of civic uses during the early unitary Italian State (Università agraria type)</td><td>Existing before the unitary Italian State, and recognised by sectoral and regional legislation (Mountain and Plains types)</td></tr>
<tr><td rowspan="2"></td><td rowspan="2">Administered by the municipality</td><td rowspan="2">Administered by a board accountable to the municipality</td><td colspan="3">Administered by a board accountable to the community</td></tr>
<tr><td>Separate Administration (ASUC). Internal rules set by regional legislation (Trentino)</td><td>Internal rules set by national and regional legislation</td><td>Relevance of customary rules</td></tr>
<tr><td colspan="3">Open membership (residence)</td><td>Open membership – registered</td><td>Prevalently close membership (descent) – registered</td></tr>
</table>

Given the primacy of the juridical factor, I have built the classificatory framework presented in Table 4 using legal status of land and modalities of legal recognition as main variables (Bassi

2012). The top two lines show that the category of civic uses land does overlap with CPRs in a full sense, but not entirely, since the first (on the left) and last columns (on the right) do not fit both categories. Line 3 differentiates, within the CPRs group, those with a stronger decisional capacity and autonomy, each being associated to a legally instituted CPO, in the form of association of community's members, with registered statute. Line 4 refers to land ownership. Line 5 refers to the process of recognition, based on specific legislation. Line 6 differentiates the modalities of administration; hence it refers to the characteristics of the inherent CPOs and their constituency. Line 7 further qualifies the type of membership. The governance capacity, in terms of efficient administrative action and environmental conservation, grows from the left towards the right columns of the table. However, for this statement I have adopted a qualitative approach, based on the identification of the best cases through literature review. I have never been able to provide a quantification.

Towards a multiple method approach for policy-oriented research in Europe

The study of the Italian rural commons shows that in Europe too community-based conservation is a standard practice, but obscured in policy, despite outstanding legal achievements in some countries, including Italy. Territory-based commons have survived and are re-emerging as a relevant factor of biodiversity conservation. We suggest that in order to meet the agreed environmental standards the EU needs to align with international practices by adopting the IUCN/CBD type D territorial governance. Given the high level of the regulatory function by the State, it is recommended that the EU environmental and agricultural policy explicitly consider and promote the biodiversity conservation action of rural commons, with special attention to forestry, agro-forestry and pastoralism. It is a process that needs to be sustained by appropriate policy-oriented research, not only to quantify its actual relevance in terms of biodiversity conservation and sound environmental governance, but also to identify viable solutions in the EU political landscape. The intra-European diversity of legal processes, political history and administrative culture poses a strong challenge in terms of defining variables for meaningful quantitative cross-country analysis. Research in this field is by necessity multi-disciplinary, due to the need to combine different disciplines in the humanities and in the environmental sciences. As such, it implies the adoption of multiple methods. Poteete, Janssen and Ostrom have outlined a relevant range of methods for research on CA and CPRs, but have pointed to the high difficulty of combining them in ways that are purposely meaningful, internally coherent, adequate for the availability of data and cost-effective (Poteete *et al.* 2009: 3-7). It is here suggested that by building a careful classification of the European rural commons it is possible: a) to reduce and aggregate the otherwise too high number of variables (Agrawal 2003), based on the relevant questions associated to each classificatory category; b) to apply coherent methods by subdividing the research by discipline, based on the ontological features of the relevant issues to investigate by each classificatory category; c) to rationally differentiate data accessibility, to select them or to produce new data based on assessment of cost-benefits.

The careful analysis of table 4 reveals that the complexity of the Italian classification can ultimately be reduced to only two main pairs of underlining principles, outlined in table 5: the features of the CPRs and the features of the CPOs.

Table 5. Principles for the classification of European Rural Commons

Qualifying the common pool resource – CPR	Land ownership / arrangement
	Legal modalities of recognition (connected to political and juridical history of the country)
Qualifying the Common Pool Organisation – CPO	Focus on modalities of governance/governing organs
	Focus on membership

It is here suggested that the same criteria and principles can be used to build a cross-country classification of European rural commons.

The juridical account provided in the previous paragraphs shows that variation in the qualities of the CPRs is strictly dependent upon the specific Italian political and juridical history. This is a component that accordingly needs to be investigated in diachronic (or processual) perspective and with qualitative, archival and reflective methods, independently in each considered European country. Indeed, Agrawal (2003) has already suggested that deep knowledge of the context, obtained through attention on the formation of CPOs and historical processes related to the emergence of CPRs, can help to define purposive sampling, reduced number of relevant variables and to construct indices to combine them.

The definition of different modalities of land ownership/land use arrangements and the identification of the qualifying features of the CPOs at European scale can provide the structuring reference for purposive quantitative investigation, along the biological and human-dependent variables that are relevant for biodiversity conservation. I am therefore suggesting that, despite the European diversity and the challenges of the field, it is possible to construct meaningful interdisciplinary and policy-oriented research on community-based biodiversity conservation at European level, by elaborating a careful multiple method design.

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