

Legal rules as common goods: a civil economy perspective

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The growing interest shown – not only by academia – towards common goods, also due to the phenomena that have been affecting the planet and consequently our daily life, has led to the necessity of rethinking the economic system of which we are part.

This kind of challenge should influence also the activities carried out by lawmakers and policy-makers and, more in general, legal systems.

It can be argued that legal rules that, according to the Latin motto *ubi societas ibi ius*, govern our relationships in the society are configurable as public goods.

It is well known that the two characteristics that a good must have in order to be classified as a “public good” are non-rivalry and non-excludability in consumption. In addition to that, they are not owned by anyone and do not have a price although they give some utility to users.

It seems quite self-evident that legal rules fall into that definition, at least at a general and theoretical level. I suppose that legal rules are probably more than public goods. Considering that, the research question evolves and becomes basically inherent to their classification as “common goods”.

Therefore, the aim of the current work is to investigate if the economic definition¹ of “commons” is suitable for legal rules and what could be the possible consequences of considering them as such.

It is not to be overlooked the fact that some doubts could arise with reference to the rivalry that connotes commons as such. Indeed, it is not always true that an excessive use of them diminishes the utility given by a certain legal rule to other people.

Anyway, it is possible to affirm that by not pursuing a loyal behaviour, free riding episodes may emerge with regard to the exploitation of rules that unfairly benefit someone at the expenses of other members of the society and so of a community as happens to commons.

The aspect to focus on to consider legal rules as common goods – or better, *global* common goods – is the “source” of that kind of immaterial goods: collective creation.

For instance, peace and knowledge, commonly contemplated as commons, appear to share a lot of features with the object of the current examination.

¹ The analysis does not involve the examination of the legal definition of “common goods”.

However, the keystone to include legal rules into the category of common goods is the social dimension that it is inevitably related to rules. As a matter of fact, they are the basis for the existence of a group, of a community.

The aforementioned element represents also the *trait d'union* with the civil economy paradigm. If communities start to consider legal rules as a shared heritage, law systems would result informed at the *homo homini natura amicus* anthropological assumption as theorized by Antonio Genovesi instead of the Hobbesian *homo homini lupus*. Furthermore, the goal would become the reaching of the common good. Although that is in perfect line with the civil economy tradition, it has not however analysed that topic with particular attention.²

Even if it may appear in contrast with the line of economic thought of the civil economy school, Friedrich August von Hayek theorized a manner of establishing norms that guide human behaviour, which can be interpreted as expression of an unintentional collective process. Concretely, the Author referred to customs and their natural surfacing.

Creating norms in that way is ascribable to the Hayekian idea of “spontaneous order”. For that reason, *a fortiori* legal rules should be considered as commons.

Actually, there is a collective dimension behind the rising (and the maintenance) of rules as the evolution of the latter is strictly related to the way in which relationships among people develop.

On the contrary, adopting a top-down approach, namely rules set by a legislature, a judiciary or a bureaucracy, does not guarantee that the final product of that activity reflects the real desires of a community.

As a consequence, a reflection is to be made also with reference to the role played by lawmakers and policy-makers in our legal framework if we start to consider legal rules as common goods.

The question regards both how the contribution to the formation of legal rules by lawmakers is compliant with the purposes that the community of reference wants to achieve and how active participation of members of a community is promoted.

The possibility of shifting from the “spontaneous order” idea applied to market mechanisms (price system) to the same concept in law-making processes remains very fascinating in the theoretical debate.

² With reference to the lack of academic production regarding the topic in question, it is important to remember Giacinto Dragonetti, who wrote about laws in his work “Delle virtù e de’ premi” (1766), although not exactly about the specific issue examined here.

Perhaps, if we imagine no central authority with (law) planning powers, there would need to be tools that permit and assure the good “living together” among citizens like a legal system does.

Deepening this examination, the possible future lines of research could be directed towards the consideration of (legal) enforcement systems as common goods.

The interesting point consists in the fact that it seems well connected with the function of the judiciary, that is, the pivotal power for the interpretation and application of legal rules.

Moreover, if the starting point would turn out to be a conceptualization of legal rules as commons, also the necessary step (read: law-making) before the “birth” of such rules could potentially be considered as a common good.

In conclusion, what the research is basically aimed at investigating is whether legal rules can be subsumed under common goods. Based on the answer to this question, one can understand how they govern people.

Even before citizens and legislators deal with it, a reasoned reflection on that argument by both economists and legal scholars is nowadays needed. The care of living in community starts also from that kind of dialogue.

Short bibliography

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